

One Hundred First Annual Report

of the

State Corporation Commission

of

Virginia

For the Year Ending December 31, 2003

GENERAL REPORT

Letter of Transmittal

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

RICHMOND, VIRGINIA, *December 31, 2003*

To the Honorable Mark R. Warner

Governor of Virginia

Sir:

We have the honor to transmit herewith the one hundred first Annual Report of the State Corporation Commission for the year 2003.

Respectfully submitted,

Hullihen Williams Moore, Chairman

Theodore V. Morrison, Jr., Commissioner

Clinton Miller, Commissioner

TABLE OF CONTENTS

Commissioners	1
Preface	3
Rules of Practice and Procedure	5
Leading Matters Disposed of by Formal Orders	14
Tables:	
Summary of Changes in Number of Virginia Corporations, Foreign Corporations, and Limited Partnerships Licensed to do Business in Virginia, and of Amendments to Virginia, Foreign and Limited Partnership Charters during 2002 and 2003	713
Fees Collected by the Clerk's Office, June 30, 2002, and June 30, 2003	714
Fees Collected by the Bureau of Financial Institutions, June 30, 2002, and June 30, 2003	715
Fees Collected by the Bureau of Insurance, June 30, 2002, and June 30, 2003	715
Assessments of Value, Taxable Property, Public Service Corporations, 2002 and 2003	716
License Taxes Assessed, Public Service Corporations, 2002 and 2003	716
State Tax for Valuation and Rate Making, Utilities Companies, 2002 and 2003	716
Assessed Value, Property of Public Service Corporations for Local Taxation, By Cities and Counties, 2002 and 2003	717
Fees Collected by the Division of Securities and Retail Franchising for the years 2002 and 2003	719
2003 Proceedings by Divisions of the State Corporation Commission	
Division of Public Utility Accounting	720
Division of Communications	721
Division of Economics and Finance	722
Division of Energy Regulation	723
Bureau of Financial Institutions	724

Division of Insurance Regulation	725
Division of Securities and Retail Franchising	726
Uniform Commercial Code	727
Division of Utility and Railroad Safety	727
Index	728
APPENDIX:	
List of Cases Established in 2003	762

State Corporation Commission

COMMISSIONERS

*Clinton Miller

Chairman

**Hullihen Williams Moore

Chairman

Theodore V. Morrison, Jr.

Commissioner

Joel H. Peck

Clerk of the Commission

*Term as Chairman expired January 31, 2003

**Elected Chairman effective for term of one year,
February 1, 2003

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
Beverley 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	
Hullihen Williams Moore	February 26, 1992 to	
Clinton Miller	February 15, 1996 to	

From 1903 through 2003 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	12	Morrison	15
Miller	8				

Preface

The State Corporation Commission is vested with regulatory authority over many business and economic interests in Virginia. These interests are as varied as the SCC's powers, which are delineated by the state constitution and state law. Its authority ranges from setting rates charged by large investor-owned utilities to serving as the central filing agency for corporations in Virginia.

Initially established to oversee the railroad and telephone and telegraph industries in Virginia, the SCC's jurisdiction now includes many businesses which directly impact Virginia consumers. The SCC's authority encompasses utilities, insurance, state-chartered financial institutions, securities, retail franchising, the Virginia Pilots' Association, and railroads. It is the state's central filing office for corporations, limited partnerships, limited liability companies, and Uniform Commercial Code liens.

The SCC's structure is unique. No other state has charged one agency with such a broad array of regulatory responsibility. The SCC is organized as a fourth branch of government with its own legislative, administrative, and judicial powers. SCC decisions can only be appealed to the Virginia Supreme Court.

**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

Rules of Practice and Procedure

TABLE OF CONTENTS

**PART I
GENERAL PROVISIONS**

	Rule
Applicability	Rule 10
Good faith pleading and practice; sanctions.	Rule 20
Counsel.	Rule 30
Photographs and broadcasting of proceedings.	Rule 40
Consultation by parties with Commissioners and Hearing Examiners.	Rule 50
Commission staff.	Rule 60
Informal complaints.	Rule 70

**PART II.
COMMENCEMENT OF FORMAL PROCEEDINGS**

Regulatory proceedings.	Rule 80
Adjudicatory proceedings.	Rule 90
Other proceedings.	Rule 100

**PART III.
PROCEDURES IN FORMAL PROCEEDINGS**

Motions.	Rule 110
Procedure before Hearing Examiners.	Rule 120
Amendment of pleadings.	Rule 130
Filing and service.	Rule 140
Copies and format.	Rule 150
Memorandum of completeness.	Rule 160
Confidential information.	Rule 170
Official transcript of hearing.	Rule 180
Rules of evidence.	Rule 190

Briefs	Rule 200
Oral argument.....	Rule 210
Petition for rehearing or reconsideration.....	Rule 220
Extension of time.....	Rule 230

PART IV.
DISCOVERY AND HEARING PREPARATION PROCEDURES

Prepared testimony and exhibits.....	Rule 240
Process, witnesses, and production of documents and things.....	Rule 250
Interrogatories to parties or requests for production of documents and things.....	Rule 260
Hearing preparation.....	Rule 270
Discovery in 5 VAC 5-20-90 proceedings.....	Rule 280

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 the 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; sanctions.

Every pleading, written motion, or other paper 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 paper, 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 paper, and shall state the partnership's mailing address and telephone number. A non-lawyer 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 a qualified officer or agent. The pleadings need not be under oath unless so required by statute. The Commission may provide, by order, a manner for acceptance of electronic signatures in particular cases.

The signature of an attorney or party constitutes a certification that: (i) the attorney or party has read the pleading, motion, or other paper; (ii) to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, it 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) it 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 paper will not be accepted for filing by the Clerk of the Commission if 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.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

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 control, 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 5 VAC 5-20-80 A or 5 VAC 5-20-80 B 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 is the proper initial responsive pleading to a rule to show cause. An answer 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 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 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 5 VAC 5-20-100 B 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.

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 the rules. In the discharge of his or her 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.

B. Objections and certification of issues. An objection to a ruling by the hearing examiner shall be stated with the reasons therefore at the time of the ruling, and the objection 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 formal 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 formal pleading or other related 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. The commission may by order make provision for electronic filing of documents, including facsimile.

When a filing would otherwise be due on a day when the Clerk's office is not open for public business, the filing will be timely if made on the next regular business day when the office is open to the public. When a period of fifteen 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 formal 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 properly addressed and stamped, on or before the date of filing. Service on a party may be made by service on the party's counsel. 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. The commission may, by order, provide for electronic service of documents, including facsimile. Notices, findings of fact, opinions, decisions, orders, or other paper 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 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, responsive pleadings, briefs, and other documents must be filed in an original and 15 copies. 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 ½ by 11 inches in dimension, and must be capable of being reproduced in copies of archival quality. Pleadings shall be bound or attached on the left side and contain adequate margins. Each page following the first page must be numbered. If necessary, a document may be filed in consecutively numbered volumes, each of which may not exceed three inches in thickness. Pleadings 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. 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

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

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 a formal proceeding that information to be filed with or submitted 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 submit the information under seal to the commission staff as may be required. One copy of all such information also shall be submitted 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.

Upon challenge, the filing party shall demonstrate to the satisfaction of the commission that the information should be withheld from 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 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.

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.

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 of the Commission's office. 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 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. 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 a 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. Documents. In a pending case, 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. Witnesses. In a pending case, 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 a party in a formal proceeding before the commission, other than a proceeding under 5 VAC 5-20-100 A and C, 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 requesting party information as is known. Interrogatories or requests for production of documents 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. 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 to the Clerk of the Commission pursuant to 5 VAC 5-20-270. All interrogatories and requests for production of documents shall 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. Objections, if any, to specified questions shall be stated with specificity, citing appropriate legal authority, and served with the list of responses. Responses and objections to interrogatories or requests for production of documents shall be served within 14 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

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

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, upon the filing of its testimony, exhibits, or report, will compile and file with the Clerk of the Commission three copies of any workpapers that support the recommendations made in its testimony or report. The Clerk of the Commission shall make the workpapers available for public inspection and copying during regular business hours.

5 VAC 5-20-280. Discovery in 5 VAC 5-20-90 proceedings.

The following applies only to proceedings in which a defendant is subject to monetary or injunctive penalties, or revocation, cancellation, or curtailment of a license, certificate of authority, registration, or similar authority previously issued by the commission to the defendant.

A. 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 interests of justice. An order granting relief under 5 VAC 5-20-280 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.

B. Depositions. After commencement of an action to which this rules applies, the commission staff or a party may take the testimony of a party or another person or entity, 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 party 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 or her 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.

C. Requests for admissions. The commission staff or a party to the 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 matter.

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

LEADING MATTERS DISPOSED OF BY FORMAL ORDERS

BUREAU OF FINANCIAL INSTITUTIONS

CASE NO. BAN20021236 JANUARY 16, 2003

APPLICATION OF
CHEQUE CASHING, INC. D/B/A ACE AMERICA'S CASH EXPRESS

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

Cheque Cashing, Inc. d/b/a ACE America's Cash Express (the "Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to § 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 Company will also be engaged in the check cashing business, as permitted by statute. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application should be 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, money transmission, or check cashing 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, money transmission, and check cashing business.
3. The Company shall be and remain a party to a written agreement to act as an agent for a person licensed to sell money orders and engage in the money transmission business, who is in good standing with the Bureau, under Title 6.1, Chapter 12 of the Code of Virginia ("money order seller/money transmitter licensee"). 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 money order seller/money transmitter licensee with whom it has a written agency agreement.
4. The Company shall maintain books and records for the money order sales, money transmission, and check cashing business separate and apart from its payday lending business and in a different location within the 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. Violation of any condition contained in this Order may result in revocation of the authority hereby conferred.

CASE NO. BAN20021238 JANUARY 22, 2003

APPLICATION OF
CHEQUE CASHING, INC. D/B/A ACE AMERICA'S CASH EXPRESS

For authority to sell in its payday lending office(s) prepaid telephone service offered by a third party

ORDER GRANTING OTHER BUSINESS AUTHORITY

Cheque Cashing, Inc. d/b/a ACE America's Cash Express (the "Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.1-463 of the Code of Virginia, for authority to sell in its payday lending office(s) prepaid telephone service offered by a third party. The Company will also be engaged in the check cashing business, as permitted by statute. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application should be 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 make payments related to prepaid telephone service.
2. The Company shall not engage in the business of accepting payments on behalf of telephone service providers in a form negotiable by the Company without being a licensed money transmitter under Title 6.1, Chapter 12 of the Code of Virginia.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

3. The Company shall comply with all federal and state laws and regulations applicable to the sale of prepaid telephone service.
4. The Company shall maintain books and records for the sale of prepaid telephone service separate and apart from its payday lending business and in a different location within the 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. Violation of any condition contained in this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20021571
JANUARY 22, 2003**

APPLICATION OF
T. BYRD, INC. D/B/A INSTANT MONEY SERVICE

For authority to conduct business as an agent of a money order seller/money transmitter in its payday lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

T. Byrd, Inc. d/b/a Instant Money Service (the "Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to § 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 offices. The Company will also be engaged in the check cashing business, as permitted by statute. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application should be 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, money transmission, or check cashing services available at the Company's payday lending offices.
2. The Company shall comply with all federal and state laws and regulations applicable to its money order sales, money transmission, and check cashing business.
3. The Company shall be and remain a party to a written agreement to act as an agent for a person licensed to sell money orders and engage in the money transmission business, who is in good standing with the Bureau, under Title 6.1, Chapter 12 of the Code of Virginia ("money order seller/money transmitter licensee"). 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 money order seller/money transmitter licensee with whom it has a written agency agreement.
4. The Company shall maintain books and records for the money order sales, money transmission, and check cashing business separate and apart from its 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. Violation of any condition contained in this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20022057
MAY 27, 2003**

APPLICATION OF
NETWORK FUNDING, L.P.

For a license to engage in business as a mortgage lender

ORDER GRANTING A LICENSE

Network Funding, L.P., a Texas limited partnership, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of mortgage lending at 9700 Richmond Avenue, Suite 320, Houston, Texas 77042. 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 16 of Title 6.1 of the Code of Virginia.

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

**CASE NO. BAN20022090
JANUARY 9, 2003**

APPLICATION OF
ATLANTIC CASH GROUP, INC. D/B/A MINUTEMEN PAYDAY LOANS

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

Atlantic Cash Group, Inc. d/b/a Minutemen Payday Loans, a Virginia corporation, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at 1814 Todds Lane, Suite J, Hampton, Virginia 23666. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20022092
JANUARY 14, 2003**

APPLICATION OF
ATLANTIC CASH GROUP, INC. D/B/A MINUTEMEN PAYDAY LOANS

For authority to conduct tax preparation business in its payday lending office(s)

ORDER GRANTING OTHER BUSINESS AUTHORITY

Atlantic Cash Group, Inc. d/b/a Minutemen Payday Loans (the "Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.1-463 of the Code of Virginia, for authority to conduct tax preparation business 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 application should be granted subject to the following conditions:

- (1) The Company shall not make a payday loan to a borrower to enable the borrower to pay a fee related to tax filing or tax preparation business available at the Company's business location(s).
- (2) The Company shall comply with all federal and state laws and regulations applicable to its tax preparation business.
- (3) The Company shall maintain books and records for the tax preparation business separate and apart from its payday lending business and in a separate place at the business location(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.
- (4) Violation of any condition contained in this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20022096
MAY 12, 2003**

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

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

Tosh of Utah, Inc. (Used in Virginia by: Tosh, Inc.) d/b/a Check City Check Cashing, a Utah corporation, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at (1) 6001 W. Broad Street, Richmond, Virginia 23230; (2) 4708 Jefferson Davis Highway, Richmond, Virginia 23234; and (3) 900 Azalea Avenue, Richmond, Virginia 23227. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20022139
MAY 8, 2003**

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

For authority to conduct business as an agent of a money order seller/money transmitter in its payday lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Tosh of Utah, Inc. (Used in Virginia by: Tosh, Inc.) d/b/a Check City Check Cashing ("Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to § 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 offices. The Company will also be engaged in the check cashing business as permitted by statute. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application should be 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, money transmission, or check cashing services available at the Company's payday lending offices.
2. The Company shall comply with all federal and state laws and regulations applicable to its money order sales, money transmission, and check cashing businesses.
3. The Company shall be and remain a party to a written agreement to act as an agent for a person licensed to sell money orders and engage in the money transmission business, who is in good standing with the Bureau, under Title 6.1, Chapter 12 of the Code of Virginia ("money order seller/money transmitter licensee"). 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 money order seller/money transmitter licensee with whom it has a written agency agreement.
4. The Company shall maintain books and records for the money order sales, money transmission, and check cashing businesses separate and apart from its 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. Violation of any condition contained in this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20022194
JANUARY 22, 2003**

APPLICATION OF
UNIVERSAL CREDIT CORPORATION OF VA D/B/A THE CASH COMPANY OF BRISTOL, VA

For authority to conduct tax preparation business in its payday lending office(s)

ORDER GRANTING OTHER BUSINESS AUTHORITY

Universal Credit Corporation of VA d/b/a The Cash Company of Bristol, VA (the "Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.1-463 of the Code of Virginia, for authority to conduct tax preparation business 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 application should be granted subject to the following conditions:

- (1) The Company shall not make a payday loan to a borrower to enable the borrower to pay a fee related to tax filing or tax preparation business available at the Company's business location(s).
- (2) The Company shall comply with all federal and state laws and regulations applicable to its tax preparation business.
- (3) The Company shall maintain books and records for the tax preparation business separate and apart from its payday lending business and in a separate place at the business location(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.
- (4) Violation of any condition contained in this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20022195
JANUARY 30, 2003**

APPLICATION OF
GULFPORT FINANCIAL, L.L.C. D/B/A VIRGINIA CASH ADVANCE

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

Gulfport Financial, L.L.C. d/b/a Virginia Cash Advance, a Missouri limited liability company, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at: (1) 2001 Armistead Avenue, Hampton, Virginia 23661; (2) 12906 Jefferson Avenue, Newport News, Virginia 23608; (3) 6916 N. Military Highway, Norfolk, Virginia 23518; (4) 6107 Sewells Point Road, Norfolk, Virginia 23513; and (5) 1917 S. Independence Boulevard, Virginia Beach, Virginia 23456. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20022289
FEBRUARY 6, 2003**

APPLICATION OF
OCEANA CASH ADVANCE, LLC

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

Oceana Cash Advance, LLC, a Virginia limited liability company, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at 1657 Virginia Beach Boulevard, Virginia Beach, Virginia 23454. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20022290
MARCH 7, 2003**

APPLICATION OF
JAMES C. DOTSON D/B/A APPALACHIAN PAYDAY LOANS

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

James C. Dotson d/b/a Appalachian Payday Loans, a Virginia sole proprietorship, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at 427 West Main Street, Wise, Virginia 24293. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20022302
FEBRUARY 12, 2003**

APPLICATION OF
ADVANCE FINANCIAL SERVICES, LLC

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

Advance Financial Services, LLC, a Virginia limited liability company, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at 311 W. Franklin Street, Suite 108, Richmond, Virginia 23220. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20022356
FEBRUARY 25, 2003**

APPLICATION OF
OCEANA CASH ADVANCE, LLC

For authority to allow a third party to conduct the business of a ceramic tile retailer and installer from the licensee's payday lending office(s)

ORDER GRANTING OTHER BUSINESS AUTHORITY

Oceana Cash Advance, LLC (the "Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.1-463 of the Code of Virginia, for authority to allow a third party to conduct the business of a ceramic tile retailer and installer from 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 application should be granted subject to the following conditions:

1. The Company shall not make a payday loan to a borrower to enable the borrower to purchase goods or services from, or repay any amount due to, the third party operating at the Company's business location(s).
2. The third party shall comply with all federal and state laws and regulations applicable to the conduct of its ceramic tile sales and installation business.
3. The third party shall maintain books and records for its business separate and apart from the Company's payday lending business and in a different location within the 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.
4. Violation of any condition contained in this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20022366
APRIL 10, 2003**

APPLICATION OF
EAGLE FINANCIAL OF MD., INC. (USED IN VIRGINIA BY: EAGLE FINANCIAL, INCORPORATED) D/B/A EAGLE CHECK CASHING

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

Eagle Financial of Md., Inc. (Used in Virginia by: Eagle Financial, Incorporated) d/b/a Eagle Check Cashing, a Maryland corporation, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at the following locations: (1) 3500 Mount Vernon Avenue, Alexandria, Virginia 22305; (2) 7426 Sudley Road, Manassas, Virginia 22110; and (3) 14496 Jefferson Davis Highway, Woodbridge, Virginia 22191. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20030117
MARCH 4, 2003**

APPLICATION OF
BILL KILLEN D/B/A "KWIK KASH"

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

Bill Killen d/b/a "Kwik Kash", of Wise, Virginia, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at 400 Main Street, Clintwood, Virginia 24228. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the report of the Bureau, the Commission finds that the application meets the criteria in Chapter 18 of Title 6.1 of the Code of Virginia.

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

**CASE NO. BAN20030119
MARCH 24, 2003**

APPLICATION OF
BAREHUT, INC. D/B/A SPEEDY CASH

For authority to sell in its payday lending office(s) cellular telephones and cellular telephone service offered by a third party

ORDER GRANTING OTHER BUSINESS AUTHORITY

Barehut, Inc. d/b/a Speedy Cash ("Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.1-463 of the Code of Virginia, for authority to sell in its payday lending office(s) cellular telephones and cellular telephone service offered by a third party. The Company will also be engaged in the check cashing business, as permitted by statute. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application should be 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 make payments or deposits related to, cellular telephone service or equipment.
2. The Company shall not engage in the business of accepting payments or deposits on behalf of cellular telephone service providers in a form negotiable by the Company without being a licensed money transmitter under Title 6.1, Chapter 12 of the Code of Virginia.
3. The Company shall comply with all federal and state laws and regulations applicable to the sale of cellular telephone service and equipment.
4. The Company shall maintain books and records for the sale of cellular telephone service and equipment separate and apart from its payday lending business and in a different location within the 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. Violation of any condition contained in this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20030122
MARCH 11, 2003**

APPLICATION OF
CHECK-N-HOLD, INC.

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

Check-N-Hold, Inc., an Illinois corporation, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at 2607 Mt. Vernon Avenue, Alexandria, Virginia 22301. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20030129
MARCH 11, 2003**

APPLICATION OF
CHECK FIRST, INC.

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

Check First, Inc., a Tennessee corporation, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at: (1) 1127 East Main Street, Salem, Virginia 24015; (2) 402 B West Main Street, Bedford, Virginia 24523; (3) 2090 Roanoke Street, Christiansburg, Virginia 24073; (4) 2050 Electric Road, Southwest Plaza, Roanoke, Virginia 24018; (5) 2842 Virginia Avenue, Collinsville, Virginia 24078; and (6) 3701 Fort Avenue, Lynchburg, Virginia 24502. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20030185
MARCH 4, 2003**

APPLICATION OF
PAUL DOUGLAS JACKSON D/B/A CHECK HOLDERS

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

Paul Douglas Jackson d/b/a Check Holders, a Virginia sole proprietorship, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at 126 West Second Street, Chase City, Virginia 23924. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20030186
MARCH 7, 2003**

APPLICATION OF
PAUL DOUGLAS JACKSON D/B/A CHECK HOLDERS

For authority to conduct a pawnbrokering business in payday lending office(s)

ORDER GRANTING OTHER BUSINESS AUTHORITY

Paul Douglas Jackson d/b/a Check Holders ("Licensee"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.1-463 of the Code of Virginia, for authority to conduct a pawnbrokering business in his 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 application should be granted subject to the following conditions:

1. The Licensee shall not make a payday loan to enable a borrower to repay any amount the borrower owes as a result of a pawnbrokering transaction.
2. The Licensee shall not enter into a pawnbrokering transaction to enable a person to repay any amount owed to the Licensee as a result of a payday loan transaction.
3. The Licensee shall not make a payday loan to enable a borrower to pay any part of the purchase price of personal property offered for sale in the payday lending office(s).
4. The Licensee shall not enter into a pawnbrokering transaction and make a payday loan contemporaneously or in response to a single request for a loan.
5. The Licensee shall comply with all federal and state laws and regulations applicable to the conduct of his pawnbrokering business.
6. The Licensee shall maintain books and records for his pawnbrokering business separate and apart from the books and records of the Licensee's payday lending business, and in a different location within the 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 this Order.
7. Violation of any provision of this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20030221
APRIL 24, 2003**

APPLICATION OF
D & Q ENTERPRISES, INC. D/B/A PAYMASTERS

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

D & Q Enterprises, Inc. d/b/a Paymasters, a Virginia corporation, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at 2261 Valley Avenue, Winchester, Virginia 22601. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20030232
APRIL 10, 2003**

APPLICATION OF

EAGLE FINANCIAL OF MD., INC. (USED IN VA BY: EAGLE FINANCIAL, INCORPORATED) D/B/A EAGLE CHECK CASHING

For authority to conduct business as an agent of a money order seller/money transmitter in its payday lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Eagle Financial of MD., Inc. (Used in VA by: Eagle Financial, Incorporated) d/b/a Eagle Check Cashing ("Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to § 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 offices. The Company will also be engaged in the check cashing business as permitted by statute. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application should be 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, money transmission, or check cashing services available at the Company's payday lending offices.
2. The Company shall comply with all federal and state laws and regulations applicable to its money order sales, money transmission, and check cashing businesses.
3. The Company shall be and remain a party to a written agreement to act as an agent for a person licensed to sell money orders and engage in the money transmission business, who is in good standing with the Bureau of Financial Institutions, under Title 6.1, Chapter 12 of the Code of Virginia ("money order seller/money transmitter licensee"). 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 money order seller/money transmitter licensee with whom it has a written agency agreement.
4. The Company shall maintain books and records for the money order sales, money transmission, and check cashing businesses separate and apart from its 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. Violation of any condition contained in this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20030233
APRIL 8, 2003**

APPLICATION OF

EAGLE FINANCIAL OF MD., INC. (USED IN VA BY: EAGLE FINANCIAL, INCORPORATED) D/B/A EAGLE CHECK CASHING

For authority to conduct retail sales business in its payday lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Eagle Financial of MD., Inc. (Used in VA by: Eagle Financial, Incorporated) d/b/a Eagle Check Cashing ("Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.1-463 of the Code of Virginia, for authority to conduct retail sales business in the Company's payday lending offices. The Company will also be engaged in the check cashing business as permitted by statute. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application should be granted subject to the following conditions:

1. The Company shall not make a payday loan to a borrower to enable the borrower to purchase a product at the Company's payday lending offices.
2. The Company shall comply with all federal and state laws and regulations applicable to the conduct of its retail sales business.
3. The Company shall maintain books and records for the retail sales business separate and apart from its 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.
4. Violation of any provision of this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20030306
MARCH 25, 2003**

APPLICATION OF
THE CASH COMPANY OF VIRGINIA D/B/A THE CASH COMPANY OF WEBER CITY

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

The Cash Company of Virginia d/b/a The Cash Company of Weber City, a Virginia corporation, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at 254 U.S. Highway 23 North, Suite 4, Weber City, Virginia 24290. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20030307 and BAN20030308
MARCH 31, 2003**

APPLICATIONS OF
THE CASH COMPANY OF VIRGINIA D/B/A THE CASH COMPANY OF WEBER CITY

For authority to conduct tax preparation and electronic tax filing business in its payday lending office(s)

ORDER GRANTING OTHER BUSINESS AUTHORITY

The Cash Company of Virginia d/b/a The Cash Company of Weber City ("Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.1-463 of the Code of Virginia, for authority to conduct tax preparation and electronic tax filing business in the Company's payday lending office(s). The applications were investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the applications and the Bureau's report, the Commission finds that the applications should be granted subject to the following conditions:

- (1) The Company shall not make a payday loan to a borrower to enable the borrower to pay a fee related to tax preparation or electronic tax filing services available at the Company's business location(s).
- (2) The Company shall not make, arrange, or broker a payday loan to a borrower on the security of a borrower's tax refund or other assignment of income payable to a borrower.
- (3) The Company shall not engage in the business of accepting payments on behalf of the Internal Revenue Service or other governmental instrumentalities in a form negotiable by the Company without being a licensed money transmitter under Title 6.1, Chapter 12 of the Code of Virginia.
- (4) The Company shall comply with all federal and state laws and regulations applicable to its tax preparation and electronic filing businesses.
- (5) The Company shall maintain books and records for its tax preparation and electronic tax filing businesses separate and apart from its payday lending business and in a separate place at the business location(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.
- (6) Violation of any condition contained in this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20030369
APRIL 8, 2003**

APPLICATION OF
FIRST BANCORP, INC.

To acquire First Commonwealth Bank

ORDER OF APPROVAL

First Bancorp, Inc., 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 the voting shares of First Commonwealth 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 First Commonwealth Bank by First Bancorp, Inc. is APPROVED, provided the acquisition takes place within one (1) year from this date and the applicant notifies the Bureau of the effective date of the transaction within ten (10) days thereof.

**CASE NO. BAN20030380
APRIL 23, 2003**

APPLICATION OF
HARRIS FINANCIAL SERVICES, INC. D/B/A CASH NOW - HAMPTON ROADS

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

Harris Financial Services, Inc. d/b/a Cash Now - Hampton Roads, a Virginia corporation, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at 1600 E. Little Creek Road, Suite 326, Norfolk, Virginia 23518. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20030412
MAY 1, 2003**

APPLICATION OF
ALLIED CASH ADVANCE VIRGINIA LLC D/B/A ALLIED CASH ADVANCE

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

Allied Cash Advance Virginia LLC d/b/a Allied Cash Advance, 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 645 Oakley Avenue, Lynchburg, Virginia 24501. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20030438
APRIL 10, 2003**

APPLICATION OF
TCF FINANCIAL CORPORATION

To acquire 9.99 percent of TransCommunity Bankshares Incorporated

ORDER OF APPROVAL

TCF Financial Corporation, an out-of-state bank holding company with headquarters in Wayzata, Minnesota, has filed with the State Corporation Commission ("Commission") the application required by Chapter 15 of Title 6.1 of the Code of Virginia to 9.99 percent of the voting shares of TransCommunity Bankshares Incorporated, a Virginia bank holding company. 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 9.99 percent of the voting shares of TransCommunity Bankshares Incorporated by TCF Financial Corporation is APPROVED, provided the acquisition takes place within one (1) year from this date and the applicant notifies the Bureau of the effective date of the transaction within ten (10) days thereof.

**CASE NO. BAN20030471
APRIL 4, 2003**

APPLICATION OF
ADVANCE FINANCIAL SERVICES, LLC

For authority to conduct tax preparation business in its payday lending office(s)

ORDER GRANTING OTHER BUSINESS AUTHORITY

Advance Financial Services, LLC ("Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.1-463 of the Code of Virginia, for authority to conduct tax preparation business in the Company's payday lending office(s). The applications were investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the applications and the Bureau's report, the Commission finds that the applications should be granted subject to the following conditions:

- (1) The Company shall not make a payday loan to a borrower to enable the borrower to pay a fee related to tax filing or tax preparation services available at the Company's business location(s).
- (2) The Company shall not make, arrange, or broker a payday loan to a borrower on the security of a borrower's tax refund or other assignment of income payable to a borrower.
- (3) The Company shall not engage in the business of accepting payments on behalf of the Internal Revenue Service or other governmental instrumentalities in a form negotiable by the Company without being a licensed money transmitter under Title 6.1, Chapter 12 of the Code of Virginia.
- (4) The Company shall comply with all federal and state laws and regulations applicable to its tax preparation business.
- (5) The Company shall maintain books and records for its tax preparation business separate and apart from its payday lending business and in a different location within the 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.
- (6) Violation of any condition contained in this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20030568
DECEMBER 31, 2003**

APPLICATION OF
KIM C. DAVIS D/B/A EASY FINANCIAL SERVICES

For a license to engage in business as a payday lender

ORDER DENYING A LICENSE

Kim C. Davis d/b/a Easy Financial Services ("applicant"), applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending pursuant to Chapter 18 of Title 6.1 of the Code of Virginia. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

The Bureau's investigation report reveals that (1) the applicant has been conducting a payday lending business in Virginia in violation of § 6.1-445 A of the Code of Virginia; (2) the applicant falsely stated in her application that she was not conducting a payday lending business in Virginia; and (3) in the course of making payday loans in Virginia, the applicant violated various requirements of the Payday Loan Act.

Having considered the application and the report of the Bureau, the Commission finds that the applicant lacks the character and general fitness such as to warrant belief that the applicant, if granted a license, would operate the business efficiently and fairly, in the public interest, and in accordance with law.

Accordingly, IT IS ORDERED THAT the license requested in the application is DENIED.

**CASE NO. BAN20030595
JULY 9, 2003**

APPLICATION OF
CASHNET, INC.

For authority to conduct business as an agent of a money order seller/money transmitter in its payday lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

CashNet, Inc. ("Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to § 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 offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application should be 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 order or money transmission services available at the Company's payday lending offices.
2. The Company shall comply with all federal and state laws and regulations applicable to its money order sales and money transmission businesses.
3. The Company shall be and remain a party to a written agreement to act as an agent for a person licensed to sell money orders and engage in the money transmission business, who is in good standing with the Bureau, under Title 6.1, Chapter 12 of the Code of Virginia ("money order seller/money transmitter licensee"). 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 money order seller/money transmitter licensee with whom it has a written agency agreement.
4. The Company shall maintain books and records for the money order sales and money transmission businesses separate and apart from its 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. Violation of any condition contained in this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20030703
JUNE 6, 2003**

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

For authority to conduct business as a Virginia Lottery sales agent in its payday lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Buckeye Check Cashing of Virginia, Inc. d/b/a Check\$mart ("Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.1-463 of the Code of Virginia, for authority to conduct business as a Virginia Lottery sales agent 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 application should be granted subject to the following conditions:

1. The Company shall not make a payday loan to a borrower to enable the borrower to purchase lottery tickets at the Company's payday lending offices.
2. The Company shall not make a payday loan to a borrower on the security of an interest in a lottery ticket or lottery prize.
3. The Company shall be licensed to sell lottery tickets by the State Lottery Department.
4. The Company shall comply with the State Lottery Law (§ 58.1-4000 *et seq.* of the Code of Virginia), as well as all other state and federal laws and regulations applicable to the conduct of its Virginia Lottery sales business.
5. The Company shall maintain books and records for the Virginia Lottery sales business separate and apart from its 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.
6. Violation of any provision of this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20030739
DECEMBER 10, 2003**

APPLICATION OF
EAGLE FINANCIAL OF MD., INC. (USED IN VIRGINIA BY: EAGLE FINANCIAL, INCORPORATED) D/B/A EAGLE CHECK CASHING

For authority to conduct business as a Virginia Lottery sales agent in its payday lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Eagle Financial of MD., Inc. (Used in Virginia by: Eagle Financial, Incorporated) d/b/a Eagle Check Cashing ("Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.1-463 of the Code of Virginia, for authority to conduct business as a Virginia Lottery sales agent 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 application should be granted subject to the following conditions:

1. The Company shall not make a payday loan to a borrower to enable the borrower to purchase lottery tickets at the Company's payday lending offices.
2. The Company shall not make a payday loan to a borrower on the security of an interest in a lottery ticket or lottery prize.
3. The Company shall be licensed to sell lottery tickets by the State Lottery Department.
4. The Company shall comply with the State Lottery Law (§ 58.1-4000 *et seq.* of the Code of Virginia), as well as all other state and federal laws and regulations applicable to the conduct of its Virginia Lottery sales business.
5. The Company shall maintain books and records for the Virginia Lottery sales business separate and apart from its 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.
6. Violation of any provision of this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20030841
JUNE 13, 2003**

APPLICATION OF
DL KING, LLC D/B/A KING'S CASH ADVANCES

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

DL King, LLC d/b/a King's Cash Advance, a Virginia limited liability company, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at the following locations: (1) 3130 Halifax Road, South Boston, Virginia 24592; and (2) 422 Furr Street, South Hill, Virginia 23970. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20030867
JUNE 13, 2003**

APPLICATION OF
CRUSADER CASH ADVANCE OF VIRGINIA, LLC

For authority to conduct business as an agent of a money order seller/money transmitter in its payday lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Crusader Cash Advance of Virginia, LLC ("Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to § 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 offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application should be 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 order or money transmission services available at the Company's payday lending offices.
2. The Company shall comply with all federal and state laws and regulations applicable to its money order sales and money transmission businesses.
3. The Company shall be and remain a party to a written agreement to act as an agent for a person licensed to sell money orders and engage in the money transmission business, who is in good standing with the Bureau, under Title 6.1, Chapter 12 of the Code of Virginia ("money order seller/money transmitter licensee"). 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 money order seller/money transmitter licensee with whom it has a written agency agreement.
4. The Company shall maintain books and records for the money order sales and money transmission businesses separate and apart from its 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. Violation of any condition contained in this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20030881
JULY 11, 2003**

APPLICATION OF
DEANNA ALSTON

To acquire 50 percent of the ownership of Highlands Venture Financial, L.L.C. d/b/a Cash America

ORDER OF APPROVAL

DeAnna Alston, of Knoxville, Tennessee, has applied to the State Corporation Commission ("Commission") to acquire 50 percent of the ownership of Highlands Venture Financial, L.L.C. d/b/a Cash America, a licensee under Chapter 18 of Title 6.1 of the Code of Virginia. The application has been investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the report of the Bureau, the Commission finds that the application meets the criteria in § 6.1-452 of the Code of Virginia.

THEREFORE, the acquisition of Highlands Venture Financial, L.L.C. d/b/a Cash America by DeAnna Alston is APPROVED.

**CASE NO. BAN20030885
MAY 21, 2003**

APPLICATION OF
MERCANTILE BANKSHARES CORPORATION

Pursuant to § 6.1-406 of the Code of Virginia

ORDER OF APPROVAL

On April 23, 2003, Mercantile Bankshares Corporation ("Mercantile"), an out-of-state bank holding company that controls several Virginia banks, filed with the State Corporation Commission ("Commission") the notice required by § 6.1-406 of the Code of Virginia of its proposed acquisition of Townsend Bank, the Delaware bank that is to be the successor by conversion of Townsend Building and Loan Association, a Delaware building and loan association. 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 any Virginia bank subsidiary of Mercantile. Therefore, the Commission hereby approves the acquisition of Townsend Bank, provided the acquisition takes place within one (1) year from this date and the applicant notifies the Bureau of the effective date within ten (10) days thereof.

**CASE NOS. BAN20030944 and BAN20031086
JULY 15, 2003**

APPLICATION OF
COLONIAL VIRGINIA BANK

For a certificate of authority to begin business as a bank at 6720 Sutton Road, Gloucester, Gloucester County, Virginia and for authority to establish a branch at 1578 Greate Road, Gloucester Point, Gloucester County, Virginia

ORDER GRANTING AUTHORITY

Colonial Virginia Bank, a Virginia corporation, has applied to the State Corporation Commission ("Commission"), pursuant to Chapter 2 of Title 6.1 of the Code of Virginia, for a certificate of authority to begin business as a bank at 6720 Sutton Road, Gloucester, Gloucester County, Virginia. The applicant also applied for authority to establish a branch at 1578 Greate Road, Gloucester Point, Gloucester County, Virginia. The applications were investigated by the Bureau of Financial Institutions ("Bureau").

Having considered the applications and the investigation report of the Bureau, the Commission finds that the public interest will be served by additional banking facilities in Gloucester County where the applicant proposes to conduct business. The Commission also finds that: (1) all applicable provisions of law have been complied with; (2) financially responsible individuals have subscribed for capital stock and surplus in an amount deemed by the Commission to be sufficient to warrant successful operation; (3) the oaths of all directors have been taken and filed in accordance with § 6.1-48 of the Code of Virginia; (4) the applicant was formed in order to conduct a legitimate banking business; (5) the moral fitness, financial responsibility, and business qualifications of those named as officers and directors of the proposed bank are such as to command the confidence of the community; and (6) the deposits of the bank are to be insured by the Federal Deposit Insurance Corporation. The Commission further finds that the application to establish a branch office complies with § 6.1-39.3 of the Code of Virginia.

IT IS THEREFORE ORDERED that a certificate of authority for Colonial Virginia Bank to engage in a banking business at the specified location is GRANTED, provided the following conditions are met before the bank opens for business:

- (1) Capital funds totaling \$12,103,500 are paid in to the bank and allocated as follows: \$3,025,875 to capital stock and \$9,077,625 to surplus;
- (2) The bank actually obtains insurance of its accounts by the Federal Deposit Insurance Corporation; and

(3) The bank receives the approval of the Commissioner of Financial Institutions of its appointment of a chief executive officer and gives the Bureau written notice of the date the bank will open for business. If the bank does not open for business within one (1) year from the date of this Order, the authority granted herein shall expire unless it is extended by the Commission.

IT IS FURTHER ORDERED that the application for a branch office is APPROVED, provided the bank opens the branch within one (1) year from the date of this Order and gives written notice to the Bureau stating the date business was begun within five (5) business days thereafter.

**CASE NO. BAN20030957
JUNE 20, 2003**

APPLICATION OF
DL KING, LLC D/B/A KING'S CASH ADVANCES

For authority to rent an/or sell personal property from its payday lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

DL King, LLC d/b/a King's Ca\$h Advance\$("Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.1-463 of the Code of Virginia, for authority to rent and/or sell personal property from 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 application should be granted subject to the following conditions:

1. The Company shall not make a payday loan to enable the borrower to purchase, or make any payments or deposits related to, items offered for rental and/or sale in the Company's payday lending offices.
2. The Company shall not make a payday loan on the security of any item sold in the Company's payday lending offices.
3. The Company shall comply with all federal and state laws and regulations application to the personal property rental and sales business.
4. The Company shall maintain books and records for its personal property rental and sales business separate and apart from its 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. Violation of any provision of this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20031051
AUGUST 1, 2003**

APPLICATION OF
MAGSAMEN INCORPORATED D/B/A COVINGTON CASH

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

Magsamen Incorporated d/b/a Covington Cash, a Virginia corporation, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at 301 West Main Street, Covington, Virginia 24426. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20031099
JULY 9, 2003**

APPLICATION OF
FNB CORPORATION

To acquire Bedford Bancshares, Inc.

ORDER OF APPROVAL

FNB Corporation, a bank holding company with headquarters in Christiansburg, Virginia, 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 Bedford Bancshares, Inc., a savings institution holding company headquartered in Bedford, Virginia. Bedford Bancshares, Inc. is the parent of Bedford Federal Savings Bank, a federal savings institution also headquartered in Bedford, Virginia. 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 complies with § 6.1-194.40 of the Code of Virginia.

THEREFORE, the proposed acquisition of Bedford Bancshares, Inc. by FNB Corporation is APPROVED, provided the acquisition takes place within one (1) year from this date and the applicant notifies the Bureau of the effective date of the transaction.

**CASE NO. BAN20031106
JULY 24, 2003**

APPLICATION OF
ROCUDA FAST CASH, INC.

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

Rocuda Fast Cash, Inc., a Virginia corporation, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at 2871 Virginia Avenue, Collinsville, Virginia 24078. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NOS. BAN20031121 and BAN20031695
SEPTEMBER 8, 2003**

APPLICATIONS OF
THE COMMUNITY BANK OF VIRGINIA

For a certificate of authority to begin business as a bank at 6657 Lake Harbour Drive, Midlothian, Chesterfield County, Virginia and for authority to establish a branch at 10014 Robious Road, Chesterfield County, Virginia

ORDER GRANTING AUTHORITY

The Community Bank of Virginia, a Virginia corporation, has applied to the State Corporation Commission ("Commission"), pursuant to Chapter 2 of Title 6.1 of the Code of Virginia, for a certificate of authority to begin business as a bank at 6657 Lake Harbour Drive, Midlothian, Chesterfield County, Virginia. The applicant also applied for authority to establish a branch at 10014 Robious Road, Chesterfield County, Virginia. The applications were investigated by the Bureau of Financial Institutions ("Bureau").

Having considered the applications and the investigation report of the Bureau, the Commission finds that the public interest will be served by additional banking facilities in Chesterfield County where the applicant proposes to conduct business. The Commission also finds that: (1) all applicable provisions of law have been complied with; (2) financially responsible individuals have subscribed for capital stock and surplus in an amount deemed by the Commission to be sufficient to warrant successful operation; (3) the oaths of all directors have been taken and filed in accordance with § 6.1-48 of the Code of Virginia; (4) the applicant was formed in order to conduct a legitimate banking business; (5) the moral fitness, financial responsibility, and business qualifications of those named as officers and directors of the proposed bank are such as to command the confidence of the community; and (6) the deposits of the bank are to be insured by the Federal Deposit Insurance Corporation. The Commission further finds that the application to establish a branch office complies with § 6.1-39.3 of the Code of Virginia.

IT IS THEREFORE ORDERED that a certificate of authority for The Community Bank of Virginia to engage in a banking business at the specified location is GRANTED, provided the following conditions are met before the bank opens for business:

- (1) Capital funds totaling \$11,440,245 are received by the bank and allocated as follows: \$3,813,415 to capital stock and \$7,626,830 to surplus;
- (2) The bank actually obtains insurance of its accounts by the Federal Deposit Insurance Corporation; and

(3) The bank receives the approval of the Commissioner of Financial Institutions of its appointment of a chief executive officer and gives the Bureau written notice of the date the bank will open for business. If the bank does not open for business within one (1) year from the date of this Order, the authority granted herein shall expire unless it is extended by the Commission.

IT IS FURTHER ORDERED that the application for a branch office is APPROVED, provided the bank opens the branch within one (1) year from the date of this Order and gives written notice to the Bureau stating the date business was begun within five (5) business days thereafter.

**CASE NO. BAN20031267
JULY 9, 2003**

APPLICATION OF
MERCANTILE BANKSHARES CORPORATION

To acquire F&M Bancorp

ORDER OF APPROVAL

Mercantile Bankshares Corporation ("Mercantile"), an out-of-state bank holding company that controls several Virginia banks, filed with the State Corporation Commission ("Commission") the notice required by § 6.1-406 of the Code of Virginia of its proposed acquisition of F&M Bancorp, a Maryland bank holding company. 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 any Virginia bank subsidiary of Mercantile.

THEREFORE, the proposed acquisition of F&M Bancorp by Mercantile is APPROVED, provided the acquisition takes place within one (1) year from this date and the applicant notifies the Bureau of the effective date of the transaction within ten (10) days thereof.

**CASE NO. BAN20031324
SEPTEMBER 4, 2003**

APPLICATION OF
EVERGREEN SERVICES INC.

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

Evergreen Services Inc., a Virginia corporation, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at the following locations: (1) 650-B North Main Street, Woodstock, Virginia 22664; (2) 3335 Fall Hill Avenue, Fredericksburg, Virginia 22401; (3) 367 Warrenton Road, Fredericksburg, Virginia 22405; (4) 13929 Lee Highway, Centreville, Virginia 20121; (5) 2722 North Washington Boulevard, Arlington, Virginia 22201; and (6) 5-B Fort Evans Road, Leesburg, Virginia 20176. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20031555
AUGUST 25, 2003**

APPLICATION OF
BRISTOL'S E-Z CASH ADVANCE, LLC

For authority to allow a third party to conduct retail sales business from the licensee's payday lending office(s)

ORDER GRANTING OTHER BUSINESS AUTHORITY

Bristol's E-Z Cash Advance, LLC ("Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.1-463 of the Code of Virginia, for authority to allow a third party to conduct retail sales business from 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 application should be granted subject to the following conditions:

1. The Company shall not make a payday loan to a borrower to enable the borrower to purchase a product from, or repay any amount due to, the third party operating at the Company's payday lending office(s).
2. The third party shall comply with all federal and state laws and regulations applicable to the conduct of its retail sales business.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

3. The third party shall maintain books and records for its retail sales business separate and apart from the Company's payday lending business and in a different location within the 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.
4. Violation of any provision of this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20031577
AUGUST 13, 2003**

APPLICATION OF
UNITED BANK

To merge with Sequoia Bank

ORDER GRANTING AUTHORITY

United Bank, 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 Sequoia Bank, a Maryland state-chartered bank. United Bank proposes to be the resulting bank in the merger and will have capital stock and surplus of not less than \$287,075,000. 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 11185 Main Street, City of Fairfax, Virginia, is authorized to maintain and operate, in addition to the current branches and facilities of United Bank, the authorized branches and facilities of Sequoia Bank listed in Attachment A. The authority granted herein shall expire one (1) year from this date unless extended by Commission order prior to the expiration date.

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

**CASE NO. BAN20031616
AUGUST 13, 2003**

APPLICATION OF
UNITED BANKSHARES, INC.

To acquire Sequoia Bancshares, Inc.

ORDER OF APPROVAL

United Bankshares, Inc., an out-of-state bank holding company that controls a Virginia bank, filed with the State Corporation Commission ("Commission") the notice required by § 6.1-406 of the Code of Virginia of its proposed acquisition of Sequoia Bancshares, Inc., a Maryland bank holding company. 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 United Bankshares, Inc.

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

**CASE NO. BAN20031887
OCTOBER 10, 2003**

APPLICATION OF
PERSEPOLIS, INC. D/B/A CASH IN A FLASH

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

Persepolis, Inc. d/b/a Cash in a Flash, a Virginia corporation, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at 4924 Chamberlayne Avenue, Richmond, Virginia 23227. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20031935
NOVEMBER 20, 2003**

APPLICATION OF
USA CHECK CASHERS, INC.

For a license to engage in business as a payday lender

ORDER GRANTING LICENSE

USA Check Cashers, Inc., a Virginia corporation, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at 3228 Riverside Drive, Danville, Virginia 24541. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20031943
NOVEMBER 25, 2003**

APPLICATION OF
HOWARD VOIGHT, D/B/A COURTHOUSE CHEQUE EXCHANGE

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

Howard Voight d/b/a Courthouse Cheque Exchange has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at 2404 Princess Anne Road, Virginia Beach, Virginia 23456. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20031966
NOVEMBER 7, 2003**

APPLICATION OF
FAST PAYDAY LOANS, INC.

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

Fast Payday Loans, Inc., a Virginia Corporation, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at the following locations: (1) 6012 East Virginia Beach Boulevard, Norfolk, Virginia 23502; (2) 712 J Clyde Morris Boulevard, Newport News, Virginia 23601; and (3) 706 Airline Boulevard, Portsmouth, Virginia 23707. 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 license requested in the application is GRANTED provided that the licensee begins business within one (1) year from this date and the licensee gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20032213
NOVEMBER 20, 2003**

APPLICATION OF
CASH EXPRESS OF VIRGINIA, INC.

For authority to conduct business as an agent of a money order seller/money transmitter in its payday lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Cash Express of Virginia, Inc. ("Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to § 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 offices. The Company is also engaged in the check cashing business, as permitted by statute. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application should be 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, money transmission, or check cashing services available at the Company's payday lending offices.
2. The Company shall comply with all federal and state laws and regulations applicable to its money order sales, money transmission, and check cashing businesses.
3. The Company shall be and remain a party to a written agreement to act as an agent for a person licensed to sell money orders and engage in the money transmission business, who is in good standing with the Bureau, under Chapter 12 of Title 6.1 of the Code of Virginia ("money order seller/money transmitter licensee"). 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 money order seller/money transmitter licensee with whom it has a written agency agreement.
4. The Company shall maintain books and records for the money order sales, money transmission, and check cashing businesses separate and apart from its 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 shall maintain a copy of this Order at each location where it conducts business as an agent of a 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. BAN20032214
DECEMBER 15, 2003**

APPLICATION OF
HARBERT PE HOLDINGS, LLC

To acquire 35.9 percent of the ownership of Express Check Advance of Virginia, LLC d/b/a Express Check Advance

ORDER OF APPROVAL

Harbert PE Holdings, LLC, a subsidiary of Harbinger Corporation and its parent, Harbert Management Corporation, has applied to the State Corporation Commission ("Commission") to acquire 35.9 percent of the ownership of Express Check Advance of Virginia, LLC d/b/a Express Check Advance, a licensed payday lender under Chapter 18 of Title 6.1 of the Code of Virginia. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the report of the Bureau, the Commission finds that the application meets the criteria in § 6.1-452 of the Code of Virginia.

THEREFORE, the acquisition of Express Check Advance of Virginia, LLC d/b/a Express Check Advance by Harbert PE Holdings, LLC is approved, provided the acquisition takes place within one (1) year from this date and the applicant gives written notice to the Bureau stating the date the acquisition occurred within ten (10) days thereafter.

**CASE NO. BAN20032282
NOVEMBER 25, 2003**

APPLICATION OF
CITIZENS BANCORP OF VIRGINIA, INC.

To acquire Citizens Bank and Trust Company

ORDER OF APPROVAL

Citizens Bancorp Of Virginia, 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 Citizens Bank And Trust Company, 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 Citizens Bank and Trust Company by Citizens Bancorp of Virginia, Inc. is APPROVED, provided the acquisition takes place within one (1) year from this date and the applicant notifies the Bureau of the effective date of the transaction within ten (10) days thereof.

**CASE NO. BAN20032305
DECEMBER 31, 2003**

APPLICATION OF
APPROVED ACQUISITION CORP.

To acquire Approved Financial Corp.

ORDER OF APPROVAL

Approved Acquisition Corp., a Michigan 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 Approved Financial Corp., a Virginia industrial loan association. 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 Approved Financial Corp. by Approved Acquisition Corp. is APPROVED, provided the acquisition takes place within one (1) year from this date and the applicant notifies the Bureau of the effective date of the transaction within ten (10) days thereof.

**CASE NO. BAN20032353
DECEMBER 31, 2003**

APPLICATION OF
AMG GUARANTY CORP

Pursuant to Title 6.1, Article 3.2, Chapter 2 Code of Virginia

ORDER APPROVING AN ACQUISITION

ON A FORMER DAY came AMG Guaranty Corp. (Greenwood Village, Colorado) and applied, as required by VA Code § 6.1-32.19, to acquire 100 percent of the voting shares of Old Dominion Trust Company (Norfolk, Virginia). The application was referred to the Bureau of Financial Institutions for investigation.

Having considered the application and the report of the Bureau of Financial Institutions, the Commission finds that the application meets the criteria in § 6.1-32.19 of the Code of Virginia.

THEREFORE, the proposed acquisition of 100 percent of the voting shares of Old Dominion Trust Company by AMG Guaranty Corp is APPROVED, provided the acquisition takes place within one (1) year from this date and the applicant notifies the Bureau of the effective date of the transaction within ten (10) days thereafter.

**CASE NO. BFI-2002-00014
MAY 9, 2003**

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

Ex Parte: In re: proposed regulation relating to bank acquisitions of real estate brokerage subsidiaries

DISMISSAL ORDER

On February 25, 2003, the Virginia Bankers Association ("VBA") and Virginia Association of Realtors ("VAR") requested that the State Corporation Commission ("Commission") cancel the hearing scheduled for March 4, 2003, in anticipation of the enactment of legislation that addresses the issues involved in this case. The VBA and VAR further requested that the Commission suspend action on the proposed regulation to allow such legislation to become effective on July 1, 2003, at which time this matter should be closed with no further action. Staff does not object.

On February 28, 2003, the Commission entered an Order in this case to cancel the hearing and continue the case generally pending further order of the Commission. Thereafter, the 2003 General Assembly enacted Chapters 536 and 558, which authorize state-chartered banks to own controlled subsidiary corporations that engage in the real estate brokerage business subject to application and approval by the Commission and various other conditions. This legislation will become effective on July 1, 2003.

Having considered Chapters 536 and 558 of the 2003 Acts of Assembly, and the joint request made by the VBA and VAR, the Commission finds that the General Assembly has addressed the issues involved in this case and that no further action should be taken in this matter. The Commission further finds that no purpose is served by keeping this matter pending on the active docket until the legislation becomes effective on July 1, 2003.

Accordingly, IT IS ORDERED THAT:

- (1) Beginning July 1, 2003, applications submitted by state-chartered banks to acquire controlled subsidiary corporations that engage in the real estate brokerage business will be reviewed by the Commission in accordance with § 6.1-58.3 of the Code of Virginia.
- (2) This case is dismissed.
- (3) The papers herein shall be placed in the file for ended causes.

**CASE NO. BFI-2002-00015
MARCH 12, 2003**

PETITION OF
VIRGINIA BANKERS ASSOCIATION

ORDER

On January 18, 2002, DuPont Community Credit Union ("DuPont") filed an application ("Application") with the Bureau of Financial Institutions ("BFI") for an expanded field of membership. DuPont seeks to expand its field of membership to include persons who live, work, worship, or attend school in, and businesses and other legal entities located in, the counties of Augusta, Bath, Highland, Rockbridge, and Rockingham, and the independent cities of Buena Vista, Harrisonburg, Lexington, Staunton, and Waynesboro. DuPont supplemented the Application on April 19, 2002. The BFI approved the Application on May 16, 2002. On June 7, 2002, the Virginia Bankers Association ("VBA" or "Petitioner") filed a petition ("Petition") with the State Corporation Commission ("Commission") in which the VBA contends that the BFI incorrectly approved the Application. Specifically, the VBA argues that

the BFI failed to adhere to the requirements of § 6.1-225.23 B 3 of the Code of Virginia ("Code") by approving the Application. The VBA asserts that the Virginia Credit Union Act, §§ 6.1-225.1 *et seq.* (Chapter 4.01 of Title 6.1) of the Code does not permit DuPont's common bond to be based on the aforementioned five counties and five cities, and the VBA seeks a Commission order to that effect.

On October 25, 2002, the Commission entered an Order in which it, *inter alia*, directed all parties to this case to file briefs and specify whether a hearing is necessary by November 15, 2002. The Commission requested briefing on the following issues:

- (1) Whether the VBA has standing to bring the present complaint;
- (2) What information should be considered by the Commission in making its decision in this case; and
- (3) What weight should be given to the National Credit Union Administration's ("NCUA") definition of a "well-defined local community, neighborhood, or rural district" and any interpretations by the NCUA of that term.¹

DuPont, the BFI, the VBA, and the Virginia Credit Union League ("VCUL") filed briefs in this case.

DuPont contends that the VBA lacks standing to bring this complaint. DuPont further asserts that the Commission should consider, *inter alia*, §§ 6.1-225.23 B 3 and 6.1-225.3:1 of the Code.²

DuPont requests that the Commission also consider the entirety of the Application, the roles of the Central Shenandoah Planning District Commission ("CSPDC") and the Shenandoah Valley Partnership ("SVP"), the approval by the NCUA of credit unions encompassing multiple jurisdictions,³ the effect on state chartered credit unions if the Commission interprets § 6.1-225.23 B 3 of the Code differently from how the NCUA interprets its relevant rules, and the reasons DuPont wishes to expand its field of membership, including: (i) to serve its members where they work and where they reside within the community; (ii) to offer residents the choice of a competitive, member-owned financial cooperative; (iii) to expand its financial services; and (iv) to ensure its long term viability.

DuPont urges the Commission to generally consider facts and features that the NCUA focuses on when it reviews an application for an expanded field of membership and to give the NCUA's definition of a "well-defined local community, neighborhood or rural district" considerable weight.⁴ DuPont observes that the language of § 6.1-225.23 B 3 of the Code pertaining to the Commission's consideration of the NCUA's definition is mandatory and concludes that the Commission should therefore give credible weight to the NCUA's definition. DuPont concludes that the VBA's Petition should be dismissed, and the Commission should affirm the BFI's approval of the Application.⁵

The VBA argues that it has standing to bring its Petition based on the Commission's policy of encouraging participation by those affected by important cases and prior Commission precedent. The VBA specifically asserts that it represents the interests of commercial banks and savings institutions doing business in the Commonwealth of Virginia and that one of the VBA's core purposes is to protect the interests of commercial banks and savings institutions before state government. According to the VBA, members of the VBA have a very direct and very material interest in seeing to it that their tax advantaged competitors [credit unions] are required to live within the "common bond" requirement of the Virginia Credit Union Act, §§ 6.1-225.1 *et seq.* (Chapter 4.01 of Title 6.1) of the Code, and that the "common bond" requirement is enforced by the BFI. The VBA also refers to the Commission's website as indicating the Commission's willingness to "encourage broad participation in SCC cases to ensure that everyone's concerns are considered."⁶ The VBA also cites a previous decision in support of its assertion that it has standing to challenge the BFI's approval of the Application.⁷

The VBA also contends that DuPont's field of membership does not constitute a "well-defined local community, neighborhood or rural district" under the plain meaning of § 6.1-225.23 B 3 of the Code. The VBA asserts that, while the Commission is required to consider the NCUA's definition of a "well-defined local community, neighborhood or rural district," the Commission is not required to blindly follow the NCUA's lead. The VBA further contends that given the significant size in terms of geography, population, and number of governmental jurisdictions involved, DuPont's proposed community does not satisfy the plain meaning of § 6.1-225.23 B 3 of the Code. The VBA also argues that community credit unions in Virginia are subject to more restrictive common bond requirements than they were prior to 1999 because the General Assembly amended the Virginia Credit Union Act, §§ 6.1-

¹ The Commission also disposed of certain procedural motions in the October 25, 2002, Order.

² Section 6.1-225.23 B 3 of the Code provides that the Commission should consider as one possible credit union field of membership "[t]hose persons or organizations within a well-defined local community, neighborhood or rural district. The Commission shall in its discretion determine whether such a proposed field of membership constitutes a 'well-defined local community, neighborhood or rural district.' However, the Commission shall give consideration to the definition of the term that has been adopted by the National Credit Union Administration and become legally effective."

Section 6.1-225.3:1 of the Code provides, *inter alia*, that "[t]he Commission is authorized to adopt such regulations as may be necessary to permit state chartered credit unions to have powers comparable with those of federally chartered credit unions regardless of any then existing statute, regulation or court decision limiting or denying such powers to state chartered credit unions."

³ DuPont emphasizes the approval of Central Virginia Federal Credit Union ("CVFCU") by the NCUA in support of the Application. CVFCU's expanded field of membership includes four counties, two cities, and one town.

⁴ DuPont Brief dated November 15, 2002, at 3, 12.

⁵ In the alternative, DuPont requests that the Commission handle the VBA's Petition in a separate generic proceeding without prejudicing DuPont's present Application. DuPont also asserts that the Commission should conduct no hearing in this case.

⁶ VBA Brief dated November 15, 2002, at 2-3. *See also*, <http://www.state.va.us/scc/commission/commissionandyou.htm>.

⁷ Petition of the Virginia Bankers Association, Case No. BFI-1997-00070, Order, 1998 S.C.C. Ann. Rep. 40 (April 3, 1998).

225.1 *et seq.* (Chapter 4.01 of Title 6.1) of the Code that year and added the word "local" to further restrict the ability of credit unions to expand outside their local community.⁸

The VBA contends that the Application also fails to meet the NCUA's definition of "well-defined local community, neighborhood or rural district." The VBA claims that the residents of the ten jurisdictions⁹ do not interact or have common interests, citing the lack of shared governmental or civic facilities, the lack of a common trade area, the lack of a shared regional hospital, and the multiple newspapers and colleges that exist within the same proposed area. The existence of the CSPDC and the SVP does not provide evidence that the residents have "common interests" or "interact" under the community common bond requirements.

According to the VBA, the NCUA's approvals of federal community common bonds should be given no weight by the Commission because § 6.1-225.23 B 3 of the Code references the NCUA's definition of "well-defined local community, neighborhood or rural district," not its approvals thereunder.¹⁰ The VBA emphasizes that the Commission need only consider the NCUA's definition and that the Commission should not abdicate to the NCUA the issue of what constitutes a permissible community common bond for Virginia credit unions.¹¹

Finally, the VBA asserts that DuPont's proposed expansion runs counter to § 6.1-225.23:1¹² because it reduces the demand for smaller credit unions. The VBA further alludes to the potential for safety and soundness concerns if the Commission approves the Application.¹³ The VBA concludes by requesting the entry of a Commission order finding that DuPont's proposed community is not a "well-defined local community, neighborhood, or rural district" under § 6.1-225.23 B 3 of the Code.¹⁴

The BFI asserts that its approval of the Application is fully supported by the facts and applicable law. The BFI maintains that the VBA does not have standing to bring this action as it has failed to demonstrate that the VBA, or one or more of its members, is suffering immediate or threatened injury as a result of the Commission's decision.¹⁵ The BFI argues that the NCUA's Interpretative Ruling and Policy Statement ("IRPS") 99-1, as well as the lack of any action by Congress to limit the IRPS, does not support the VBA's argument that the addition of the word "local" was intended to restrict the NCUA's approval of community credit unions. The BFI further claims that the General Assembly did not limit the Commission's discretion in amending § 6.1-225.23 B 3 of the Code but rather explicitly gave the Commission the authority to make the requisite determinations "in its discretion." According to the BFI, this broad grant of authority to the Commission when evaluating proposed fields of membership cannot be interpreted as intending to restrict the Commission's authority.

The BFI notes that IRPS 99-1 is sufficiently broad to allow for large community credit unions and that the NCUA has approved community credit unions with populations far greater than DuPont's Application.¹⁶ The BFI asserts that it is significant that the Application's proposed field of membership also constitutes a planning district represented by the CSPDC. The BFI also directs our attention to portions of the Application pertaining to shared medical facilities, newspapers, colleges and universities, interscholastic sport competitions, and community fairs and festivals as demonstrating the cohesiveness of the proposed field of membership. Finally, the BFI provides an alternative ground for approval of the Application by arguing that the proposed field of membership might also constitute a "well-defined rural district," pursuant to § 6.1-225.23 B 3 of the Code.¹⁷ The BFI requests that the VBA's Petition be dismissed.¹⁸

The VCUL urges the Commission to dismiss the VBA's Petition and affirm the BFI's approval of DuPont's Application. The VCUL first asserts that the VBA lacks standing to pursue its complaint. According to the VCUL, the VBA has made insufficient allegations of individualized harm to satisfy

⁸ Moreover, the VBA claims that the BFI has never approved such a large community common bond, even prior to the General Assembly's 1999 amendment adding the word "local."

⁹ The proposed expanded field of membership would also include eleven towns located in the five counties.

¹⁰ The VBA contends that the NCUA has ignored its own rules in approving certain federal credit union applications.

¹¹ VBA Brief dated November 15, 2002, at 13-14.

¹² Section 6.1-225.23:1 of the Code provides, *inter alia*, that "[w]hen practicable and consistent with reasonable safety-and-soundness standards, the Commission shall encourage the formation of a separately chartered credit union instead of adding a new group to the field of membership of an existing credit union."

¹³ The VBA argues that large credit unions with loosely defined fields of membership will compete with and potentially weaken smaller credit unions that have remained true to the original intent of the common bond. VBA Brief dated November 15, 2002, at 15.

¹⁴ The VBA agrees with DuPont that a hearing is unnecessary in this case.

¹⁵ BFI Brief dated November 15, 2002, at 3.

¹⁶ The BFI asserts that these approvals are entitled to deference under Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984).

¹⁷ BFI Brief dated November 15, 2002, at 12-14.

¹⁸ The BFI does not request a hearing in this case but asks leave to participate if another party requests a hearing.

the standing requirements of 5 VAC 5-20-100 B.¹⁹ The VCUL claims that the VBA has shown no injury in fact, let alone an injury fairly traceable to the conduct of the BFI or DuPont.²⁰

The VCUL also maintains that the BFI appropriately exercised its administrative discretion in approving DuPont's Application. The VCUL claims that the facts show a common community of interest as evidenced by the political subdivisions that have organized the CSPDC and the SVP. The VCUL also asserts that, in the proposed expanded field of membership, there is a single trade area as well as shared governmental and civic facilities. Finally, the VCUL argues that the NCUA has approved five multiple community credit unions, three of which have a greater population than DuPont's proposed expanded field, since the amendment to the federal law.²¹ All parties agree that no hearing is necessary in this case.

NOW THE COMMISSION, upon consideration of the applicable law, including the NCUA's definition of the term "well-defined local community, neighborhood or rural district" as required by § 6.1-225.23 B 3 of the Code, as well as the pleadings and briefs and the arguments of the parties, including the VBA, contained therein, finds that the BFI's approval of DuPont's Application is fully supported by the facts and the applicable law.

Accordingly, IT IS ORDERED THAT:

- (1) The BFI's approval of DuPont's Application is Affirmed;
- (2) The Petition of the VBA is Dismissed; and
- (3) The case is placed in the file for ended causes.

¹⁹ 5 VAC 5-20-100 B of the Commission Rules of Practice and Procedure ("Rule 100 B") provides, *inter alia*, that "[p]ersons 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. . ."

²⁰ VCUL Brief dated November 15, 2002, at 8-9 (quoting *Pye v. United States*, 269 F.3d 459, 466-467 (4th Cir. 2001)).

²¹ The VCUL asserts that no hearing is necessary because there are no material facts in issue.

**CASE NO. BFI-2002-00015
JUNE 20, 2003**

PETITION OF
VIRGINIA BANKERS ASSOCIATION

OPINION

On January 18, 2002, DuPont Community Credit Union ("DuPont") filed an application with the Bureau of Financial Institutions ("Bureau") for an expanded field of membership. Specifically, DuPont requested permission to amend its bylaws in order to serve those persons who live, work, worship, or attend school in, and businesses and other legal entities located in, the counties of Augusta, Bath, Highland, Rockbridge, and Rockingham, and the independent cities of Buena Vista, Harrisonburg, Lexington, Staunton, and Waynesboro. This area is commonly known as the Central Shenandoah Valley Region ("CSVV"). DuPont supplemented its application on April 19, 2002, and the Bureau subsequently approved it on May 16, 2002. Shortly thereafter, on June 7, 2002, the Virginia Bankers Association ("VBA") filed a petition ("Petition") with the State Corporation Commission ("Commission") pursuant to 5 VAC 5-20-100 B in which the VBA sought Commission review of the Bureau's approval decision. We requested and received briefs from all interested parties, and by Order dated March 12, 2003, reciting the contentions of all the parties, we affirmed the Bureau's approval of DuPont's application. Although the material facts in this case are not in dispute, the factually specific nature of this matter warrants a review of the factors we considered and evaluated in reaching our final decision.¹

The gravamen of the VBA's Petition is that the Bureau failed to adhere to the requirements of § 6.1-225.23 B 3 of the Virginia Credit Union Act, § 6.1-225.1 *et seq.* of the Code of Virginia ("Code"), in approving DuPont's application. Specifically, the VBA argues that DuPont's proposed field of membership is not comprised of "[t]hose persons or organizations within a well-defined local community, neighborhood or rural district." Thus, the determinative issue presented in this case is whether the proposed field of membership constitutes a "well-defined local community, neighborhood or rural district." Although the statute itself contains no guidance as to the meaning of this phrase, the Commission is instructed to "give consideration to the definition of the term that has been adopted by the National Credit Union Administration ["NCUA"] and become legally effective."² However, the General Assembly left the Commission unconstrained by federal law and provided in no uncertain terms that "[t]he Commission shall *in its discretion* determine whether such a proposed field of membership constitutes a 'well-defined local community, neighborhood or rural district'" (emphasis added).³ We agree with the VBA's statement that the Commission is not required to follow the NCUA's lead in approving fields of membership; however, we reject the VBA's narrow view of the facts supporting DuPont's application.

In accordance with the statutory directive found in 12 U.S.C. § 1759(g) of the Federal Credit Union Act, the NCUA has established by regulation certain criteria for determining the meaning of "well-defined local community, neighborhood, or rural district." These criteria, which are embodied in the NCUA's Interpretative Ruling Policy Statement 99-1, as amended ("IRPS"), require the following in order to approve a community charter application:

¹ In accordance with § 12.1-39 of the Code of Virginia, this opinion sets forth the reasons for the action we took by Order dated March 12, 2003.

² § 6.1-225.23 B 3 of the Code of Virginia.

³ *Id.*

(1) the geographic area's boundaries must be clearly defined; (2) the charter must establish that the area is a "well-defined, local community, neighborhood, or rural district;" and (3) the residents must have common interests or interact (IRPS, at 2-46). The IRPS further provides that "[t]he meaning of local community, neighborhood, or rural district includes a variety of factors. Most prominent is the requirement that the residents of the proposed community area interact or have common interests." *Id.* In this regard, the IRPS furnishes examples of factors that the NCUA views as indicative of community interaction and/or common interests, including a single major trade area, shared facilities (for example, educational, medical, etc.), organizations and clubs within the community, and area newspapers (*Id.* at 2-48).

Before we consider the common interests and interactions among residents of the CSVR, it is appropriate for us to assess the geographical scope of the proposed community, as well as the number of persons residing within its borders. According to year 2000 census figures contained in DuPont's application, the estimated population of the CSVR was 258,789 people, which represents less than three percent (3%) of the total population of the Commonwealth of Virginia. In fact, the CSVR's total population is comparable to several single counties and cities in Virginia.⁴ Information provided in Exhibit N of the Bureau's brief reveals that this population is spread out among approximately 3,430 square miles. The five counties and five cities comprising the CSVR are contiguous and form clearly defined boundaries. Moreover, approximately 98% of the CSVR has an average population of only 48 people per square mile. Although we are not aware of any recognized numerical definition for the term "rural," we find that the CSVR is a predominantly rural area.

According to the NCUA, the size of a proposed community can create a *per se* "well-defined local community, neighborhood, or rural district." Pursuant to the IRPS, "[i]n most cases, the 'well-defined local community, neighborhood, or rural district' requirement will be met if . . . (2) the area to be served is in multiple contiguous political jurisdictions, i.e. a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. If the proposed area meets [this] criteria, the credit union must only submit a letter describing how the area meets the standards for community interaction or common interests."⁵ Obviously, the population of the CSVR exceeds 200,000 people. Nevertheless, we regard this figure as a mere benchmark when evaluating the nature and quantum of evidence needed in order for a proposed field of membership to qualify as a "well-defined local community, neighborhood, or rural district."

In applying the standards used by the NCUA in connection with community charter applications, we do not believe that any one particular fact or factor is determinative or controlling. Rather, we think it is appropriate to consider the totality of circumstances that, when viewed together, depict an area characterized by common interests and interactions. Although we find DuPont's comprehensive application to be replete with evidence of such common interests and interaction, we believe it is useful to highlight those portions of the submission that we view as the most significant.

The counties and cities comprising DuPont's proposed field of membership do not appear to have been arbitrarily chosen by DuPont because of their contiguity. Rather, the area to be served constitutes a planning district represented by the Central Shenandoah Planning District Commission ("CSPDC"), which was chartered in 1969 under the Virginia Area Development Act, now the Regional Cooperation Act, § 15.2-4200 *et seq.* of the Code. Commissions such as the CSPDC are formed by agreement of a substantial part of the population within their districts acting through their elected representatives. According to the CSPDC, planning district commissions "[provide] assistance to local governments and their citizens with issues including land use planning and regulation, transportation, solid waste management, water and waste water utilities, housing, economic development, water resource management, flood mitigation and human services. Cooperative, cost-saving solutions to problems are addressed at the [planning district commissions] through their regional efforts."⁶ We agree with the Bureau's assertion that the mere existence of the CSPDC and its longevity are cogent proof of a common commitment in the CSVR to joint community development. Our examination of the record indicates that the CSPDC has supported and promoted a host of initiatives and programs that facilitate regional collaboration and coordination throughout the area. Furthermore, we find it notable that the NCUA has already recognized such planning districts as providing the analytical template to foster joint development and interaction.⁷ Thus, it is our view that the CSPDC, a body politic under § 15.2-4205 of the Code, constitutes a form of shared/common facilities that fosters cohesiveness, common interests, and interaction among CSVR residents.

In addition to the CSPDC, the CSVR is also directly served and supported by the Shenandoah Valley Partnership ("SVP"), a public-private regional economic development and marketing organization covering the same geographic area as the CSPDC. As stated in DuPont's application, the SVP's primary function is to market the CSVR as a business location, and membership in the SVP is required for each of the five counties and five municipalities that comprise the CSVR. We note that DuPont's application furnishes a considerable amount of material from the SVP's internet site as evidence of the SVP's role within the CSVR. According to the SVP's website, the SVP brings together business, government, and education leaders to promote new investment, strengthen existing business, and guide labor force development to ensure a healthy economic future for the CSVR region.⁸ Based on the record, we are satisfied that the SVP works in tandem with the CSPDC to cultivate common interests and interaction through the coordination of economic and community projects and initiatives that unify and jointly benefit the residents of the CSVR. While we acknowledge the VBA's argument that the counties and municipalities comprising the CSVR have distinct local governments and maintain their own school districts, police, and fire protection units, we also note that the IRPS does not deem the existence of separate political jurisdictions to be fatal or even a substantial impediment to a community charter application. Rather, the IRPS views multiple political jurisdictions as just one factor that tends to diminish the local character of an area, thereby necessitating countervailing evidence of common interests and interaction. In this particular case, DuPont's application supplies such evidence. Moreover, in considering the CSVR's shared/common facilities, we concur with the Bureau's contention that the VBA fails to appreciate the significant quasi-governmental roles played by the CSPDC and SVP in demonstrating that the area is a "well-defined local community, neighborhood, or rural district."

⁴ <http://www.census.gov/>

⁵ IRPS, pg. 2-47. Moreover, the NCUA declares that its numerical benchmarks do "not preclude community charters consisting of multiple counties or local areas with populations of any size from meeting community charter requirements." *Id.*

⁶ <http://www.cspdc.org/>

⁷ See, e.g., NCUA approval of General Electric Rome Employees Federal Credit Union (DuPont brief, Exhibit 9); NCUA approval of Robins Federal Credit Union (DuPont brief, Exhibit 11).

⁸ http://www.svp-va.org/about_svp/index.php.

In support of its Petition, the VBA further avers that the CSVR is comprised of multiple trade areas. Specifically, the VBA alleges that each of the proposed counties has its own trade area insofar as CSVR residents shop and do business at or near where they live. Although this may be true to a certain extent, the VBA did not introduce any evidence to support such a claim. More importantly, we are persuaded by DuPont's application that area residents also travel to other parts of the CSVR to conduct their shopping. Two large enclosed malls located in the area attract residents from throughout the CSVR; namely, Colonial Mall in Staunton and Valley Mall in Harrisonburg. These malls are conveniently located near major interstates and offer residents several large department stores, as well as a wide array of national chain and local specialty retail shops, some of which are unavailable elsewhere in the CSVR. The VBA advances the argument that two large malls in the region do not show the kind of "common interests" or "interaction" contemplated by the NCUA rule. We disagree with this assertion. To the contrary, the IRPS specifically states that "major trade areas (shopping patterns and traffic flows)" are examples of acceptable documentation (IRPS, pg. 2-48). While we observe that there may not be only one trade center, as the VBA would require, we find that the CSVR maintains two conveniently located focal points for residents to interact and share common interests by shopping together at dozens of stores under one roof. Since both malls tend to draw residents from throughout the CSVR and promote the type of cohesion contemplated by the IRPS, we believe that these dual trade centers play a role in bonding area residents. As such, it is our view that they jointly bolster the contention that the CSVR is a "well-defined local community, neighborhood, or rural district."

Another factor referred to in the IRPS as demonstrating common interests and interaction is the presence of shared medical facilities. In support of their position, the VBA points out that there are separate hospitals located in the jurisdictions comprising the CSVR and apparently would require that there be only one regional hospital for the entire area in order for it to qualify as a "local community, neighborhood, or rural district." Notwithstanding the obvious negative health consequences of having only one hospital for an area of approximately 3,430 square miles, we do not think the IRPS requires it. Although "shared medical facilities" is not defined in the IRPS, we think the term encompasses the various illustrations of medical interaction within the CSVR that are highlighted in DuPont's application. In addition to having joined together to form a shared medical service corporation many years ago, we find it noteworthy that the three major hospitals in the area also coordinate services and share advanced medical equipment and specialist staff in order to increase the quality of medical care to all residents of the CSVR at a reduced cost. Other regional medical organizations and projects found in the area include the Central Shenandoah Health District, the Blue Ridge Area Health Education Center Health & Human Services Directory, and Grief Support Services. In short, we find more than enough evidence in the record demonstrating that these medical arrangements and initiatives promote community interaction and unity among those who live and work in the CSVR.

In reviewing a community charter application, the NCUA also considers the existence of newspapers or other periodicals published for and about the proposed field of membership. The VBA contends that there are at least five newspapers published in the area and claims that each one only "serves" a portion of the CSVR. While there are several newspapers published in the region, DuPont's application reports that a Staunton newspaper, *The News Leader*, claims to serve the entire CSVR. In fact, our review of the record shows that *The News Leader* publishes ads for jobs located throughout the region, which we believe buttresses their circulation claim by showing that residents throughout the CSVR read this same newspaper. In their brief, the VBA declares that one newspaper serving the proposed community would tend to show "common interests" or "interaction." We agree. Based on DuPont's application, we also think it is telling that the coverage maps for several radio stations reportedly match up perfectly with the boundaries of the CSVR, which indicates that these stations are reaching out to the same population and many CSVR residents are listening to the same radio stations. Indeed, these findings lead us to conclude that the common interests and interactions of CSVR residents are further reinforced by shared media outlets.

Another factor considered by the NCUA when reviewing community charter applications is the presence of common educational facilities. The VBA argues by implication that the several colleges and universities in the region are attended only by residents of the individual localities in which each is located. However, DuPont's application contains several examples of educational facilities that bring together residents from throughout the CSVR. In particular, we observe that the Dabney S. Lancaster Community College purportedly furnishes educational services to all five counties located in the CSVR. Moreover, the record cites numerous institutions of higher learning that attract students from throughout the area with their wide range of academic and technical training programs. For instance, we note that Blue Ridge Community College, conveniently located between Harrisonburg and Staunton along the I-81 corridor, has served residents of the CSVR with a comprehensive program of instruction since 1967. We concur with the Bureau's contention that it is more likely that these institutions place no limitations on their enrollments but lure students from the entire CSVR with their educational offerings. Accordingly, we conclude that area residents routinely interact at one or more educational facilities located in the CSVR as they pursue common training and scholastic interests.

In addition to the foregoing, DuPont's application contains significant additional documentation that amply demonstrates that the CSVR is an area where individuals share common interests and interact with each other. For example, the application describes and details interscholastic competitions in various sports between local schools situated in the CSVR. Although the VBA argues that such material does not demonstrate common interests or interaction, we are persuaded that these sporting events, particularly at the high school level, promote considerable interaction and cohesion among residents. In addition to bringing together the athletes from the various school districts in the region, area teams enjoy strong community support and draw attendance from parents, students, and other residents, thereby promoting socialization and common interests. Interaction within the region is also advanced by the congregation and commingling of area residents throughout the year during a variety of fairs, festivals, and special events, notably including the Virginia Horse Festival and the "Summer Extravaganza," a two-day event that draws the vast majority of its attendees from the CSVR. Of course, all of the interaction in the region is made possible by the strong transportation network that allows area residents to readily travel throughout the CSVR in order to go to work, to school, to shop, and to engage in recreational activities. Modern interstate highways such as I-81 and I-64 provide the primary road access, connecting all of the metropolitan areas within the CSVR. In order to travel greater distances, residents of the CSVR assemble at the Shenandoah Valley Regional Airport, the area's only regional commercial airport. According to DuPont's application, over 90% of the passengers using this state-of-the-art transportation hub are residents of the CSVR, thereby establishing the airport as another shared facility within the region that brings together area residents and further promotes community interaction.

In sum, based upon the voluminous documentation contained in DuPont's application and the definition of the term "well-defined local community, neighborhood, or rural district" adopted by the NCUA, we find that the CSVR is characterized by clearly defined boundaries, substantial interaction among residents, an abundance of common interests, a shared feeling of cohesion, and a thriving sense of community. While we believe that this finding affords us a sufficient basis for concluding that DuPont's proposed field of membership comprises a "well-defined local community, neighborhood, or rural district" for purposes of § 6.1-225.23 B 3 of the Code, we think it is judicious to weigh additional factors. To begin, we note that the record contains evidence of numerous federal credit union community charter application decisions made by the NCUA pursuant to the IRPS. To the extent that these decisions shed some light on the IRPS and the meaning ascribed to the term "well-defined local community, neighborhood, or rural district," we believe it is reasonable to review them. In recognition perhaps of the broad grant of legal authority given to the Commission under § 6.1-225.23 B 3 of the Code, the VBA simply maintains that it is inappropriate for us to consider federal credit union approvals by the NCUA. While we acknowledge the VBA's position, it appears to be based, at least in part, on the VBA's contention that the NCUA has erroneously approved numerous federal credit union applications

encompassing large fields of membership. Although we are unquestionably required to consider the NCUA's definition of the term "well-defined local community, neighborhood, or rural district," all of the parties in this case agree that we are not bound by the four corners of the IRPS in determining whether an application satisfies § 6.1-225.23 B of the Code. In this regard, we think that the discretion provided for in § 6.1-225.23 B 3 of the Code gives us sufficient latitude to consider how the NCUA itself responded to similar community charter applications that were submitted under the IRPS. In reviewing the NCUA's actions, we are cognizant of the VBA's admonition that the Commission should not blindly follow the NCUA or abdicate to the NCUA the determination of whether a proposed field of membership satisfies the requirements of the Virginia Credit Union Act. In exercising the discretion and responsibility entrusted to us by the General Assembly, we have no intention of substituting the NCUA's judgment for our own.

In its brief, the VBA advances the position that "such a large geographic area, with a significant population, and ten separate political jurisdictions, simply does not constitute a 'well-defined local community, neighborhood, or rural district' under the plain meaning of [§ 6.1-225.23 B 3 of the Code]." In light of the fact that the NCUA adopted its regulations in order to implement an identically worded standard under the Federal Credit Union Act, we find it both instructive and telling that pursuant to the IRPS, the NCUA has approved numerous community credit union applications with fields of membership of equal or greater size than we approve here.

For example, the record reveals that in 2001, the NCUA approved an application by General Electric Rome Employees Federal Credit Union to serve 511,142 people in ten Georgia counties that comprise the Coosa Valley Region ("CVR"), a "service delivery region" analogous to a Virginia planning district. Like the CSVR, the CVR occupies a large area and is predominantly rural (approximately 83% of residents reside in rural areas). Another example in the record is Robins Federal Credit Union, which the NCUA approved in 2000 to serve 431,679 people in eleven Georgia counties. The boundaries of the area conformed to the Middle Georgia Service Delivery Region. Like the CSVR and CVR, the region sought to be served by Robins Federal Credit Union was mostly rural. Other noteworthy examples in the record include the 2001 approvals of MidSouth Federal Credit Union (11 counties in Georgia; 428,580 people); Columbia Teachers Federal Credit Union (4 counties in South Carolina; 573,209 people); Pioneer Federal Credit Union (5 counties in Idaho; 452,000 people); SAC Federal Credit Union (4 counties in Nebraska and Iowa; 700,000 people); and School Employees of Central New York Federal Credit Union (4 counties in New York; 732,920 people). Significant approvals from 2002 include GHS Federal Credit Union (3 counties in New York; 303,721 people); Sunmark Federal Credit Union (4 counties in New York; 794,293 people); and Mobiloil Federal Credit Union (4 counties in Texas; 385,090 people). We believe it is quite evident from these approvals that proposed fields of membership consisting of multiple jurisdictions and hundreds of thousands of people can meet the NCUA's definition of a "well-defined local community, neighborhood, or rural district." Based on our reading of the IRPS and the NCUA's approval of these and other large community fields of membership, we agree with the Bureau's contention that "[c]onsiderations of square mileage, number of political jurisdictions and size of population are not dispositive in this case or like cases." Notwithstanding, we do not subscribe to the VBA's rejoinder that such an interpretation means that such considerations "[do] not matter" or that the entire Commonwealth of Virginia or southeastern United States could qualify as a "well-defined community, neighborhood, or rural district."

Contrary to what the VBA suggests, we have considered factors such as square mileage, number of political jurisdictions, and population size. As we noted earlier, the CSVR contains approximately 258,789 residents spread out among 3,430 square miles, which equates to 75.4 persons per square mile. The five counties in the CSVR, which comprise 98% of the area, have an average population of only 48 people per square mile. In recognition of the wide dispersion of residents living and working in this area, the Bureau points out in its brief that § 6.1-225.23 B 3 of the Code authorizes Commission approval of three types of "community" credit unions; namely, those whose membership consists of persons or organizations within a well-defined (1) local community, (2) neighborhood, or (3) *rural district*. Basing this reading on the rule of statutory construction that provides that in construing a statute, each word must be given effect,⁹ the Bureau submits that the CSVR constitutes a well-defined "rural district" within the meaning of § 6.1-225.23 B 3 of the Code. Although the NCUA has not assigned a distinct meaning to the term "rural district," the Bureau cites to the American Heritage Collegiate Dictionary as evidence for the proposition that a "rural district" generally means "a country area." Considering the overwhelmingly rural nature of the CSVR and the fact that it has already been designated as a "planning district," as defined in § 15.2-4202 of the Code, we find it reasonable to conclude that the area also qualifies as a "rural district" for purposes of § 6.1-225.23 B 3 of the Code. We concur with the Bureau's proposition that given the significant likelihood that the CSVR enjoys a high degree of employment crossover between counties and adjacent cities, it makes little sense to exclude residents of cities surrounded by counties from rural district credit union fields of membership when, as in this case, counties comprise almost all of the physical area occupied by the proposed field of membership. Even if we had rejected the "rural district" interpretation espoused by the Bureau, we remain of the view that it is appropriate to take into account the geographical size of the CSVR and the density of its residents when evaluating the nature and extent of interests and interaction. Under either construction of § 6.1-225.23 B 3 of the Code, we believe the record contains abundant support for our opinion that DuPont's proposed field of membership represents a "well-defined local community, neighborhood, or rural district."

In its Petition, the VBA raises several secondary arguments in support of its claim that DuPont's application should be denied. None of these contentions has merit. The VBA first alleges that the approval of DuPont's proposal runs counter to § 6.1-225.23:1 of the Code, which requires the Commission to encourage the formation of separately chartered credit unions rather than authorizing the addition of a new group to an existing credit union. According to its application, DuPont is a multiple common bond credit union (§ 6.1-225.23 B 2 of the Code) seeking to convert to a community field of membership (§ 6.1-225.23 B 3 of the Code). From (1) the simultaneous repeated use of the term "group" in § 6.1-225.23:1, § 6.1-225.23 B 1, and § 6.1-225.23 B 2 of the Code, as contrasted with the absence of this term in § 6.1-225.23 B 3 of the Code, which subsection in 1999 first established the permissibility under Virginia law of credit union membership based primarily upon geographical location, and (2) the disjunctive use of the words "group" and "community" in the revised definition of "member" in § 6.1-225.2 of the Code that was simultaneously enacted in 1999 (Acts of Assembly, c. 63), we conclude that § 6.1-225.23:1 of the Code is inapplicable to proposed community-based credit unions. The VBA's next contention is that DuPont's proposal raises safety and soundness concerns insofar as it will inevitably lead to aggressive competition between credit unions and the ultimate demise of smaller credit unions. We find this speculative concern unsupported by any evidence in the record. Lastly, the VBA asserts that credit unions receive certain government subsidies and benefits, including a tax exempt status, and that DuPont is engaging in unfair competition and exploiting such subsidies and benefits. In our opinion, public policy arguments such as these should be directed to our federal and state legislatures. We do not consider them to be pertinent to the legal issues raised in this case.

Accordingly, having considered the foregoing, as well as the Virginia Credit Union Act, the definition of the term "well-defined local community, neighborhood, or rural district" adopted by the NCUA, and all of the pleadings, briefs, and arguments made in this matter, we conclude and find that the Bureau's approval of DuPont's field of membership application is fully supported by the facts and applicable law. In our judgment, the cities and counties that comprise the CSVR and DuPont's proposed field of membership constitute a "well-defined local community, neighborhood, or rural district" under § 6.1-225.23 B 3 of the Virginia Credit Union Act.

⁹ Bureau Brief, pg. 12 (citing *Michie's Jurisprudence*, Statutes, § 42).

**CASE NO. BFI-2002-00030
NOVEMBER 4, 2003**

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

v.

HOUSEHOLD INTERNATIONAL, INC., a Delaware Corporation,
Defendant

ORDER AMENDING SETTLEMENT ORDER

On December 19, 2002, the State Corporation Commission ("Commission") entered a Settlement Order in this case which provided, among other things, that the Commission retain jurisdiction to enforce its terms and conditions and that it could be modified by further Commission order. Now the Commissioner of Financial Institutions and Household International, Inc. ("Household"), seek to amend the Settlement Order retroactive to April 1, 2003, for the purposes of realizing their mutual intent of maximizing the amount of restitution that may be distributed to eligible consumers, net of taxes on the Restitution Funds, and of making ministerial changes to the language of the borrower releases. Upon consideration thereof,

IT IS ORDERED THAT the December 19, 2002, Settlement Order is amended retroactive to April 1, 2003, as follows:

1. After the heading "Restitution", before paragraph 4, the following language is added:

As and for restitution to Borrowers who had Covered Transactions, Household shall establish a fund ("the Restitution Fund") which shall consist of two segregated sub-funds: the Settlement Fund, which is defined as a qualified settlement fund within the meaning of Treasury Regulation Section 1.468B-1, or any corresponding successor provision, pursuant to Paragraph 4(G) hereof, and the Administrative Fund, as hereinafter provided. The Restitution Fund, including monies held in both the Settlement Fund and the Administrative Fund, is also intended to be a qualified settlement fund within the meaning of Treasury Regulation Section 1.468B-1 or any corresponding successor provision.

2. Paragraph 4(B) is amended to provide as follows:

B. Household shall pay into the Settlement Fund the amount of \$16,703,228 as provided in Exhibit A. The Commonwealth shall use the Settlement Fund solely to provide restitution to Borrowers or to pay those administrative costs not paid by the Administrative Fund, as set forth in the Settlement Administration section below. The Commonwealth shall have sole discretion to determine the manner in which it will provide restitution for the Lending Practices to Borrowers who had Covered Transactions, including criteria for choosing which Borrowers shall receive any restitution and the amount to distribute to each. The Commonwealth will determine its own criteria for allocating restitution and other relief to a broad number of Borrowers. The restitution awarded under the terms of this Settlement Order is not and shall not be considered as forgiven debt. Should there be residual funds remaining after initial distribution to Borrowers and payment of all administrative costs and expenses, such funds shall be distributed to Borrowers and shall not revert to the Commonwealth, except that the Commonwealth shall determine how to use any funds that are associated with un-negotiated settlement checks in accordance with state law.

3. Paragraph 4(E) is amended to provide as follows:

E. The Settlement Fund is intended for restitution to Borrowers affected by the Lending Practices for the Covered Transactions and for payment or reimbursement of administrative expenses that are not paid by the Administrative Fund under Paragraph 28 of this Settlement Order and does not include any monies for fines, penalties, or punitive damages.

4. Paragraph 4(G) is amended to provide as follows:

As part of the Restitution Fund, the Settlement Fund will continue to be characterized as a qualified settlement fund within the meaning of Treasury Regulation Section 1.468B-1 or any corresponding successor provision.

5. Paragraph 28(A) is amended to provide as follows:

A. Household shall choose and retain an administrator ("the Administrator") to administer the process of providing restitution to Borrowers and of paying the administrative expenses incurred. For the purpose of protecting the proprietary and customer information to be provided to it by Household, the Administrator shall be solely an agent of Household. The identity and contract of the Administrator and any successor administrator shall be subject to the approval of two-thirds(2/3) of the number of Settling States. Household shall select the Administrator in a prompt manner in cooperation with the Settling States.

6. Paragraph 28(C) is amended to provide as follows:

C. Following the Effective Date and as herein provided, Household shall establish and fund a separate administrative fund or sub-fund ("the Administrative Fund") for payment of the Administrator's administrative fees and expenses. In no event will Household be required to contribute to the Administrative Fund, cumulatively, an amount which exceeds the contribution defined in this paragraph 28(c). The amount of Household's contribution to the Administrative Fund shall be calculated on a per state basis in an amount equal to the greater of 2% of each Settling State's pro rata share of the Settlement Fund or \$20,000. The Commonwealth's share of the Administrative Fund is \$334,065. Any fees or expenses of the Administrator in excess of the amount held in the Administrative Fund and allocable to the Commonwealth under this Settlement Order shall be paid from the Commonwealth's share of the Settlement Fund and shall not be a separate debt of the Commonwealth. In addition, Household shall be responsible for any costs of the Administrator, including attorneys' fees and costs of litigation, related to maintaining the confidentiality of customer and proprietary information against third-party requests.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

7. Paragraph 28(D) is amended to provide as follows:

D. Upon selection of the Administrator and establishment of the Administrative Fund, the Administrator shall receive an initial payment from the Administrative Fund in an amount to be agreed upon with the Settling States. Thereafter, the Administrator will be paid from the Administrative Fund as provided in the Administrator's agreement with Household and will send copies of all bills to the Commonwealth.

8. Paragraph 28(E)(6)(b) is amended to provide as follows:

b. A full and complete quarterly accounting of all charges and fees allocated to and charged against the Commonwealth's designated share of the Administrative Fund.

9. A new Paragraph 28(H) is added as follows:

H. Income taxes on income earned by the Administrative Fund, if any, shall be paid out of the income earned by the Administrative Fund. Monies remaining in the Administrative Fund following termination of the settlement administration and payment of all administrative expenses shall revert to Household.

10. A new Paragraph 28(I) shall be added which will provide as follows:

I. Income taxes on income earned by the Settlement Fund, if any, shall be paid out of the income earned by the Settlement Fund.

11. Paragraph 32 shall be amended to provide as follows:

32. Releases from Borrowers. Each Borrower who receives a payment from the Settlement Fund shall first execute the following general release of Household: "In consideration for the restitution received, I/we hereby release Household from all civil claims and causes of action which I/we may have as of the date of this release agreement, in contract, in tort (including, but not limited to, personal injury and emotional distress), in statute, regulation or common law, and whether in an administrative or judicial proceeding, whether known or unknown, threatened or unasserted, that arise from or are related to the restitution received or the following lending practices by Household in connection with the above referenced account numbers for my real estate secured loans originated by Household's retail branches from January 1, 1999, through September 30, 2002: Household's conduct with respect to multiple real estate secured loans that are made at or near the same date to the same Borrower (*i.e.*, "split loans"), loan points and origination fees, interest rates, monthly payment amounts, single premium credit and other insurance products, prepayment penalties, loans offered through a negotiable check (*i.e.*, "live checks"), home equity lines of credit, loan billing practices relating to simple interest calculations, balloon payments, payoff information, non English language documentation, and net tangible benefit in loan refinancing. Notwithstanding this release, I/we may affirmatively or defensively assert any claim or defense that I/we have with respect to my loan with Household in response to a judicial or threatened non-judicial foreclosure, including those related to the lending practices listed in this release. However, I/we agree that the otherwise released claims cannot form the basis for an affirmative monetary recovery to me against Household. For purposes of this release, "Household" means Household International, Inc., Household Finance Corporation, Beneficial Corporation, and their direct and indirect subsidiaries, affiliates, officers, directors, employees, agents, related entities, successors, and assigns." The release shall be written in both English and Spanish.

IT IS FURTHER ORDERED that provisions of the December 19, 2002, Settlement Order not amended hereby remain the same and in full force and effect, and that this Order shall not be interpreted as amending such provisions.

**CASE NO. BFI-2002-00033
FEBRUARY 4, 2003**

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

v.

COASTAL MORTGAGE CORP. OF VIRGINIA,
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 bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on December 12, 2002; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on December 18, 2002, (1) of his intention to recommend revocation of its license unless a new bond was filed by January 8, 2003, and (2) that a written request for hearing was required to be filed in the Office of the Clerk on or before January 1, 2003; 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-2003-00002
FEBRUARY 20, 2003**

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

v.

AMERICAN INTERNATIONAL MORTGAGE BANKERS, 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 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 3, 2003; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on January 6, 2003, (1) of his intention to recommend revocation of its license unless a new bond was filed by January 27, 2003, and (2) that a written request for hearing was required to be filed in the Office of the Clerk on or before January 20, 2003; 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 is hereby revoked.

**CASE NO. BFI-2003-00003
MARCH 4, 2003**

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

v.

FAITHLOAN, INC. D/B/A MIDAS MORTGAGE,
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 bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on December 13, 2002; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on January 13, 2003, (1) of his intention to recommend revocation of its license unless a new bond was filed by February 3, 2003, and (2) that a written request for hearing was required to be filed in the Office of the Clerk on or before January 27, 2003; 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-2003-00004
JANUARY 31, 2003**

IN THE MATTER OF
THE PORTSMOUTH POST OFFICE CREDIT UNION, INCORPORATED
Merger into
NORTHERN STAR CREDIT UNION, INCORPORATED

ORDER AMENDING BYLAWS AND APPROVING THE MERGER

The Staff of the Bureau of Financial Institutions ("Bureau") has reported and represented to the State Corporation Commission ("Commission"):

(1) The Portsmouth Post Office Credit Union, Incorporated ("TPPOCU"), a Virginia-chartered credit union, has some \$1.9 million in assets and approximately 784 members. The December 2002 financial statement of TPPOCU discloses it to be insolvent with a negative net worth of \$70,358.

(2) TPPOCU has been experiencing ongoing financial difficulties, including numerous accounting and loan underwriting problems, as well as the identification of insider and potentially fraudulent loans. On September 27, 2002, a Letter of Understanding and Agreement ("LUA") was executed between the Bureau, TPPOCU, and the National Credit Union Administration. To date, TPPOCU has been unable to meet all of the requirements of the LUA. These trends have reached a point where TPPOCU is no longer viable as a separate entity. The trends are confirmed in a Bureau memorandum dated January 16, 2003, and attached exhibits.

(3) An emergency exists, and it is in the best interests of the members of TPPOCU to have TPPOCU immediately merged into Northern Star Credit Union, Incorporated ("NSCU"), also a Virginia-chartered credit union.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(4) In order for TPPOCU to be merged into NSCU under § 6.1-225.10 of the Code of Virginia, the board of directors of both corporations must approve a plan of merger. The board of directors of NSCU has approved a plan of merger that provides, among other things, that the remaining members of TPPOCU will become members of NSCU.

(5) According to Article V, Section 1 of TPPOCU's bylaws, TPPOCU's board of directors shall consist of nine (9) members. Article V, Section 7 provides that a majority of the board of directors constitutes a quorum for the transaction of business. Insofar as TPPOCU has only two remaining members on its board of directors, its board of directors is unable to achieve the quorum necessary to vote on the plan of merger with NSCU.

(6) To enable TPPOCU's board of directors to vote on the plan of merger, TPPOCU's bylaws should be amended by the Commission pursuant to § 6.1-225.17 of the Code of Virginia. The Bureau has provided TPPOCU with notice of the proposed amendments, and TPPOCU has waived its right to a hearing.

(7) NSCU's member accounts are insured by the National Credit Union Share Insurance Fund.

Having considered the report and the above representations of the Bureau, the Commission finds as follows: (i) TPPOCU is insolvent; (ii) an emergency exists; (iii) the board of directors of NSCU has approved a merger of TPPOCU into NSCU; (iv) the merger is in the best interests of the members of TPPOCU; (v) TPPOCU's bylaws should be amended by the Commission so that its board of directors may vote on the plan of merger; and (vi) TPPOCU has been notified of the proposed amendments and waived its right to a hearing.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 6.1-225.17 of the Code of Virginia, Article V, Section 1 of TPPOCU's bylaws be amended to read as follows: "The Board of Directors shall consist of five (5) members, who shall be members of this credit union. The Board of Directors shall consist of an odd number of directors, at least five (5) in number."

(2) In addition, Article V, Section 7 of TPPOCU's bylaws be amended to read as follows: "For purposes of voting on a merger with Northern Star Credit Union, Incorporated, two (2) directors shall constitute a quorum. For all other purposes, a majority of the number of directors specified in these Bylaws shall constitute a quorum for the transaction of business at any meeting thereof but fewer than a quorum may adjourn from time to time until a quorum is in attendance. Written notice of an adjourned meeting need not be given."

(3) Subject to approval of the plan of merger by TPPOCU's board of directors and the receipt of evidence thereof by the Commission, the merger of TPPOCU into NSCU is hereby approved pursuant to § 6.1-225.10 of the Code of Virginia.

(4) Pursuant to § 6.1-225.10 of the Code of Virginia, this Order of Approval shall take the place of the usual approval of the merger by the members of both credit unions. TPPOCU shall promptly provide its members of record with notice of TPPOCU's insolvency and its merger into NSCU for the purpose of providing such members an opportunity to challenge the finding that TPPOCU is insolvent. TPPOCU shall also preserve and make available to its members the relevant books and records for a period of thirty (30) days after such notice is sent.

**CASE NO. BFI-2003-00006
MARCH 14, 2003**

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

v.
SOLOMON RUSSELL LUCAS, JR. D/B/A Q GARDENS REALTY & ASSOCIATES,
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 bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on February 5, 2003; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on February 13, 2003, (1) of his intention to recommend revocation of its license unless a new bond was filed by March 6, 2003, and (2) that a written request for hearing was required to be filed in the Office of the Clerk on or before February 27, 2003; 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-2003-00007
OCTOBER 16, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.
AMERICAN HOME FINANCE, INC.,
Defendant

SETTLEMENT ORDER

On April 25, 2003, the State Corporation Commission ("Commission") issued a Rule to Show Cause in this case ("the Rule") against the Defendant. The Rule contained allegations by the Bureau of Financial Institutions ("the Bureau") that the Defendant violated various laws and regulations applicable the conduct of its business as a licensee under Chapter 16 of Title 6.1 of the Code of Virginia. The Rule did not allege that the Defendant committed any act of fraud, misrepresentation, or deceit. The Defendant filed a pleading in response to the Rule and stated its intention to appear at the hearing in the case. Thereafter, the Defendant proposed to settle the case, without admitting or denying the allegations contained in the Rule or making any declaration against interest, by payment of the sum of fifteen thousand dollars (\$15,000) and abiding by the provisions of this Order. 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 of settlement of this case is accepted.
- (2) Defendant shall pay to the Commonwealth the sum of fifteen thousand dollars (\$15,000) within seven (7) days after entry of this Order.
- (3) Defendant, during the period of five (5) years from the date of entry of this Order, shall not violate any provision of Chapter 16 of Title 6.1 of the Code of Virginia or any regulation promulgated thereunder.
- (4) If, during the aforesaid five (5) year period, the Defendant fails to comply with the provisions of paragraph 3, or the Bureau finds by examination or otherwise that the Defendant (a) has acted or failed to act in a fashion constituting a ground for revocation of its license under § 6.1-425 of the Code of Virginia or (b) has committed such violations of laws or regulations as warrant, in the Bureau's judgment, revocation of the Defendant's license, the Defendant shall within fourteen (14) days of the mailing of written notice to it by the Bureau surrendered its mortgage lender and broker license to the Bureau in writing.
- (5) If the Defendant fails to comply with the surrend requirement imposed under the preceding paragraph, the Commission shall enter an order revoking the Defendant's license without notice or hearing.
- (6) Defendant shall file an acceptable written response with the Bureau to its 1999 Report of Examination within 45 days of the date of this order.
- (7) Acts or failures to act alleged in the Rule or cited in the Defendant's 1999 or 2001 Report of Examination shall not, per se, provide a basis for Bureau issuance of a surrender notice under paragraph 4 of this order.
- (8) This case is continued generally on the Commission's docket.

**CASE NO. BFI-2003-00008
APRIL 18, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.
MORTGAGE FINDERS OF VIRGINIA, INC. D/B/A EXCEL MORTGAGE BANKERS,
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 bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on February 17, 2003; that the Commissioner, pursuant to delegated authority, sent by certified mail a letter dated March 3, 2003, to the Defendant giving written notice (1) of his intention to recommend revocation of its license unless a new bond was filed by March 24, 2003, and (2) that a written request for hearing was required to be filed in the Office of the Clerk on or before March 17, 2003; 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-2003-00009
MARCH 12, 2003**

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

v.

DAHABSHIL, INC.,
Defendant

SETTLEMENT ORDER

ON A FORMER DAY, the Staff reported to the State Corporation Commission ("Commission") that the Defendant recently applied for a license to engage in business under Chapter 12 of Title 6.1 of the Code of Virginia; that it was discovered the Defendant had conducted business as a money transmitter without a license after being informed of the licensing requirement, in violation of § 6.1-371 of the Code of Virginia; that upon being informed that the Commissioner of Financial Institutions ("Commissioner") intended to recommend the imposition of a fine, the Defendant, by counsel, 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 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 herein shall be placed in the file for ended causes.

**CASE NO. BFI-2003-00012
MARCH 31, 2003**

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

v.

FAITHLOAN, INC. d/b/a MIDAS MORTGAGE,
Defendant

ORDER REINSTATING A LICENSE

On March 4, 2003, in Case No. BFI-2003-00003, the State Corporation Commission ("Commission") entered an Order revoking the mortgage broker license issued to the Defendant under Chapter 16 of Title 6.1 of the Code of Virginia for its failure to maintain its surety bond in force as required by law. Subsequently, the Defendant obtained and filed with the Bureau of Financial Institutions a new surety bond, and the Commissioner of Financial Institutions recommended to the Commission that Defendant's license be reinstated.

Accordingly, IT IS ORDERED that the Defendant's license to engage in business as a mortgage broker is reinstated retroactive to March 4, 2003, and that the Order entered on that date in Case No. BFI-2003-00003 revoking the Defendant's mortgage broker license is hereby nullified.

**CASE NO. BFI-2003-00013
APRIL 4, 2003**

IN THE MATTER OF
ALEXANDRIA POSTAL CREDIT UNION
Merger into
COMMONWEALTHONE FCU

ORDER APPROVING THE MERGER

The Staff of the Bureau of Financial Institutions ("Bureau") has reported and represented to the State Corporation Commission ("Commission"):

- (1) Alexandria Postal Credit Union ("APCU"), a Virginia chartered credit union, has some \$1.1 million in assets and approximately 568 members. The February 2003 financial statement of APCU discloses it to be insolvent with a negative net worth of \$34,338.
- (2) APCU has been experiencing ongoing financial difficulties, including numerous accounting and loan underwriting problems, as well as the identification of insider and potentially fraudulent loans. These trends have reached a point where APCU is no longer viable as a separate entity. The trends are confirmed in a Bureau memorandum dated March 28, 2003, and attached exhibits.
- (3) An emergency exists, and it is in the best interests of the members of APCU to have APCU immediately merged into CommonwealthOne FCU ("COFCU"), a federally chartered credit union.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(4) In order for APCU to be merged into COFCU under § 6.1-225.10 of the Code of Virginia, the board of directors of both corporations must approve a plan of merger. The board of directors of the credit unions have approved a plan of merger that provides, among other things, that the remaining members of APCU will become members of COFCU.

(5) COFCU's member accounts are insured by the National Credit Union Share Insurance Fund.

Having considered the report and the above representations of the Bureau, the Commission finds that APCU is insolvent, an emergency exists, the board of directors of the credit unions have approved the merger, and that the merger is in the best interests of the members of APCU.

Accordingly, IT IS ORDERED THAT:

(1) The merger of APCU into COFCU is hereby approved pursuant to § 6.1-225.10 of the Code of Virginia.

(2) Pursuant to § 6.1-225.10 of the Code of Virginia, this Order of Approval shall take the place of the usual approval of the merger by the members of both credit unions. APCU shall promptly provide its members of record with notice of APCU's insolvency and its merger into COFCU for the purpose of providing such members an opportunity to challenge the finding that APCU is insolvent. APCU shall also preserve and make available to its members the relevant books and records for a period of thirty (30) days after such notice is sent.

**CASE NO. BFI-2003-00021
JUNE 4, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

INFINITY MORTGAGE COMPANY, INC. (BOSTON) (USED IN VIRGINIA BY: INFINITY MORTGAGE COMPANY, 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 did not file its annual report due March 1, 2003, in accordance with § 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 April 15, 2003, (1) of his intention to recommend revocation of its license unless an annual report was received by May 15, 2003, and (2) that a written request for hearing was required to be filed in the Office of the Clerk on or before May 6, 2003; and that no annual report or written request for hearing was received or filed.

Accordingly, the Commission finds that the Defendant has failed to file an annual 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-2003-00022
JUNE 4, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

INNOVATION 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 broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the Defendant did not file its annual report due March 1, 2003, in accordance with § 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 April 15, 2003, (1) of his intention to recommend revocation of its license unless an annual report was received by May 15, 2003, and (2) that a written request for hearing was required to be filed in the Office of the Clerk on or before May 6, 2003; and that no annual report or written request for hearing was received or filed.

Accordingly, the Commission finds that the Defendant has failed to file an annual 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-2003-00028
JUNE 4, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

OLYMPIA MORTGAGE GROUP, INC., FORMERLY KNOWN AS OLYMPIC MORTGAGE 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 did not file its annual report due March 1, 2003, in accordance with § 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 April 15, 2003, (1) of his intention to recommend revocation of its license unless an annual report was received by May 5, 2003, and (2) that a written request for hearing was required to be filed in the Office of the Clerk on or before May 6, 2003; and that no annual report or written request for hearing was received or filed.

Accordingly, the Commission finds that the Defendant has failed to file an annual 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-2003-00031
JUNE 4, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

RLI MORTGAGE 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 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 did not file its annual report due March 1, 2003, in accordance with § 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 April 15, 2003, (1) of his intention to recommend revocation of its license unless an annual report was received by May 15, 2003, and (2) that a written request for hearing was required to be filed in the Office of the Clerk on or before May 6, 2003; and that no annual report or written request for hearing was received or filed.

Accordingly, the Commission finds that the Defendant has failed to file an annual 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-2003-00035
APRIL 10, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

CHALLENGE FINANCIAL INVESTORS CORP.,
Defendant

SETTLEMENT ORDER

ON A FORMER DAY, the Staff reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business under Chapter 16 of Title 6.1 of the Virginia Code; that during an examination of its records on September 17, 2002, by Bureau of Financial Institutions examiners, it was found that the Defendant had violated various laws and regulations applicable to the conduct of its licensed business; that upon being informed that the Commissioner of Financial Institutions ("Commissioner") approved the imposition of a fine therefor, the Defendant offered to settle this case by payment of the proposed fine in the amount of ten thousand dollars (\$10,000), tendered said sum to the Commonwealth of Virginia, and waived its right to a hearing in the case; and the Commissioner recommended that the Commission accept 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 hereby accepted.

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

**CASE NO. BFI-2003-00043
AUGUST 27, 2003**

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

CEASE AND DESIST ORDER

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant was denied a license to engage in business as a payday lender under Chapter 18 of Title 6.1 of the Code of Virginia; that during an investigation by Staff of the Bureau of Financial Institutions in July 2003, it was discovered that the Defendant was arranging or brokering payday loans from one or more office locations in Virginia in violation of § 6.1-445 B of the Code of Virginia; that the Commissioner, in accordance with § 6.1-465 of the Code of Virginia, gave written notice to the Defendant by certified mail on July 23, 2003, (1) of his intention to recommend that it be ordered to cease and desist from arranging or brokering payday loans in Virginia, and (2) that a written request for hearing was required to be filed in the Office of the Clerk on or before August 13, 2003; and that a written request for hearing was not filed.

Accordingly, the Commission finds that the Defendant has arranged or brokered payday loans in violation of § 6.1-445 B of the Code of Virginia, and

IT IS HEREBY ORDERED that the Defendant shall immediately cease and desist arranging or brokering payday loans.

**CASE NO. BFI-2003-00044
AUGUST 15, 2003**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
RELOCATION FINANCIAL 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 lender 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 17, 2003; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on July 21, 2003, (1) of his intention to recommend revocation of its license unless a new bond was filed by August 11, 2003, and (2) that a written request for hearing was required to be filed in the Office of the Clerk on or before August 4, 2003; 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 is hereby revoked.

**CASE NO. BFI-2003-00045
JULY 30, 2003**

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

SETTLEMENT ORDER

ON A FORMER DAY the Staff reported to the State Corporation Commission ("Commission") that the Defendant, ServiMex, Inc., recently applied for a license to engage in the business of money transmission in Virginia pursuant to Chapter 12 of Title 6.1 of the Code of Virginia; that during investigation of the application it was found that the Defendant had conducted a money transmission business in Virginia without the required license in violation of § 6.1-370 of the Code of Virginia; that upon being informed that the Commissioner of Financial Institutions ("Commissioner") intended to recommend the imposition of a fine, the Defendant offered to settle this case by payment of a fine of five thousand dollars (\$5,000), tendered said sum to the

Commonwealth, and waived its right to a hearing in the case; and the Commissioner 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 of settlement of this case is accepted.
- (2) This case is dismissed.
- (3) The papers herein shall be placed in the file for ended causes.

**CASE NO. BFI-2003-00047
AUGUST 6, 2003**

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

Ex Parte: In re annual fees for licensed payday lenders

ORDER TO TAKE NOTICE

WHEREAS § 6.1-457 of the Code of Virginia requires licensed payday lenders to pay an annual fee calculated in accordance with a schedule set by the State Corporation Commission ("Commission"); and

WHEREAS 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 which will promote the efficient and effective examination, supervision, and regulation of licensed payday lenders;

IT IS ORDERED THAT:

- (1) The proposed regulation, entitled "Schedule of Annual Fees for the Examination, Supervision and Regulation of Payday Lenders", is appended hereto and made part of the record herein.
- (2) On or before September 8, 2003, any person desiring to comment on the proposed regulation shall file written comments containing a reference to Case No. BFI-2003-00047 with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23219.
- (3) The proposed regulation shall be posted on the Commission's website at <http://www.state.va.us/scc/caseinfo.htm>.
- (4) AN ATTESTED COPY hereof, together with a copy of the proposed regulation, 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. BFI-2003-00047
SEPTEMBER 11, 2003**

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

Ex Parte: In re annual fees for licensed payday lenders

ORDER ADOPTING A REGULATION

By Order herein dated August 6, 2003, the State Corporation Commission ("Commission") directed that notice be given of a proposed regulation numbered 10 VAC 5-200-90 entitled "Schedule of Annual Fees for the Examination, Supervision, and Regulation of Payday Lenders." Notice of the proposed regulation was published in the Virginia Register on August 25, 2003, and was also given to all licensees under Chapter 18 of Title 6.1 of the Code of Virginia. Interested parties were afforded an opportunity to comment on the proposal, and written comments were filed with the Clerk of the Commission by and on behalf of certain payday lender licensees.

The proposed regulation sets an annual fee schedule for licensed payday lenders based upon short-year data presently available to the Commission. Having considered the Staff proposal and written comments received in this case, the Commission concludes that the proposed regulation fulfills the purposes of § 6.1-457 of the Code of Virginia. Accordingly, the Commission is of the opinion that the regulation, with certain technical corrections suggested by the Registrar of Regulations and a technical amendment to the text of the regulation as published in the Virginia Register, should be adopted.

THEREFORE, IT IS ORDERED THAT:

(1) Amended regulation 10 VAC 5-200-90 attached hereto is adopted effective immediately.

(2) Inasmuch as the fee schedule is based upon partial-year data reported by licensees for calendar year 2002, the Staff is directed to reexamine all relevant factors when calendar year 2003 data is available and make a report to the Commission so that it can be determined if a modification of the fee schedule is warranted.

(3) Copies of the amended regulation shall be sent by the Bureau of Financial Institutions to all licensees and current applicants for licenses under Chapter 18 of Title 6.1 of the Code of Virginia.

(4) The amended regulation shall be posted on the Commission's website at <http://www.state.va.us/scc/caseinfo.htm>.

NOTE: A copy of Attachment A entitled "Schedule of Annual Fees for the Examination, Supervision, and Regulation of Payday Lenders" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. BFI-2003-00048
OCTOBER 14, 2003**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
EMPIRE ACCEPTANCE COMPANY, 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 the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on September 2, 2003; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on September 4, 2003, (1) of his intention to recommend revocation of its license unless a new bond was filed by October 4, 2003, and (2) that a written request for hearing was required to be filed in the Office of the Clerk on or before September 25, 2003; 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-2003-00054
NOVEMBER 14, 2003**

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

Ex Parte: In re: proposed regulation relating to conduct of other business in payday lending offices

ORDER TO TAKE NOTICE

WHEREAS, § 6.1-458 of the Payday Loan Act ("Act"), § 6.1-444 *et seq.* of the Code of Virginia, authorizes the State Corporation Commission ("Commission") to adopt such regulations as it deems appropriate to effect the purposes of the Act;

WHEREAS, § 6.1-463 of the Act authorizes the Commission to determine what other businesses should be solicited or conducted at the office of a licensed payday lender; and

WHEREAS, the Bureau of Financial Institutions has proposed a regulation that will govern the conduct of business other than payday lending where a licensed payday lending business is conducted;

IT IS THEREFORE ORDERED THAT:

(1) The proposed payday lending regulation, entitled "Other business in payday lending offices," is appended hereto and made a part of the record herein.

(2) Comments or requests for hearing on the proposed regulation must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before January 9, 2004. Requests for hearing shall state why a hearing is necessary and why such issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2003-00054. 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.state.va.us/scc/caseinfo/notice.htm>.

(3) The proposed regulation shall be posted on the Commission's website at <http://www.state.va.us/scc/caseinfo.htm>.

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

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, Bureau of Financial Institutions, Tyler Building, 1300 East Main Street, Richmond, Virginia.

**CASE NO. BFI-2003-00056
DECEMBER 19, 2003**

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

v.

OCEANTRUST MORTGAGE 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 bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on October 21, 2003; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on November 4, 2003, (1) of his intention to recommend revocation of its license unless a new bond was filed by December 4, 2003, and (2) that a written request for hearing was required to be filed in the Office of the Clerk on or before November 25, 2003; 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-2003-00060
NOVEMBER 21, 2003**

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

Ex Parte: In re: Proposed Credit Union Regulation

ORDER TO TAKE NOTICE

WHEREAS, §§ 6.1-225.3:1 and 6.1-225.22 of the Code of Virginia authorize the State Corporation Commission ("Commission") to promulgate regulations permitting state credit unions to exercise powers comparable to federal credit unions; and

WHEREAS, certain federal credit unions are authorized by 12 U.S.C. § 1759 to expand their membership to include persons and organizations in "underserved areas;" and

WHEREAS, the Commission is informed that certain state credit unions wish to exercise this authority;

IT IS ORDERED THAT:

(1) The proposed regulation entitled "Serving Underserved Areas" is appended hereto and made part of the record in this case.

(2) Written comments or requests for hearing must be filed with the Clerk, State Corporation Commission, c/o Document Control Center, P. O. Box 2118, Richmond, Virginia 23218, on or before January 9, 2004, and shall contain a reference to Case No. BFI-2003-00060. Requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments.

(3) Interested persons desiring to electronically submit comments or request a hearing may do so by following the instructions at the Commission's website: <http://www.state.va.us/scc/caseinfo.htm>.

(4) The proposed regulation shall be posted on the Commission's website at the above Internet address.

(5) An attested copy of this order, together with a copy of the proposed regulation, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

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

**CASE NO. BFI-2003-00061
DECEMBER 15, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION
v.
EMPIRE ACCEPTANCE COMPANY, INC.,
Defendant

ORDER REINSTATING A LICENSE

On October 14, 2003, in Case No. BFI-2003-00048, the State Corporation Commission ("Commission") entered an Order revoking the mortgage lender and broker license issued to the defendant under Chapter 16 of Title 6.1 of the Code of Virginia. Thereafter, the Staff reported to the Commission that the Defendant's license was revoked wrongly due to circumstances beyond its control.

Accordingly, IT IS ORDERED THAT the Defendant's license to engage in business as a mortgage lender and broker is reinstated retroactive to October 14, 2003, and that the Order entered on that date in Case No. BFI-2003-00048 revoking the Defendant's license shall be deemed a nullity for all purposes.

CLERK'S OFFICE**CASE NO. CLK-2003-00003
OCTOBER 17, 2003**

PETITION OF
FAITHWAY CHURCH OF JESUS OF THE APOSTOLIC FAITH, INC.,
Petitioner
v.
ERNEST R. SUTTON,
Respondent

ORDER

On February 20, 2003, Faithway Church of Jesus of the Apostolic Faith, Inc. ("Faithway Church" or "Petitioner"), a non-profit North Carolina corporation, by counsel, filed a Petition for Rule to Show Cause and for Rescission of Certificate of Authority ("Petition") with the State Corporation Commission ("Commission").¹ Therein, among other things, Petitioner² seeks to have the Commission hold Ernest R. Sutton³ ("Sutton" or "Respondent") in contempt pursuant to § 13.1-811 of the Code of Virginia⁴ for signing false documents⁵ and to rescind the certificate of authority issued by the Commission to Faithway Church.⁶ Petitioner alleges that Sutton signed the Application as president of Faithway Church knowing that Stokley, as bishop, was the president of the church.

On March 17, 2003, the Commission entered an Order Establishing a Proceeding and Requiring Responsive Pleading which established this matter as a formal proceeding, ordered the Respondent to file an Answer admitting or denying the allegations contained in the Petition, assigned this matter to a Hearing Examiner to conduct all further proceedings, and scheduled a hearing for April 21, 2003.

On April 1, 2003, Respondent filed an Answer in which he declared, *inter alia*, that he is the duly elected president of Faithway Church and had the authority to file an Application for a Certificate of Authority.

The hearing convened on April 21, 2003. SuAnne Hardee Bryant, Esquire, appeared as counsel for Petitioner and M. Seth Ginter, Esquire, appeared as counsel for Respondent. Ten witnesses testified at the hearing and nineteen exhibits were accepted into the record.

After reviewing the filings and testimony submitted in the case and the applicable law, the Hearing Examiner, in a report ("Hearing Examiner's Report") issued on July 9, 2003, made, among other things, the following findings and recommendations:

- (1) The material issue in this case is whether or not Ernest Sutton signed an Application for Certificate of Authority to Transact Business in Virginia knowing it was false in any material respect.
- (2) In 2002, Mr. Sutton was elected interim pastor and general overseer by the Virginia and North Carolina branches of Faithway Church.⁷
- (3) At a special meeting held April 6, 2003, members from both congregations ratified actions taken on August 21, 2002, in electing Ernest Sutton as pastor, president and general overseer of Faithway Church.⁸
- (4) The documents and testimony in this case indicate that Ernest Sutton believed he was acting in his capacity as president of the church.⁹

¹ 5 VAC 5-20-100 B of the Commission's Rules of Practice and Procedure.

² Timothy L. Stokley ("Stokley") claims to be president, bishop and general overseer of Faithway Church and initiated this matter on behalf of Faithway Church.

³ Ernest R. Sutton claims to be president, bishop and general overseer of Faithway Church.

⁴ § 13.1-811. Penalty for signing false documents. It shall be unlawful for any person to sign a document which he knows is false in any material respect with the intent that the document be delivered to the Commission for filing. Any person who violates the provisions of this section shall be guilty of a Class 1 misdemeanor.

⁵ Exhibit 5. Ernest R. Sutton filed an Application for a Certificate of Authority to Transact Business in Virginia ("Application") dated December 26, 2002, as president of Faithway Church, with the Commission.

⁶ On January 2, 2003, the Commission approved the Application and granted Faithway Church a Certificate of Authority to Transact Business in Virginia ("Certificate") effective December 31, 2002.

⁷ Exhibit 16. Minutes from Urgent Call Meeting, Faithway Apostolic Church, Inc., August 21, 2002, at p. 2.

⁸ Exhibit 17. Faithway Apostolic Church, Inc., Notice of Special Meeting of Members, August 16, 2003, at item 4. Exhibit 18. Faithway Apostolic Church, Inc., Minutes of Special Meeting of Member, August 16, 2003, at pp. 3-4.

⁹ Transcript at pp. 173-174, 180, 242-244 and 248.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- (5) The Certificate of Authority to Transact Business in Virginia was properly obtained and should not be revoked.
- (6) That the Commission should enter an Order dismissing the petition with prejudice and passing the papers herein to the file for ended causes.

Petitioner and Respondent filed comments to the Hearing Examiner's Report. Petitioner averred, among other things, that the recommendation of the Hearing Examiner is not supported by applicable law. Respondent agreed fully and completely with the findings of the Hearing Examiner.

Upon consideration of the filings and testimony submitted, the Report of the Hearing Examiner, and the Comments submitted thereto, 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 Petition of Faithway Church be, and the same is hereby, DISMISSED with prejudice; and
- (2) The papers herein are passed to the file for ended causes.

**CASE NO. CLK-2003-00004
MAY 1, 2003**

IN RE MERGER OF
ATLEE COMMERCE CENTER II, L.L.C., DICKENS PLACE, L.L.C.
and
SK REALTY, LLC

ORDER NULLIFYING A MERGER

On April 1, 2003 the State Corporation Commission ("Commission") issued a certificate of merger between Atlee Commerce Center II, L.L.C., Dickens Place, L.L.C. and SK Realty, LLC, ("Companies") Virginia limited liability companies. Thereafter the Companies, by counsel, filed a petition and amended petitions in this case seeking rescission of the certificate of merger on the ground that their application had been filed prematurely by mistake. Upon consideration of the petition,

IT IS ORDERED THAT:

- (1) The April 1, 2003 certificate of merger is vacated effective on that date.
- (2) The separate existences of Atlee Commerce Center II, L.L.C. and Dickens Place, L.L.C., the non-surviving companies, are restored effective April 1, 2003.
- (3) This case is hereby dismissed and the papers herein be filed among the ended cases.

BUREAU OF INSURANCE**CASE NO. INS-1991-00068
DECEMBER 11, 2003**

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

v.

FIDELITY BANKERS LIFE INSURANCE COMPANY,
Defendant

**ORDER APPROVING SECOND AMENDMENT OF AGREEMENT
AND DECLARATION OF TRUST**

ON A FORMER DAY CAME the Deputy Receiver of First Dominion Mutual Life Insurance Company (formerly Fidelity Bankers Life Insurance Company), in Receivership for Conversation and Rehabilitation (the "Company") and filed with the Clerk of the Commission an Application for Order Approving Second Amendment of Agreement and Declaration of Trust ("Application"), seeking an order from the Commission which approves a second amendment of the Agreement and Declaration of Trust ("Agreement") by which the Company formed a grantor Trust, and extends the term of the Trust until December 31, 2005.

AND THE COMMISSION, having considered the Application, finds that the Deputy Receiver's Application is, in all things, well taken and that it should be, and it is hereby, granted. Accordingly, the Commission now finds that the "AMENDMENT NUMBER TWO TO AGREEMENT AND DECLARATION OF TRUST" attached to the Deputy Receiver's Application as Exhibit "A", should be, and it is hereby, approved as being in conformance with the Agreement and the plan for the rehabilitation of the Company approved by this Commission on September 29, 1992 ("Rehabilitation Plan"). The Commission finds that the extension of the term of the Trust until December 31, 2005, is in the best interest of policyholders, other creditors, and the public.

THEREFORE, IT IS ORDERED that the Application for Order Approving Second Amendment of Agreement and Declaration of Trust be, and it is hereby, granted in conformance with the Agreement and the Rehabilitation Plan, and the Trust be, and it is hereby, extended until December 31, 2005.

**CASE NO. INS-1991-00255
MARCH 7, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

EXECUTIVE LIFE INSURANCE COMPANY OF NEW YORK,
Defendant

ORDER TO TAKE NOTICE

Section 38.2-1040 of the Code of Virginia provides, *inter alia*, that the 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.

Executive Life Insurance Company of New York, 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 September 17, 1991, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended due to financial regulatory concerns.

Defendant's Virginia Certificate of Authority was revoked on September 1, 1992.

Defendant has not filed any financial information with the Virginia Bureau of Insurance since 1991.

The Bureau of Insurance has recommended that, based on the foregoing, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be revoked.

THEREFORE, IT IS ORDERED that Defendant TAKE NOTICE that the Commission shall enter an order subsequent to March 18, 2003, suspending the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before March 18, 2003, Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for hearing before the Commission with respect to the proposed suspension of Defendant's license.

**CASE NO. INS-1991-00255
MARCH 25, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
EXECUTIVE LIFE INSURANCE COMPANY OF NEW YORK,
Defendant

ORDER REVOKING LICENSE

In an Order entered herein March 7, 2003, Defendant was ordered to take notice that the Commission would enter an Order subsequent to March 18, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before March 18, 2003, Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed revocation of Defendant's license.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed revocation of Defendant's license.

THEREFORE, IT IS ORDERED THAT:

- (1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be, and it is hereby, REVOKED;
- (2) Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia;
- (3) The appointments of Defendant's agents to act on behalf of Defendant in the Commonwealth of Virginia be, and they are hereby, REVOKED;
- (4) The Bureau of Insurance shall cause an attested copy of this Order to be sent to each of Defendant's agents appointed to act on behalf of Defendant in the Commonwealth of Virginia as notice of the revocation of such agent's appointment; and
- (5) The Bureau of Insurance shall cause notice of the revocation of Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-1991-00300
FEBRUARY 20, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
NEW JERSEY LIFE INSURANCE COMPANY,
Defendant

ORDER TO TAKE NOTICE

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

New Jersey Life Insurance Company, a foreign corporation domiciled in the State of New Jersey ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

By order entered herein October 29, 1991, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended due to financial regulatory concerns.

On August 12, 1993, by an Order of Liquidation and Approval (the "Liquidation Order"), the Superior Court of Bergen County, New Jersey, found Defendant to be insolvent and ordered Defendant to be liquidated by the New Jersey Department of Insurance.

American General Life Insurance Company, pursuant to the Liquidation Order, assumed Defendant's liabilities.

Defendant's Virginia Certificate of Authority was revoked on September 1, 1994.

The New Jersey Department has notified the Bureau of Insurance that it does not object to the revocation of Defendant's license to transact the business of insurance in the Commonwealth of Virginia.

The Bureau of Insurance has recommended that Defendant's license to transact the business of insurance in the Commonwealth of Virginia be revoked.

IT IS THEREFORE ORDERED that Defendant TAKE NOTICE that the Commission shall enter an order subsequent to February 27, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before February 27, 2003, Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for a hearing before the Commission with respect to the proposed revocation of Defendant's license.

**CASE NO. INS-1991-00300
MARCH 17, 2003**

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

v.

NEW JERSEY LIFE INSURANCE COMPANY,
Defendant

ORDER REVOKING LICENSE

In an order entered herein February 20, 2003, Defendant was ordered to take notice that the Commission would enter an order subsequent to February 27, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before February 27, 2003, Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed revocation of Defendant's license.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed revocation of Defendant's license.

THEREFORE, IT IS ORDERED THAT:

(1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be, and it is hereby, REVOKED;

(2) Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia;

(3) The appointments of Defendant's agents to act on behalf of Defendant in the Commonwealth of Virginia be, and they are hereby, REVOKED;

(4) The Bureau of Insurance shall cause an attested copy of this Order to be sent to each of Defendant's agents appointed to act on behalf of Defendant in the Commonwealth of Virginia as notice of the revocation of such agent's appointment; and

(5) The Bureau of Insurance shall cause notice of the revocation of Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-1994-00078
FEBRUARY 20, 2003**

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

v.

PREMIER ALLIANCE INSURANCE COMPANY,
Defendant

ORDER TO TAKE NOTICE

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

Premier Alliance Insurance Company, a foreign corporation domiciled in the State of California ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

By order entered herein June 24, 1994, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended due to financial regulatory concerns.

On August 2, 1994, the Superior Court of the County of San Francisco, California, found Defendant to be insolvent and ordered Defendant to be liquidated by the California Department of Insurance.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The California Department has notified the Bureau of Insurance that it has no plan to sell Defendant's bare charter and does not object to the revocation of Defendant's license to transact the business of insurance in the Commonwealth of Virginia.

The Bureau of Insurance has recommended that Defendant's license to transact the business of insurance in the Commonwealth of Virginia be revoked.

IT IS THEREFORE ORDERED that Defendant TAKE NOTICE that the Commission shall enter an order subsequent to February 27, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before February 27, 2003, Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for a hearing before the Commission with respect to the proposed revocation of Defendant's license.

**CASE NO. INS-1994-00078
MARCH 17, 2003**

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

ORDER REVOKING LICENSE

In an order entered herein February 20, 2003, Defendant was ordered to take notice that the Commission would enter an order subsequent to February 27, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before February 27, 2003, Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed revocation of Defendant's license.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed revocation of Defendant's license.

THEREFORE, IT IS ORDERED THAT:

- (1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be, and it is hereby, REVOKED;
- (2) Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia;
- (3) The appointments of Defendant's agents to act on behalf of Defendant in the Commonwealth of Virginia be, and they are hereby, REVOKED;
- (4) The Bureau of Insurance shall cause an attested copy of this Order to be sent to each of Defendant's agents appointed to act on behalf of Defendant in the Commonwealth of Virginia as notice of the revocation of such agent's appointment; and
- (5) The Bureau of Insurance shall cause notice of the revocation of Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-1994-00081
FEBRUARY 6, 2003**

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

FINAL ORDER

Summit National Life Insurance Company, a foreign corporation domiciled in the Commonwealth of Pennsylvania ("Defendant"), initially was licensed to transact the business of insurance in the Commonwealth of Virginia on December 28, 1978.

By order entered herein June 24, 1994, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended.

By request of Samuel G. Rosenberger, Office of Liquidations and Rehabilitations, Pennsylvania Insurance Department, dated January 23, 2003, and filed with the Commission's Bureau of Insurance, the Commission was advised that Defendant wishes to withdraw its license to transact the business of insurance in the Commonwealth of Virginia.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The withdrawal of Defendant's license has been processed by the Bureau of Insurance, effective February 3, 2003.

The Bureau of Insurance 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.

THEREFORE, IT IS ORDERED THAT:

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

**CASE NO. INS-1994-00116
JANUARY 30, 2003**

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

v.

COMPBENEFITS INSURANCE COMPANY (FORMERLY LINCOLN MEMORIAL LIFE INSURANCE COMPANY),
Defendant

FINAL ORDER

CompBenefits Insurance Company, a foreign corporation domiciled in the State of Texas (formerly Lincoln Memorial Life Insurance Company) ("Defendant"), initially was licensed to transact the business of insurance in the Commonwealth of Virginia on April 15, 1960.

Section 38.2-1028 of the Code of Virginia requires that insurers licensed to transact the business of insurance in the Commonwealth of Virginia are required to maintain minimum capital of \$1,000,000 and minimum surplus of \$3,000,000.

By order entered herein August 15, 1994, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended based on Defendant's voluntary consent to such suspension due to Defendant's failure to comply with such minimum surplus requirement, which became effective on July 1, 1994.

The Quarterly Statement of Defendant dated September 30, 2002, and filed with the Bureau of Insurance (the "Bureau") reflects that Defendant is in compliance with Virginia's minimum capital and surplus requirements as set forth in § 38.2-1028.

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, is of the opinion that the Order Suspending License entered by the Commission should be vacated.

THEREFORE, IT IS ORDERED THAT:

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

**CASE NO. INS-1997-00229
FEBRUARY 28, 2003**

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

v.

LMI 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.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

LMI Insurance Company, a foreign corporation domiciled in the State of Ohio ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

By Order entered herein October 2, 1997, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended due to financial regulatory concerns.

On May 22, 2000, by a Final Order of Liquidation and Appointment of Liquidator, the Court of Common Pleas of Franklin County, Ohio, found Defendant to be insolvent and ordered Defendant to be liquidated by the Ohio Department of Insurance.

Defendant's Virginia Certificate of Authority was revoked on April 2, 2001.

The Ohio Department has notified the Bureau of Insurance that it does not object to the revocation of Defendant's license to transact the business of insurance in the Commonwealth of Virginia.

The Bureau of Insurance has recommended that Defendant's license to transact the business of insurance in the Commonwealth of Virginia be revoked.

IT IS THEREFORE ORDERED that Defendant TAKE NOTICE that the Commission shall enter an Order subsequent to March 7, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before March 7, 2003, Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for a hearing before the Commission with respect to the proposed revocation of Defendant's license.

**CASE NO. INS-1997-00229
MARCH 17, 2003**

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

ORDER REVOKING LICENSE

In an order entered herein February 28, 2003, Defendant was ordered to take notice that the Commission would enter an order subsequent to March 7, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before March 7, 2003, Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed revocation of Defendant's license.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed revocation of Defendant's license.

THEREFORE, IT IS ORDERED THAT:

- (1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be, and it is hereby, REVOKED;
- (2) Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia;
- (3) The appointments of Defendant's agents to act on behalf of Defendant in the Commonwealth of Virginia be, and they are hereby, REVOKED;
- (4) The Bureau of Insurance shall cause an attested copy of this Order to be sent to each of Defendant's agents appointed to act on behalf of Defendant in the Commonwealth of Virginia as notice of the revocation of such agent's appointment; and
- (5) The Bureau of Insurance shall cause notice of the revocation of Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-1998-00148
JANUARY 30, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

UNITED BENEFIT LIFE INSURANCE COMPANY,
Defendant

FINAL ORDER

United Benefit Life Insurance Company, a foreign corporation domiciled in the State of Ohio ("Defendant"), initially was licensed to transact the business of insurance in the Commonwealth of Virginia on September 22, 1992.

By order entered herein January 5, 2001, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended.

By letter of Steven H. Puck, counsel for Defendant, dated January 7, 2003, and attached affidavit of Defendant's Vice President and Treasurer, respectively, dated December 30, 2002, and filed with the Commission on January 28, 2003, the Commission was advised that Defendant ceased to transact business in the Commonwealth of Virginia as of December 31, 2001, and that Defendant wishes to withdraw its license to transact the business of insurance in the Commonwealth of Virginia.

The withdrawal of Defendant's license has been processed by the Bureau of Insurance, effective January 14, 2003.

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.

THEREFORE, IT IS ORDERED THAT:

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

**CASE NO. INS-1999-00138
FEBRUARY 28, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

FIRST NATIONAL LIFE INSURANCE COMPANY OF AMERICA,
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.

First National Life Insurance Company of America, a foreign corporation domiciled in the State of Mississippi ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

By order entered herein June 7, 1999, Defendant's license to transact the business of insurance on the Commonwealth of Virginias was suspended due to financial regulatory concerns.

On June 7, 1999, by a Final Order of Liquidation and Finding of Insolvency, the Chancery Court of the First Judicial District of Hinds County, Mississippi, found Defendant to be insolvent and ordered Defendant to be liquidated by the Mississippi Department of Insurance.

Defendant's Virginia Certificate of Authority was revoked on November 1, 1999.

By Order entered herein December 22, 1999, the Commission approved Defendant's application for approval of an assumption reinsurance agreement, whereby Madison National Life Insurance Company, a Wisconsin-domiciled insurer licensed to transact the business of insurance in the Commonwealth of Virginia, assumed all of the life insurance policies and annuities issued by Defendant.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Mississippi Department has notified the Bureau of Insurance that it does not object to the revocation of Defendant's license to transact the business of insurance in the Commonwealth of Virginia.

The Bureau of Insurance has recommended that Defendant's license to transact the business of insurance in the Commonwealth of Virginia be revoked.

IT IS THEREFORE ORDERED that Defendant TAKE NOTICE that the Commission shall enter an Order subsequent to March 7, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before March 7, 2003, Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for a hearing before the Commission with respect to the proposed revocation of Defendant's license.

**CASE NO. INS-1999-00139
FEBRUARY 28, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
FRANKLIN AMERICAN LIFE 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.

Franklin American Life Insurance Company, a foreign corporation domiciled in the State of Tennessee ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

By Order entered herein June 7, 1999, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended due to financial regulatory concerns.

On October 22, 1999, by a Consent Final Order of Liquidation; Finding of Insolvency; and Permanent Injunction, the Chancery Court of Tennessee found Defendant to be insolvent and ordered Defendant to be liquidated by the Tennessee Department of Commerce and Insurance.

Defendant's Virginia Certificate of Authority was revoked on September 1, 1999.

The Tennessee Receiver's Office has notified the Bureau of Insurance that it does not object to the revocation of Defendant's license to transact the business of insurance in the Commonwealth of Virginia.

The Bureau of Insurance has recommended that Defendant's license to transact the business of insurance in the Commonwealth of Virginia be revoked.

IT IS THEREFORE ORDERED that Defendant TAKE NOTICE that the Commission shall enter an Order subsequent to March 7, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before March 7, 2003, Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for a hearing before the Commission with respect to the proposed revocation of Defendant's license.

**CASE NO. INS-1999-00139
MARCH 17, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
FRANKLIN AMERICAN LIFE INSURANCE COMPANY,
Defendant

ORDER REVOKING LICENSE

In an order entered herein February 28, 2003, Defendant was ordered to take notice that the Commission would enter an order subsequent to March 7, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before March 7, 2003, Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed revocation of Defendant's license.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed revocation of Defendant's license.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

THEREFORE, IT IS ORDERED THAT:

- (1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be, and it is hereby, REVOKED;
- (2) Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia;
- (3) The appointments of Defendant's agents to act on behalf of Defendant in the Commonwealth of Virginia be, and they are hereby, REVOKED;
- (4) The Bureau of Insurance shall cause an attested copy of this Order to be sent to each of Defendant's agents appointed to act on behalf of Defendant in the Commonwealth of Virginia as notice of the revocation of such agent's appointment; and
- (5) The Bureau of Insurance shall cause notice of the revocation of Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2000-00049
SEPTEMBER 2, 2003**

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

v.

ACCELERATION NATIONAL INSURANCE COMPANY,
Defendant

ORDER TO TAKE NOTICE

Section 38.2-1040 of the Code of Virginia provides, *inter alia*, that the 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.

Acceleration National Insurance Company, a foreign corporation domiciled in the state of Ohio ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

By order entered herein July 14, 2000, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended due to financial regulatory concerns.

Defendant's Virginia Certificate of Authority was revoked on February 28, 2001.

On February 28, 2001, by a Final Order of Liquidation and Appointment of Liquidator, the Court of Common Pleas, Franklin County, Ohio, found Defendant to be insolvent and ordered Defendant to be liquidated by the Ohio Department of Insurance.

The Office of the Ohio Insurance Liquidator has notified the Bureau of Insurance that it does not object to the revocation of Defendant's license to transact the business of insurance in the Commonwealth of Virginia.

The Bureau of Insurance has recommended that, based on the foregoing, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be revoked.

THEREFORE, IT IS ORDERED that Defendant TAKE NOTICE that the Commission shall enter an order subsequent to September 16, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before September 16, 2003, Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for hearing before the Commission with respect to the proposed revocation of Defendant's license.

**CASE NO. INS-2000-00049
SEPTEMBER 24, 2003**

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

v.

ACCELERATION NATIONAL INSURANCE COMPANY,
Defendant

ORDER REVOKING LICENSE

In an order entered herein September 2, 2003, Defendant was ordered to take notice that the Commission would enter an order subsequent to September 16, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before

September 16, 2003, Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed revocation of Defendant's license.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed revocation of Defendant's license.

THEREFORE, IT IS ORDERED THAT:

(1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be, and it is hereby, REVOKED;

(2) Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia;

(3) The appointments of Defendant's agents to act on behalf of Defendant in the Commonwealth of Virginia be, and they are hereby, REVOKED;

(4) The Bureau of Insurance shall cause an attested copy of this Order to be sent to each of Defendant's agents appointed to act on behalf of Defendant in the Commonwealth of Virginia as notice of the revocation of such agent's appointment; and

(5) The Bureau of Insurance shall cause notice of the revocation of Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2000-00079
MARCH 31, 2003**

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

ORDER TO TAKE NOTICE

Section 38.2-1040 of the Code of Virginia provides, inter alia, that the 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.

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

By order entered herein April 28, 2000, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended due to financial regulatory concerns.

On August 3, 2000, by an Order of Liquidation, the Commonwealth Court of Pennsylvania found Defendant to be insolvent and ordered Defendant to be liquidated by the Pennsylvania Insurance Commissioner and her designees.

Defendant has not filed any financial information with the Bureau of Insurance since 1999, and Defendant's Virginia Certificate of Authority was revoked on October 31, 2000.

The Pennsylvania Department's Office of Liquidations, Rehabilitations and Special Funds has notified the Bureau of Insurance that it does not object to the revocation of Defendant's license to transact the business of insurance in the Commonwealth of Virginia.

The Bureau of Insurance has recommended that, based on the foregoing, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be revoked.

THEREFORE, IT IS ORDERED that Defendant TAKE NOTICE that the Commission shall enter an order subsequent to April 9, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before April 9, 2003, Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for hearing before the Commission with respect to the proposed suspension of Defendant's license.

**CASE NO. INS-2000-00079
APRIL 16, 2003**

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

ORDER REVOKING LICENSE

In an order entered herein March 31 2003, Defendant was ordered to take notice that the Commission would enter an order subsequent to April 9, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before April 9, 2003, Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed revocation of Defendant's license.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed revocation of Defendant's license.

THEREFORE, IT IS ORDERED THAT:

(1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be, and it is hereby, REVOKED;

(2) Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia;

(3) The appointments of Defendant's agents to act on behalf of Defendant in the Commonwealth of Virginia be, and they are hereby, REVOKED;

(4) The Bureau of Insurance shall cause an attested copy of this Order to be sent to each of Defendant's agents appointed to act on behalf of Defendant in the Commonwealth of Virginia as notice of the revocation of such agent's appointment; and

(5) The Bureau of Insurance shall cause notice of the revocation of Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2000-00274
JUNE 19, 2003**

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

FINAL ORDER

IGF Insurance Company, a foreign corporation domiciled in the State of Indiana ("Defendant"), initially was licensed to transact the business of insurance in the Commonwealth of Virginia on December 29, 1998.

By order entered herein September 24, 2001, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended.

By letter of Bradley J. Haskell, Director of Regulatory Affairs for Defendant, dated May 30, 2003, and attached affidavit of Defendant's President and Treasurer, respectively, dated May 30, 2003, and filed with the Commission on June 16, 2003, the Commission was advised that Defendant ceased to transact business in the Commonwealth of Virginia as of June 29, 2001, and that Defendant wishes to withdraw its license to transact the business of insurance in the Commonwealth of Virginia.

The withdrawal of Defendant's license has been processed by the Bureau of Insurance, effective June 6, 2003.

The Bureau has recommended that, in light of the foregoing, 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.

THEREFORE, IT IS ORDERED THAT:

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

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

**CASE NO. INS-2000-00280
NOVEMBER 3, 2003**

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

ORDER TO TAKE NOTICE

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

Credit General Insurance Company, a foreign corporation domiciled in the State of Ohio ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

On January 5, 2001, by a Final Order of Liquidation and Appointment of Liquidator, the Court of Common Pleas of Franklin County, Ohio, found Defendant to be insolvent and ordered Defendant to be liquidated by the Ohio Department of Insurance.

By order entered herein March 7, 2001, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended due to financial regulatory concerns.

Defendant's Virginia Certificate of Authority was revoked on January 2, 2002.

The Ohio Department has notified the Bureau of Insurance that it does not object to the revocation of Defendant's license to transact the business of insurance in the Commonwealth of Virginia.

The Bureau of Insurance has recommended that Defendant's license to transact the business of insurance in the Commonwealth of Virginia be revoked.

IT IS THEREFORE ORDERED that Defendant TAKE NOTICE that the Commission shall enter an order subsequent to November 14, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before November 14, 2003, Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for a hearing before the Commission with respect to the proposed revocation of Defendant's license.

**CASE NO. INS-2000-00280
NOVEMBER 24, 2003**

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

ORDER REVOKING LICENSE

In an order entered herein November 3, 2003, Defendant was ordered to take notice that the Commission would enter an order subsequent to November 14, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before November 14, 2003, Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed revocation of Defendant's license.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed revocation of Defendant's license.

THEREFORE, IT IS ORDERED THAT:

- (1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be, and it is hereby, REVOKED;
- (2) Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia;

(3) The appointments of Defendant's agents to act on behalf of Defendant in the Commonwealth of Virginia be, and they are hereby, REVOKED;

(4) The Bureau of Insurance shall cause an attested copy of this Order to be sent to each of Defendant's agents appointed to act on behalf of Defendant in the Commonwealth of Virginia as notice of the revocation of such agent's appointment; and

(5) The Bureau of Insurance shall cause notice of the revocation of Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2000-00285
MARCH 31, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

GRAPHIC ARTS BENEFIT CORPORATION,
Defendant

FINAL ORDER

Graphic Arts Benefit Corporation, a foreign corporation domiciled in the State of Maryland ("Defendant"), initially was licensed to transact the business of a health services plan in the Commonwealth of Virginia on June 29, 1993.

Section 38.2-4208 D of the Code of Virginia provides, inter alia, that the minimum level for the contingency reserves of a health services plan shall not exceed forty-five (45) days of the anticipated operating expenses and incurred claims expense.

By order entered herein November 22, 2000, Defendant's license to transact the business of a health services plan in the Commonwealth of Virginia was suspended due to Defendant's failure to comply with such contingency reserve requirement.

Defendant timely filed its 2002 Annual Statement dated December 31, 2002, with the Bureau of Insurance (the "Bureau"), which evidences Defendant's compliance with the minimum contingency reserve requirement set forth in § 38.2-4208 D.

Defendant has requested that the Order Suspending License be vacated and its license be restored to good standing.

The Bureau has reviewed Defendant's 2002 Annual Statement and Defendant's request and 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.

THEREFORE, IT IS ORDERED THAT:

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

**CASE NO. INS-2000-00296
AUGUST 14, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

INTERNATIONAL INDEMNITY COMPANY (IN LIQUIDATION)
Defendant

ORDER TO TAKE NOTICE

Section 38.2-1040 of the Code of Virginia provides, inter alia, 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 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.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

International Indemnity Company (in Liquidation), a foreign corporation domiciled in the State of Georgia ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

By Order entered herein April 3, 2001, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended due to financial regulatory concerns.

On January 18, 2001, by an Order of Liquidation, the Superior Court of Fulton County, Georgia, found Defendant to be insolvent and ordered Defendant to be liquidated by the Georgia Insurance Commissioner and his designees.

Defendant's Virginia Certificate of Authority was revoked on April 30, 2003.

The Liquidator's Designee has notified the Bureau of Insurance that it does not object to the revocation of Defendant's license to transact the business of insurance in the Commonwealth of Virginia.

The Bureau of Insurance has recommended that, based on the foregoing, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be revoked.

THEREFORE, IT IS ORDERED that Defendant TAKE NOTICE that the Commission shall enter an Order subsequent to August 26, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before August 26, 2003, Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for hearing before the Commission with respect to the proposed revocation of Defendant's license.

**CASE NO. INS-2000-00296
SEPTEMBER 8, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
INTERNATIONAL INDEMNITY COMPANY (IN LIQUIDATION),
Defendant

ORDER REVOKING LICENSE

In an order entered herein August 14, 2003, Defendant was ordered to take notice that the Commission would enter an order subsequent to August 26, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before August 26, 2003, Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed revocation of Defendant's license.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed revocation of Defendant's license.

THEREFORE, IT IS ORDERED THAT:

- (1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be, and it is hereby, REVOKED;
- (2) Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia;
- (3) The appointments of Defendant's agents to act on behalf of Defendant in the Commonwealth of Virginia be, and they are hereby, REVOKED;
- (4) The Bureau of Insurance shall cause an attested copy of this Order to be sent to each of Defendant's agents appointed to act on behalf of Defendant in the Commonwealth of Virginia as notice of the revocation of such agent's appointment; and
- (5) The Bureau of Insurance shall cause notice of the revocation of Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2001-00062
JANUARY 21, 2003**

PETITION OF
ROBERT WEINGARTEN,
GERRY R. GINSBERG,
and
LEONARD GUBAR,

For Payment of Interest

FINAL ORDER

On May 13, 1991, the Circuit Court for the City of Richmond entered an order placing Fidelity Bankers Life Insurance Company ("Fidelity Bankers")¹ into receivership and appointing the State Corporation Commission ("Commission") as receiver. Thereafter, the Commission entered an order appointing Steven Foster, then Commissioner of Insurance for the Commonwealth of Virginia, to serve as the Deputy Receiver for Fidelity Bankers ("Deputy Receiver"). Alfred Gross succeeded Mr. Foster as Commissioner of Insurance and was substituted as Deputy Receiver for Fidelity Bankers.

On October 28, 2002, Robert Weingarten, Gerry R. Ginsberg, and Leonard Gubar ("Petitioners") filed a petition ("Petition") seeking payment of interest on their administrative claim. The Petitioners seek an order from the Commission requiring the Deputy Receiver to pay the sum of \$263,913.25 in interest on the \$3.5 million stipulated judgment entered by the United States District Court for the Eastern District of Virginia on January 19, 2001. The Petitioners are former directors of Fidelity Bankers.

After extensive federal litigation, the Petitioners and the Deputy Receiver agreed to settle the Petitioners' claim for indemnification by the entry of a "Stipulated Judgment" in the Petitioners' favor in the amount of \$3.5 million. The Stipulated Judgment was entered by the United States District Court for the Eastern District of Virginia on January 19, 2001. A provision of the Stipulated Judgment provided that the payment of \$3.5 million to Petitioners was "subject to the determination of the Virginia State Corporation Commission as to the priority to be accorded this judgment among the claims against, and liability of, the Receivership Estate."

After further litigation at the Commission and the Supreme Court of Virginia,² it was established that the \$3.5 million judgment in favor of the Petitioners is entitled to be paid as an expense of the administration of the estate pursuant to § 38.2-1509 of the Code of Virginia. This Petition, seeking payment of interest from January 19, 2001, to August 7, 2002,³ followed.

Petitioners claim that they are due interest on the Stipulated Judgment because the Stipulated Judgment Order does not exclude the accrual of post-judgment interest. Accordingly, Petitioners maintain that 28 U.S.C. § 1961 requires that interest be paid on the Stipulated Judgment.

The Deputy Receiver filed a Motion to Dismiss and Answer to Petition for Payment of Interest, as well as an accompanying memorandum in support thereof, on November 15, 2002. The Deputy Receiver denies that any interest is due to be paid to the Petitioners. The Deputy Receiver further asserts that the Petition should be dismissed because (i) as a matter of law, the Petitioners are not entitled to payment of post-judgment interest on the Stipulated Judgment; (ii) the Petition is untimely and was filed with the Commission in violation of the requirements set forth in the Receivership Appeal Procedure ("RAP"); (iii) the Petitioners have waived their rights to any post-judgment interest on the Stipulated Judgment; and (iv) § 12.1-36 of the Code of Virginia only permits payment of interest on Commission judgments when specifically allowed by the Commission. Since the Commission Order of July 31, 2002, directed payment only of the \$3.5 million, the Deputy Receiver argues, no interest is due or permitted under Virginia law.

The Petitioners filed a memorandum in opposition to the Deputy Receiver's Motion to Dismiss on December 2, 2002.⁴ Therein, the Petitioners renew their contention that they are owed interest in the amount of \$263,913.25 from the Deputy Receiver. The Petitioners again assert that payment of interest on a judgment entered by a federal court is mandatory, pursuant to 28 U.S.C. § 1961. The Petitioners further assert that the RAP is not applicable to the current Petition, primarily because the Commission previously ruled that the Petitioners' claim for payment of the \$3.5 million itself was not subject to the RAP.⁵ The Petitioners further assert that they have not waived their right to interest on the Stipulated Judgment as the Petitioners claim that they acted promptly to demand interest once the issue of priority was determined. The Petitioners also claim that they received no consideration from the Deputy Receiver in exchange for waiving their right to interest. The Petitioners also reject the Deputy Receiver's contention that interest could not have accrued until July 31, 2002.

The Deputy Receiver filed a Reply in Support of Motion to Dismiss Petition for Payment of Interest on December 16, 2002. The Deputy Receiver argues again that, as a matter of law, post-judgment interest does not accrue on the Stipulated Judgment. The Deputy Receiver further contends that the Petitioners have waived any right that they may have had to interest on the Stipulated Judgment, that Virginia law does not provide for payment of

¹ References herein to Fidelity Bankers include First Dominion Mutual Life Insurance Company, the successor of Fidelity Bankers Life Insurance Company, and the Fidelity Bankers Life Insurance Company Trust.

² See *Weingarten v. Gross*, 264 Va. 243 (2002).

³ The Stipulated Judgment was entered by the United States District Court for the Eastern District of Virginia on January 19, 2001, and the Petitioners received payment of the \$3.5 million (without any accompanying interest) from the Deputy Receiver on August 6, 2002.

⁴ The Petitioners filed a corrected Memorandum in Opposition to the Motion to Dismiss on December 4, 2002.

⁵ Petition of Robert Weingarten, Gerry R. Ginsberg and Leonard Gubar, Case No. INS-2001-00062, Final Order, 2001 S.C.C. Ann. Rep. 105 (August 8, 2001). Petitioners also claim that they are not a "creditor" as that term is used in the RAP, since it has already been determined that the Stipulated Judgment is an administrative expense of the estate, not a claim of a general creditor.

interest on judgments of the Commission unless expressly allowed by the Commission, and that the Petitioners failed to comply with the RAP, rendering their Petition untimely.

Pursuant to the agreement reached between the Petitioners and the Deputy Receiver, Judge Williams of the United States District Court for the Eastern District of Virginia ordered "[t]hat [Petitioners] recover of [the Deputy Receiver], the sum of \$3.5 million, representing certain of the fees and costs incurred by [Petitioners] in the present action, such recovery to be made only from the assets of the Fidelity Bankers Life Insurance Company Receivership Estate and subject to the determination of the Virginia State Corporation Commission as to the priority to be accorded this judgment among the claims against, and liability of, the Receivership Estate." The Stipulated Judgment clearly contemplated additional action by the Petitioners and the Deputy Receiver before payment of the \$3.5 million. The Stipulated Judgment required the Commission to determine the priority to be accorded the \$3.5 million as a condition precedent to payment by the Deputy Receiver. The Commission directed payment of the \$3.5 million as an expense of the administration of the estate under § 38.2-1509 of the Code of Virginia together with the costs taxed to the Deputy Receiver in an Order entered on July 31, 2002.⁶ No provision for interest was made in the Order.

In accordance with our previous ruling in this case,⁷ we find that the RAP is inapplicable to the present proceeding. We have reviewed the pertinent cases cited by both parties. Because of our determination that the Petitioners are not entitled to interest under either Virginia or federal law, we do not address the Deputy Receiver's contention that the Petitioners have waived their right to assert a claim to interest on the Stipulated Judgment.

Neither the Commission's Order entered on August 8, 2001,⁸ nor the Commission's Order entered on July 31, 2002,⁹ addressed the issue of whether interest was to be paid on the Stipulated Judgment. Nor did the Petitioners seek interest in those proceedings. Section 12.1-36 of the Code of Virginia provides that "[t]he judgments of the Commission for fines or penalties, or for the recovery of money, shall take effect as of the date thereof, and when allowed by the Commission, the judgment shall bear interest from that date." (Emphasis added.) The Commission is without authority to reopen its July 31, 2002, Order and award interest in this case.¹⁰ We note also that 28 U.S.C. § 1961 provides, in pertinent part that "[e]xecution [for the interest] may be levied by the marshal, in any case where, by the law of the State in which such court is held, execution may be levied for interest on judgments recovered in the courts of the State." Since the Commission did not allow interest on the judgment referenced in its Order dated July 31, 2002, no execution may be levied for any interest on that judgment. Even if § 12.1-36 of the Code of Virginia is not applicable, the Petitioners are not entitled to interest on the Stipulated Judgment under federal law.

Assuming, as both the Petitioners and the Deputy Receiver have in this case, that federal law rather than state law governs the Stipulated Judgment, the payment of interest is still not warranted. Section 1961 of Title 28 of the United States Code provides, *inter alia*, that "[i]nterest shall be allowed on any money judgment in a civil case recovered in a district court." We do not believe that the money in this case was "recovered in a district court." First, while the Stipulated Judgment was filed and entered in the United States District Court for the Eastern District of Virginia, the money was recovered at the Commission, following litigation over the priority to which the \$3.5 million was entitled to be paid. The Stipulated Judgment itself specifically included the provision that the Commission must first determine the priority to be accorded the judgment before it would be paid. Moreover, we find that the cases submitted by the parties do not support the Petitioners' contention that the \$3.5 million was "recovered in a district court" even if the Stipulated Judgment is interpreted according to federal law.

Kincade v. General Tire & Rubber Co.¹¹ involved a class action alleging plantwide racial discrimination at a tire and rubber plant in Waco, Texas. A proposed settlement agreement was filed with the court. After subsequent appeals by disaffected class members were resolved, the plaintiffs filed their request for interest on the court-approved settlement agreement. The Court noted that "the plaintiffs [had] failed to cite a single case in which § 1961 has been applied to a court order or judgment which merely approves a settlement agreement arrived at by the parties to a lawsuit."¹² After determining that the question was one of first impression, the Court held that "§ 1961 is intended to allow postjudgment interest on money awarded by a judge or jury after litigation. Thus, the Court holds that § 1961 was not intended to apply and will not be interpreted to extend to court-approved settlement agreements."¹³ Similarly, in the instant case, the Petitioners and the Deputy Receiver have agreed to a Stipulated Judgment.

Subsequent cases have cited Kincade with approval and have reached the same result. In Isaiah v. City of New York,¹⁴ a stipulated settlement was ordered by the Court, by which the plaintiff was to receive a certain amount of money. The plaintiff later sought interest on that amount. The Court held that 28 U.S.C. § 1961 only applies to "money judgments" that are "recovered in a district court" and found that in the case of a court-approved settlement agreement, the amount of money to be paid is not "recovered in a district court."¹⁵

⁶ See, Petition of Robert Weingarten, Gerry R. Ginsberg, and Leonard Gubar, Case No. INS-2001-00062, Order, July 31, 2002, at 2. The Supreme Court mandate issued on June 7, 2002, also provided that "[the Petitioners] shall recover from the [Deputy Receiver] . . . costs . . ." in the amount of \$1,309.20.

⁷ Petition of Robert Weingarten, Gerry R. Ginsberg and Leonard Gubar, Case No. INS-2001-00062, Final Order, 2001 S.C.C. Ann. Rep. 105 (August 8, 2001), *rev'd*, Weingarten v. Gross, 264 Va. 243 (2002).

⁸ Petition of Robert Weingarten, Gerry R. Ginsberg and Leonard Gubar, Case No. INS-2001-00062, Final Order, 2001 S.C.C. Ann. Rep. 105 (August 8, 2001), *rev'd*, Weingarten v. Gross, 264 Va. 243 (2002).

⁹ Petition of Robert Weingarten, Gerry R. Ginsberg, and Leonard Gubar, Case No. INS-2001-00062, Order, July 31, 2002.

¹⁰ The Commission derives all its powers from the Constitution and statute laws of the state. Jeffries v. Commonwealth, 121 Va. 425, 442 (1917).

¹¹ 540 F. Supp. 115 (W.D. Tex. 1982), *rev'd on other grounds*, 716 F.2d 319 (5th Cir. 1983). The Fifth Circuit reversed the District Court on its interpretation of the settlement agreement. The Fifth Circuit did not address the District Court's interpretation of 28 U.S.C. § 1961.

¹² 540 F. Supp. at 120.

¹³ Id. at 121.

¹⁴ 1999 U.S. Dist. Lexis 841 (S.D.N.Y. 1999).

¹⁵ Id. at 2.

Similarly, Doyle v. Turner¹⁶ involved litigation between former officers of a labor union and the union. Certain portions of the dispute were resolved by a Stipulated Order of Dismissal. A subsequent claim for interest was denied by the Court, which found that 28 U.S.C. § 1961 does not apply to amounts owing under a stipulation of settlement or consent judgment.¹⁷ We find the reasoning of Kincade, Isaiah, and Doyle to be persuasive.¹⁸ The Petitioners and the Deputy Receiver reached a compromise on the Petitioners' counterclaims in the federal litigation, and their agreement was enshrined in the Stipulated Judgment. We find that the \$3.5 million was not "recovered in a district court" as that term is used in 28 U.S.C. § 1961 based on the foregoing cases.

While Petitioners cite Waggoner v. R. McGray, Inc.¹⁹ in support of their position, we are not persuaded by the decision in that case. It is true that Waggoner involved a stipulated judgment, and the Ninth Circuit held that, under 28 U.S.C. § 1961, interest is paid on a judgment (stipulated or not) regardless of whether the judgment expressly includes it.²⁰ Waggoner relied on two cases in support of its decision, neither of which stands for the proposition ultimately reached by the Ninth Circuit.

Blair v. Durham²¹ is one of the cases cited by the Ninth Circuit in Waggoner. Blair does not support the Waggoner decision because the Blair case involved a jury verdict, not a stipulated judgment or settlement agreement approved by the court. The Sixth Circuit had no occasion to address the question of whether the successful litigants would be entitled to interest on a judgment if it had been reached by agreement, rather than awarded by a jury.

Schumacher v. Leterman²² also involved a controversy over whether the defendants were required to pay interest on an amount owed to the plaintiff. The initial case was resolved by agreement but contained a provision for subsequent action if the defendants failed to make payments in accordance with the earlier agreement. The plaintiff obtained a judgment after the defendants failed to make a payment and the plaintiff filed a motion for an order declaring the defendants in default. The case is therefore distinguishable. In any event, the Southern District of New York no longer follows Schumacher, as evidenced by the decisions in Doyle and Isaiah. We believe that Waggoner is not supported by the decisions in Blair and Schumacher. Moreover, we find the reasoning of Kincade, Isaiah, and Doyle to be more convincing, especially given the procedural posture of this case.

The parties expressly reserved to this Commission the determination of the priority to be accorded the \$3.5 million payment. If the Commission's determination that the Petitioners were entitled only to the status of unsecured creditors had been affirmed by the Supreme Court of Virginia, the Petitioners might not have received payment for years, until all others with priority to the assets of the estate had been satisfied. We do not believe that the \$3.5 million Stipulated Judgment would be accruing interest until such time as the other creditors had been satisfied. The Petitioners' position would have dictated just such a result. We hold, therefore, that the Petitioners are not entitled to any interest on the \$3.5 million Stipulated Judgment.

ACCORDINGLY, IT IS ORDERED THAT:

- (1) The Petitioners' request for \$263,913.25 be, and the same is hereby, DENIED.
- (2) The papers herein shall be placed in the file for ended causes.

¹⁶ 2001 U.S. Dist. Lexis 7645 (S.D.N.Y. 2001).

¹⁷ Id. at 7-8.

¹⁸ See also, Audiovisual Publishers, Inc. v. Cenco, Inc., 964 F. Supp. 861, 880, n.24 (S.D.N.Y. 1997) ("mandatory postjudgment interest under 28 U.S.C. § 1961 is not applicable here because the Consent Judgment does not constitute an award of money by the court after litigation of a lawsuit").

¹⁹ 743 F.2d 643 (9th Cir. 1984).

²⁰ 743 F.2d at 644.

²¹ 139 F.2d 260 (6th Cir. 1943).

²² 14 F. Supp. 1015 (S.D.N.Y. 1936).

**CASE NO. INS-2001-00078
MARCH 7, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

PENN TREATY NETWORK AMERICA INSURANCE COMPANY,
Defendant

FINAL ORDER

Penn Treaty Network America Insurance Company, a foreign corporation domiciled in the State of Pennsylvania ("Defendant"), initially was licensed to transact the business of insurance in the Commonwealth of Virginia on April 30, 1958.

Section 38.2-1028 of the Code of Virginia requires that insurers licensed to transact the business of insurance in the Commonwealth of Virginia are required to maintain minimum capital of \$1,000,000 and minimum surplus of \$3,000,000.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

By Consent Order entered herein April 17, 2001, Defendant consented to and was ordered by the Commission not to issue any new contracts or policies of insurance in the Commonwealth of Virginia until further order of the Commission. The Consent Order was based on Defendant's voluntary consent thereto due to Defendant's treatment of a reserve credit on its December 31, 2000 Annual Statement, which caused Defendant's failure to comply with such minimum surplus requirement.

The Annual Statement of Defendant dated December 31, 2002, and filed with the Bureau of Insurance (the "Bureau"), reflects that Defendant's reserves are in compliance with Virginia statutes and that Defendant is in compliance with Virginia's minimum capital and surplus requirements as set forth in § 38.2-1028.

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, is of the opinion that the Consent Order entered by the Commission should be vacated.

THEREFORE, IT IS ORDERED THAT:

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

**CASE NO. INS-2001-00079
MARCH 7, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.

AMERICAN NETWORK INSURANCE COMPANY,
Defendant

FINAL ORDER

American Network Insurance Company, a foreign corporation domiciled in the State of Pennsylvania ("Defendant"), initially was licensed to transact the business of insurance in the Commonwealth of Virginia on November 29, 1972.

Section 38.2-1028 of the Code of Virginia requires that insurers licensed to transact the business of insurance in the Commonwealth of Virginia are required to maintain minimum capital of \$1,000,000 and minimum surplus of \$3,000,000.

By Consent Order entered herein April 17, 2001, Defendant consented to and was ordered by the Commission not to issue any new contracts or policies of insurance in the Commonwealth of Virginia until further order of the Commission. The Consent Order was based on Defendant's voluntary consent thereto due to Defendant's treatment of an investment in the common stock of its parent corporation, Penn Treaty American Corporation, on its December 31, 2000 Annual Statement, which caused Defendant's failure to comply with such minimum surplus requirement.

The Annual Statement of Defendant dated December 31, 2002, and filed with the Bureau of Insurance (the "Bureau"), reflects that Defendant is in compliance with Virginia's minimum capital and surplus requirements as set forth in § 38.2-1028.

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, is of the opinion that the Consent Order entered by the Commission should be vacated.

THEREFORE, IT IS ORDERED THAT:

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

**CASE NOS. INS-2001-00081, INS-2001-00082, and INS-2002-00040
OCTOBER 28, 2003**

PETITION OF
CENTENNIAL HOMES, INC., d/b/a TRENDMAKER HOMES

For review of HOW Insurance Company, Home Warranty Corporation and Home Owners Warranty Corporation Deputy Receiver's Determination of Appeal

ORDER

On October 14, 1994, the Circuit Court of the City of Richmond, Virginia, entered an order ("Receivership Order") appointing the Virginia State Corporation Commission ("Commission") the Receiver of the HOW Insurance Company ("HOWIC"), Home Warranty Corporation ("HWC"), and Home Owners Warranty Corporation ("HOW") (collectively, "HOW Companies" or "HOW"). The Receivership Order granted the Commission the authority to proceed with the rehabilitation or liquidation of the HOW Companies and established a receivership appeal procedure ("RAP") to govern appeals and challenges to decisions rendered by the receiver or the receiver's duly authorized representatives.

On April 13, 2001, Centennial Homes, Inc. d/b/a Trendmaker Homes¹ ("Petitioner" or "Trendmaker") filed a Petition for Review ("Petition") with the Commission contesting the Deputy Receivers Determination of Appeal in Claim No. 3590206.² Trendmaker's Petition was assigned Case No. INS-2001-00081.

On April 18, 2001, Petitioner filed a Petition with the Commission contesting the Deputy Receiver's Determination of Appeal in Claim No. 3386722.³ Trendmaker's Petition was assigned Case No. INS-2001-00082.

The Commission docketed the cases,⁴ assigned the matters to a hearing examiner ("Examiner" or "Hearing Examiner"), and directed the Deputy Receiver to file an answer or other responsive pleading to the Petitions.

On May 10, 2001, the Hearing Examiner consolidated Case Nos. INS-2001-00081 and INS-2001-00082 for hearing by Hearing Examiner Ruling of May 10, 2001.⁵

On May 25, 2001, the Deputy Receiver filed a Consolidated Motion to Dismiss. Therein, the Deputy Receiver claimed, among other things, that: (i) Trendmaker's Petitions were premature, and (ii) Trendmaker lacked standing to bring the Petitions.

In response, Trendmaker declared, among other things, that: (i) the Petitions were not premature because there is an actual controversy between the Deputy Receiver and Receiver over the processing of claims regarding an MSD, and (ii) Petitioner has standing to bring this action since any decision of the Deputy Receiver that affects a financial interest, contract rights, or legal entitlement constitutes an appealable decision under Rule A2(b) of the Receivership Appeal Procedures.

By Hearing Examiner Ruling entered on August 1, 2001, the Deputy Receiver's Consolidated Motion to Dismiss was denied.

On September 6, 2001, the Deputy Receiver filed a Joint Motion for Continuance. Therein, the Deputy Receiver stated that the parties were attempting to reach an amicable disposition of the two claims. By ruling dated September 11, 2001, the Examiner continued the matter generally.

On November 21, 2001, Trendmaker filed a Petition with the Commission contesting a determination made by the Deputy Receiver in Claim No. 3883104 A.⁶ Trendmaker's Petition was assigned Case No. INS-2002-00040.

¹ Trendmaker is a privately-held company that is a wholly owned subsidiary of Weyerhaeuser Real Estate Company ("WRECO"). Centennial Homes, Inc. ("Centennial Homes") was a subsidiary of WRECO. Centennial Homes went out of business and its remaining business was merged into Trendmaker. Trendmaker assumed responsibility on all homes warranties issued by Centennial Homes on homes that it had built.

² On October 24, 2000, the Deputy Receiver issued a Notice of Claim Determination in Claim No. 3590206. Therein, the Deputy Receiver awarded the Kilpatricks ("Kilpatrick") a liquidated claim in the amount of \$5,275.00 for major structural defect ("MSD") damage to their home. Trendmaker, as builder of the Kilpatricks' home, and pursuant to the RAP, filed a Notice of Appeal contesting the Kilpatricks' award. By Determination of Appeal dated March 14, 2001, the Deputy Receiver denied Trendmaker's appeal.

³ On October 30, 2000, the Deputy Receiver issued a Notice of Claim Determination in Claim No. 3386722. Therein, the Deputy Receiver awarded the Bogerts ("Bogert") a liquidated claim in the amount of \$5,250.00 for MSD damage to their home. Trendmaker, as builder of the Bogert's home, and pursuant to the RAP, filed a Notice of Appeal contesting the Bogert's award. By Determination of Appeal dated March 20, 2001, the Deputy Receiver denied Trendmaker's appeal.

⁴ Case Nos. INS-2001-00081 and INS-2001-00082 were docketed on April 26, 2001.

⁵ The Deputy Receiver filed a Motion for Consolidation on May 3, 2001. Trendmaker filed a response on May 4, 2001, in which it did not object to consolidation of the cases.

⁶ On June 1, 2001, the Deputy Receiver issued a Notice of Claim Determination in Claim No. 3883104A. Therein, the Deputy Receiver awarded the Kiefers ("Kiefer") a liquidated claim in the amount of \$9,755.80 for MSD damage to their home. Trendmaker, as builder of the Kiefer's home, and pursuant to the RAP, filed a Notice of Appeal contesting the Kiefer's award. Pursuant to Section B9 of the RAP, Trendmaker's Notice of Appeal was deemed automatically rejected by the Deputy Receiver. Receivership Order at p. 7.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

On March 28, 2002, the Deputy Receiver filed a Motion to Consolidate Case No. INS-2002-00040 with the earlier consolidated cases. By Ruling dated April 23, 2002, the Motion to Consolidate was granted and set for hearing on July 11, 2002.

The hearing was convened on July 11, 2002. Trendmaker appeared by its counsel Brendan D. Cook, Esquire. The Deputy Receiver appeared by its counsel Joseph H. West, Esquire, and Susan E. Salch, Esquire.

On June 27, 2003, the Hearing Examiner issued his Report, in which he made the following findings and recommendations:

- (1) Virginia substantive law should control in this case to avoid exposing the receivership estate to a myriad of possible conflicting state laws, to provide for the equitable payment of claims and distribution of the assets of the estate among creditors of the same class no matter where the creditors of the HOW Companies may reside, and to provide for the orderly administration and wind down of the estate;
- (2) The Kilpatricks filed a timely claim for MSD coverage under their HOW insurance/warranty documents;
- (3) The Bogerts filed a timely claim for MSD coverage under their HOW insurance/warranty documents;
- (4) The Bogerts filed a valid claim against the receivership estate;
- (5) The Deputy Receiver lacks authority to delegate his responsibility to adjudicate HOW claims to some other entity, modify the procedural due process scheme established by the RAP, or otherwise use the Agreement Regarding Claims ("ARC")⁷ for adjudication of homeowners' claims filed against the HOW Companies;
- (6) Inconsistencies between the RAP and the ARC must be resolved in favor of the RAP to avoid violating the Receivership Order;
- (7) The RAP requires the Deputy Receiver to issue the Kilpatricks a Notice of Claim Determination ("NCD") on their specific claim, which was filed timely with the HOW Companies;
- (8) The Kilpatricks' claim was pending with the Deputy Receiver until such time as he issued his NCD;
- (9) The phrase "unsafe, unsanitary, or otherwise unlivable" in the HOW insurance/warranty documents is ambiguous;
- (10) The Kilpatricks' home had an MSD as defined in the HOW insurance/warranty documents;
- (11) The Bogerts' home had an MSD as defined in the HOW insurance/warranty documents;
- (12) The Kiefers' home had an MSD as defined in the HOW insurance/warranty documents;
- (13) The reasonable costs to repair the additional portions of the homes damaged as a result of the MSD in the foundations are direct damages, not consequential damages, and are covered under the HOW insurance/warranty documents;
- (14) The Deputy Receiver's award of secondary damages in the subject cases was supported by the evidence and the HOW insurance/warranty documents;
- (15) Trendmaker failed to meet its evidentiary burden that Exclusion D⁸ applies in any of the subject cases;
- (16) Trendmaker failed to establish that Exclusion H⁹ applies in any of the subject claims; and
- (17) The Commission should enter an order adopting the finding in the Report; affirming the Deputy Receiver's Determination of Appeal in the subject cases; and dismissing Trendmaker's Petition for Appeal in the subject cases, with prejudice.

On July 16, 2003, Trendmaker filed Comments and Objections to the Report. Therein, among other things, it objected to findings and recommendations numbers 6, 7, 8, 9, 10, 11, 12, 13, and 14 of the Report.¹⁰

⁷ The ARC is an arrangement between HOW's National Account Builders ("Account Builders") and the Deputy Receiver, which went into affect on August 22, 1997. The ARC, among other things, outlines claim handling procedures between the Deputy Receiver and Account Builders. In the subject cases, Trendmaker is the builder of the claimants' homes. Under the terms of the ARC, after a homeowner files a claim with HOW, the claim is referred to Trendmaker for initial evaluation. Trendmaker has the authority to settle, pay or reject any claim, although it is not a duly authorized representative of HOW. Upon rejection of a claim, Trendmaker is to advise the homeowner that he/she could resubmit the claim to HOW to process as if it was presented to HOW and not subject to the terms of the ARC.

⁸ The Limited Warranty shall not extend to or include or be acceptable to: any damage to the extent it is caused or made worse by negligence, improper maintenance, or improper operation by anyone other than the Builder, its employees, agents, or subcontractors. Exclusion D1, HOW insurance/warranty documents at p. 4.

⁹ The Limited Warranty shall not extend to or include or be applicable to: loss or damage, not otherwise excluded under this Limited Warranty, which does not constitute a defect in the construction of the home by the Builder, its employees, agents, or subcontractors. Exclusion H, HOW insurance/warranty documents at p. 4.

¹⁰ Centennial Homes, Inc. d/b/a Trendmaker Homes' Comments and Objections to the Hearing Examiner's Report at pp. 2 and 3.

On July 18, 2003, the Deputy Receiver filed Comments to the Report. Therein, among other things, he requested that the findings relating to the relationship between the RAP and the ARC, as set forth in findings and recommendations numbers 5 and 6 of the Report, be rejected,¹¹ but that all other findings and recommendations be adopted.

Upon consideration of the filings and testimony submitted, the Report of the Hearing Examiner and the Comments and Objections submitted thereto, the Commission is of the opinion and so finds that the findings and recommendations of the Hearing Examiner should be adopted except for findings and recommendations numbers 5 and 6 of the Report, which relate to the relationship between the ARC and RAP in HOW claim resolution.

In findings 5 and 6 of the Report, the Examiner found that the Deputy Receiver violated the Receivership Order by: (i) delegating his responsibility to adjudicate HOW claims to some other entity; (ii) modifying the procedural due process scheme established by the RAP; and (iii) using the ARC for adjudication of homeowners' claims filed against the HOW Companies. The Examiner further found that inconsistencies between the RAP and the ARC must be resolved in favor of the RAP to avoid violating the Receivership Order.

We disagree with the conclusion reached by the Hearing Examiner that the Deputy Receiver's use of the ARC violated the Receivership Order. The ARC is an arrangement between HOW's National Account Builders and the Deputy Receiver which, among other things, outlines claim handling procedures between the Account Builders and the Deputy Receiver. There is nothing in either the record or in the ARC itself to suggest that the ARC does anything more than provide an alternative procedural mechanism for facilitating settlement of a pending claim of a homeowner.

Such an arrangement is clearly authorized by the Receivership Order. The Receivership Order permits the Deputy Receiver to delegate authority in resolution of claims against the receivership and allows the Deputy Receiver to take any and all actions that it deems advisable in connection with the liquidation or rehabilitation of the receivership.¹² Furthermore, the Receivership Order provides for the Deputy Receiver to enter into such contracts as are necessary to carry out the terms of the Receivership Order.¹³

Nor does the use of the ARC modify the procedural due process established by the RAP or violate the claim adjudication process established in the Receivership Order. The ARC spells out the process by which homeowners might resolve their claims with the builder, or alternatively, could proceed to have HOW resolve the claim. The RAP does not apply and does not impact the rights or obligations of the parties until a final decision is reached with respect to a particular claim.¹⁴ This decision is usually manifested by the issuance of a Notice of Claim Determination by the Receiver, Deputy Receiver, or duly authorized representative of the Receiver.¹⁵ In these cases, once the NCDs were issued, the appeal process was triggered.¹⁶

There are no inconsistencies between the ARC and the RAP which affect the procedural due process established by the Receivership Order. Both are used to resolve claims against the receivership at different times: the ARC prior to issuance of an NCD and the RAP, after issuance of an NCD.

Accordingly, IT IS ORDERED THAT:

- (1) The Petitions for Review of Centennial Homes, Inc. d/b/a Trendmaker Homes be, and the same are hereby, DENIED;
- (2) The Determinations of Appeal issued respectively by the Deputy Receiver to the Kiefers, Kilpatricks, and the Bogerts be, and the same are hereby, AFFIRMED;
- (3) These cases are dismissed, and the papers herein are passed to the file for ended causes.

¹¹ Deputy Receiver's Comments on Report of Hearing Examiner Michael D. Thomas at pp. 1 and 2.

¹² Receivership Order at ¶ 3. at pp. 5-6.

¹³ Receivership Order at ¶ 7(e) at p. 11.

¹⁴ The Receivers Appeal Procedure governs appeals and challenges of any decision made by the Receiver of HOW Insurance Company, Home Warranty Corporation, and Home Owners Warranty Corporation. Receivership Order at p. 6.

¹⁵ The ARC contains no terms that might be construed to establish Trendmaker as a "duly authorized representative" of the Receiver. Nor does the limited authority Trendmaker is given to settle claims under the ARC make it a duly authorized representative of the Receiver for purposes of adjudicating claims.

¹⁶ The first avenue of appeal under the RAP is the appeal to the Deputy Receiver. Once the Deputy Receiver concludes his review of a specific claim, the claimant will be sent a Notice of Claim Determination advising him or her on the disposition of the claim. Thereafter, the claimant has thirty days to file its appeal with the Deputy Receiver. Receivership Order at ¶ B, p.7.

**CASE NO. INS-2001-00105
MARCH 7, 2003**

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

ORDER TO TAKE NOTICE

Section 38.2-1040 of the Code of Virginia provides, *inter alia*, that the 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.

Amwest Surety Insurance Company, a foreign corporation domiciled in the state of Nebraska ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

On June 7, 2001, by an Order of Liquidation, Declaration of Insolvency, and Injunction, the District Court of Lancaster, Nebraska found Defendant to be insolvent and ordered Defendant to be liquidated by the Nebraska Department of Insurance.

By order entered herein June 26, 2001, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended due to financial regulatory concerns and the Nebraska Order.

The Nebraska Department of Insurance has notified the Bureau of Insurance that it does not object to the revocation of Defendant's license to transact the business of insurance in the Commonwealth of Virginia.

The Bureau of Insurance has recommended that, based on the foregoing, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be suspended.

THEREFORE, IT IS ORDERED that Defendant TAKE NOTICE that the Commission shall enter an order subsequent to March 18, 2003, suspending the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before March 18, 2003, Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for hearing before the Commission with respect to the proposed suspension of Defendant's license.

**CASE NO. INS-2001-00106
APRIL 1, 2003**

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

ORDER TO TAKE NOTICE

Section 38.2-1040 of the Code of Virginia provides, *inter alia*, 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 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.

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

By Order entered herein June 13, 2001, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended due to financial regulatory concerns.

On October 3, 2001, by an Order of Liquidation, the Commonwealth Court of Pennsylvania found Defendant to be insolvent and ordered Defendant to be liquidated by the Pennsylvania Insurance Commissioner and her designees.

Defendant's Virginia Certificate of Authority was revoked on January 31, 2002.

The Pennsylvania Department's Office of Liquidations, Rehabilitations and Special Funds has notified the Bureau of Insurance that it does not object to the revocation of Defendant's license to transact the business of insurance in the Commonwealth of Virginia.

The Bureau of Insurance has recommended that, based on the foregoing, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be revoked.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

THEREFORE, IT IS ORDERED that Defendant TAKE NOTICE that the Commission shall enter an Order subsequent to April 14, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before April 14, 2003, Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for hearing before the Commission with respect to the proposed revocation of Defendant's license.

**CASE NO. INS-2001-00106
APRIL 22, 2003**

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

ORDER REVOKING LICENSE

In an order entered herein April 1, 2003, Defendant was ordered to take notice that the Commission would enter an order subsequent to April 14, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before April 14, 2003, Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed revocation of Defendant's license.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed revocation of Defendant's license.

THEREFORE, IT IS ORDERED THAT:

- (1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be, and it is hereby, REVOKED;
- (2) Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia;
- (3) The appointments of Defendant's agents to act on behalf of Defendant in the Commonwealth of Virginia be, and they are hereby, REVOKED;
- (4) The Bureau of Insurance shall cause an attested copy of this Order to be sent to each of Defendant's agents appointed to act on behalf of Defendant in the Commonwealth of Virginia as notice of the revocation of such agent's appointment; and
- (5) The Bureau of Insurance shall cause notice of the revocation of Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2001-00196
OCTOBER 28, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
PENNSYLVANIA CASUALTY COMPANY,
Defendant

FINAL ORDER

Pennsylvania Casualty Company, a foreign corporation domiciled in the State of Pennsylvania ("Defendant"), initially was licensed to transact the business of insurance in the Commonwealth of Virginia on July 18, 1974

By order entered herein September 14, 2001, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended.

By letter of Defendant's General Counsel and Vice President, and Senior Vice President, Finance and Treasurer dated October 10, 2003, and filed with the Commission on October 23, 2003, the Commission was advised that Defendant was placed in Rehabilitation by order of the Commonwealth Court of Pennsylvania on November 19, 2001, and that Defendant no longer transacts business in any jurisdiction and wishes to withdraw its license to transact the business of insurance in the Commonwealth of Virginia.

The withdrawal of Defendant's license has been processed by the Bureau of Insurance (the "Bureau"), effective October 22, 2003.

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.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

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.

THEREFORE, IT IS ORDERED THAT:

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

**CASE NO. INS-2001-00197
APRIL 4, 2003**

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

ORDER TO TAKE NOTICE

Section 38.2-1040 of the Code of Virginia provides, inter alia, that the 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.

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

By order entered herein September 14, 2001, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended due to financial regulatory concerns.

On February 1, 2002, by an Order of Liquidation, the Commonwealth Court of Pennsylvania found Defendant to be insolvent and ordered Defendant to be liquidated by the Pennsylvania Insurance Commissioner and her designees.

Defendant's Virginia Certificate of Authority was revoked on October 31, 2002.

The Pennsylvania Insurance Department has notified the Bureau of Insurance that it does not object to the revocation of Defendant's license to transact the business of insurance in the Commonwealth of Virginia.

The Bureau of Insurance has recommended that, based on the foregoing, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be revoked.

THEREFORE, IT IS ORDERED that Defendant TAKE NOTICE that the Commission shall enter an order subsequent to April 17, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before April 17, 2003, Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for hearing before the Commission with respect to the proposed revocation of Defendant's license.

**CASE NO. INS-2001-00263
APRIL 22, 2003**

PETITION OF
DONALD AND SUSAN WILLY

For review of HOW Insurance Company, Home Warranty Corporation and Home Owners Warranty Corporation Deputy Receiver's Determination of Appeal

ORDER

On October 14, 1994, the Circuit Court of the City of Richmond, Virginia, entered an order appointing the State Corporation Commission ("Commission") the receiver ("Receivership Order") of the HOW Insurance Company ("HOWIC"), Home Warranty Corporation ("HWC"), and Home Owners Warranty Corporation ("HOW")¹ (collectively, "HOW Companies" or "HOW"). The Receivership Order granted the Commission the authority to proceed with the rehabilitation or liquidation of the HOW Companies and established a receivership appeal procedure to govern appeals and challenges to decisions rendered by the receiver or the receiver's duly authorized representatives.

¹ Commonwealth of Virginia, ex rel. State Corporation Commission, et al. v. Home Warranty Corporation, et al., Court File No. HE-1059-1, Final Order Appointing Receiver for Rehabilitation or Liquidation (Cir. Ct. of Richmond 1994).

On September 20, 2001, Donald and Susan Willy ("Petitioners") filed a Petition for Review ("Petition") with the Commission contesting the Deputy Receiver's Determination of Appeal issued in Claim No. 3693858 on August 24, 2001, whereby the Deputy Receiver denied Petitioners' claims for builder limited warranty and major structural defect coverage on Petitioners' residence located 51 Burwick Street, Sugarland, Texas 77479.

This matter comes now before the Commission based on an extended history. Petitioners' home was enrolled in the HOW Program in August 1990.² By letter dated May 4, 1992, Petitioners notified HOW that Perry Homes, Inc. ("Perry Homes" or "Builder") had failed to correct fifteen defects brought to the attention of the Builder.³ On July 22, 1992, a non-binding arbitration hearing was held among Petitioners, Perry Homes, and HOW regarding the alleged defects, and the arbitrator ruled in favor of Perry Homes.⁴ Petitioners then sued Perry Homes and HOW in Texas District Court.⁵ When HOW was placed in receivership, the United States District Court for the Eastern District of Virginia enjoined all actions against HOW.⁶ Accordingly, the Texas court severed Petitioners' suit against Perry Homes from Petitioners' suit against HOW, and stayed the case against HOW.⁷ On February 25, 1997, a jury trial in the Texas District Court found in favor of Perry Homes.⁸ By letter dated May 17, 1999, Petitioners sought HOW coverage relative to the fifteen defects included in its 1992 complaint as well as ten additional defects.⁹

By Order dated October 9, 2001, the Commission docketed the case, assigned the matter to a Hearing Examiner, and directed the Deputy Receiver to file an Answer or other responsive pleading to the Petition on or before November 2, 2001.

On November 2, 2001, the Deputy Receiver, by counsel, filed a Motion to Dismiss and Answer to Petition for Review, and Memorandum in Support of Motion to Dismiss ("Motion"). The Deputy Receiver asserted therein, among other things, that: (i) Petitioners' claims are untimely by the express contractual provisions of the HOW Program; (ii) most of the defects alleged by Petitioners related to the HOW Program Builder's Limited Warranty, and since these defects were subject to an arbitration and state court proceedings between Petitioners and Perry Homes in which the Builder prevailed, Petitioners are not entitled to compensation; and (iii) Petitioners assertions are insufficient to support a claim for Major Structural Defect coverage under the HOW Program.

On December 26, 2001, Petitioners filed a response to the Motion. They contended therein, among other things, that the Deputy Receiver's Motion should be denied since it failed: (i) to demonstrate that the Commission lacks jurisdiction; (ii) to state that the Petition did not state a cause of action; or (iii) to state that the Petition is legally insufficient.

By Hearing Examiner Ruling dated February 6, 2002, the Deputy Receiver's Motion was granted in part. The Hearing Examiner found that HOW Program Builder's Liability coverage¹⁰ limited HOW's exposure to the Builder's liability, and without a finding of Builder liability in the arbitration and state court proceedings, there could be no Builder Default coverage. Consequently, the Hearing Examiner granted the Deputy Receiver's Motion to Dismiss relative to HOW's Builder Default coverage. Since Petitioners claimed defects that could have been covered under HOW's Major Structural Defect coverage, and there were factual disputes concerning those defects, the Motion was denied as to defects claimed under Major Structural Defect coverage.¹¹

In a ruling by the Hearing Examiner dated February 20, 2002, based upon an agreement between the parties, the procedural schedule and hearing date was suspended, and the matter continued generally.

On April 4, 2002, Petitioners filed a Motion to Remand ("Remand Motion") requesting the Commission to order the Deputy Receiver to take the steps necessary to remand this matter to the 240th District Court of Fort Bend County, Texas, for a jury trial to determine liability and damages. In its Remand Motion, Petitioners claimed, among other things, that: (i) the Receiver's authority does not legally include a determination of liability or damages, since this is normally determined by a jury where the parties do not consent; (ii) a determination of these issues by the Receiver without jury trial is a denial of due process; and (iii) conflict of laws rules require this matter be determined by a Texas jury.

On May 3, 2002, the Deputy Receiver filed a Response in Opposition to Petitioners' Motion to Remand. The Deputy Receiver averred therein, among other things, that: (i) the Commission has exclusive *in rem* jurisdiction over the affairs and the estate of HOW as granted by the Receivership Order

² Petition at 1.

³ Petition at Exhibit 3.

⁴ Petition at 2.

⁵ Donald J. Willy, et al. v. Perry Houston Interest, Inc., et al., Cause No 77,849 (240th Dist. Fort Bend County, Tex. 1992)

⁶ Commonwealth of Virginia, ex rel. Steven T. Foster, Commissioner of Insurance, and State Corporation Commission v. HOW Insurance Company, A Risk Retention Group, Home Warranty Corporation, and Home Owners Warranty Corporation, Cause No. 3:94CV742 (E.D. Va. 1994)

⁷ Petition at 2-3.

⁸ Petition at Exhibit 20.

⁹ Petition at Exhibit 9.

¹⁰ Limited Warranty coverage commences on the date which the home is enrolled in the HOW Program. The Limited Warranty coverage terminates two (2) years after its commencement. HOW Insurance/Warranty Document, Exhibit J to the Deputy Receiver's Memorandum in Support of Motion to Dismiss at 3.

¹¹ Major Structural Defect is the actual physical damage to any of the designated load-bearing portions of the home caused by the failure of such load-bearing portions which affects their load-bearing functions to the extent that the home becomes unsafe, unsanitary or otherwise unlivable. Coverage for Major Structural Defects is provided during years three through ten. HOW Insurance/Warranty Document, Exhibit J to the Deputy Receiver's Memorandum in Support of Motion to Dismiss at 6 and 20.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

pursuant to Title 38.2, Chapter 15 of the Code of Virginia; (ii) the Receivership Order and the Permanent Injunction issued by the United State District Court for the Eastern District of Virginia are entitled to full faith and credit by the courts in the state of Texas; (iii) requiring Petitioners to pursue their claims with the Commission is not a violation of due process; and (iv) Virginia law controls the issues in this case.

On May 28, 2002, Petitioners filed their Reply to the Deputy Receiver's Opposition to Motion to Remand. They contended therein, among other things, that: (i) the Commission should remand the claim to another forum for a liquidation of liability in order to insure due process; and (ii) the Hearing Examiner's Ruling of February 6, 2002, fails to address the fraud and consumer protection claims and fails to correctly apply Texas or Virginia res judicata law. Additionally, Petitioners decided not to pursue a Major Structural Defect claim against HOW and requested a final determination of the Remand Motion.

After reviewing the pleadings submitted in the case and the applicable law, the Hearing Examiner issued his Report on February 10, 2003, in which the Hearing Examiner made the following findings and recommendations:

- (1) HOW's liability under limited warranty coverage rests on the builder's liability resulting from the builder's failure to perform.
- (2) Without a finding of builder liability or obligation, there can be no Builder Default coverage.
- (3) Since the Texas jury found no liability as to Perry Homes, summary judgment should be granted in favor of the Deputy Receiver relative to the fifteen defects reported in May 1992.
- (4) The ten additional defects first reported to HOW by letter dated May 17, 1999, are untimely as to Limited Warranty coverage.
- (5) However, the ten additional defects first reported to HOW by letter dated May 17, 1999, are timely as to Major Structural Defect coverage and whether or not they fall within such coverage is a disputed factual issue.
- (6) Therefore, the Deputy Receiver's Motion to Dismiss was denied in regards to the ten defects reported in May 1999.
- (7) Petitioners subsequently decided not to pursue the Major Structural Defect claim against HOW and requested a final determination of their Motion to Remand.
- (8) Section 38.2-1508 of the Code of Virginia establishes a single regulatory scheme for the comprehensive and efficient resolution of claims against an insolvent insurer.
- (9) Section 38.2-1508 and the Receivership Order inaugurated the Commission as the single forum in which claims against HOW could be asserted.
- (10) Petitioners' claim for HOW warranty coverage can be seen only as a claim against the assets now under the control and ownership of the Commission.
- (11) Petitioners have failed to make their case for a trial by jury.
- (12) Petitioners' Motion for Remand should be denied.
- (13) The Commission should enter an order adopting the finding of the Hearing Examiner, affirming the Deputy Receiver's denial of Claim No. 3693858, and dismissing this case from the docket of active matters.

On February 28, 2003, Petitioners filed Comments and Exceptions to the Hearing Examiner Report. The Petitioners contended therein, among other things, that: (i) Major Structural Defects are HOW's responsibility; (ii) prior adjudications do not collaterally estop the HOW claims; (iii) conflict of law rules do not support the Hearing Examiner's Ruling; and (iv) the Hearing Examiner's Ruling denied due process.

Upon consideration of the filings submitted, the Report of Hearing Examiner, and the Comments thereto, 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) Petitioners' Motion for Remand be, and the same is hereby, DENIED.
- (2) Petitioners' Petition for Review be, and the same is hereby, DENIED.
- (3) The Determination of Appeal in Claim No. 3693858 issued by the Deputy Receiver on August 24, 2001, be and the same is hereby, AFFIRMED.
- (4) The case is dismissed, and the papers herein are passed to the file for ended causes.

**CASE NO. INS-2001-00264
JULY 10, 2003**

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

IMPAIRMENT ORDER

The General Continuance Order entered herein November 14, 2002, ordered that the Rule to Show Cause previously scheduled for hearing on November 18, 2002, was continued until further order by the Commission, and that the provisions of the Judgment Order entered herein June 19, 2002, were to continue in full force and effect until further order by the Commission. The Judgment Order directed the Bureau of Insurance to continue to monitor Defendant's financial condition and to notify the Commission immediately in the event that Defendant's financial condition deteriorated further and threatened to become hazardous under the standards of 14 VAC 5-290-30.

Section 38.2-1028 of the Code of Virginia requires Defendant, as a foreign insurer licensed to transact the business of insurance in the Commonwealth of Virginia, to maintain minimum capital of \$1,000,000 and minimum surplus of \$3,000,000.

Section 38.2-1036 of the Code of Virginia provides, *inter alia*, 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 2002 Annual Audited Financial Statement of Defendant, dated as of December 31, 2002, and filed with the Commission's Bureau of Insurance on June 2, 2003, as required by 14 VAC 5-270-40 and 14 VAC 5-270-50, indicates capital of \$3,000,000, and surplus of negative \$2,106,000.

The Quarterly Financial Statement of Defendant, dated March 31, 2003, and the Monthly Financial Statement of Defendant dated April 30, 2003, both unaudited, indicate that Defendant is in compliance with the minimum capital and surplus requirements set forth in § 38.2-1028; however, the Florida Department of Insurance, Defendant's domiciliary regulator, has adjusted Defendant's surplus as of March 31, 2003, and April 30, 2003, in accordance with Chapter 625 of Title XXXVII of the Florida Statutes, which governs investments.

Section 38.2-1400 of the Code of Virginia provides, *inter alia*, that a foreign insurer may not invest its funds and assets in any investments that are not permitted by the laws of its state of domicile. Therefore, pursuant to § 38.2-1400, Defendant's reported surplus, adjusted in accordance with Florida law, is \$705,261 as of March 31, 2003, and \$1,518,244 as of April 30, 2003, both of which are below the minimum surplus requirement set forth in § 38.2-1028.

THEREFORE, IT IS ORDERED THAT, on or before September 10, 2003, 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 Defendant's president or other authorized officer, accompanied by a balance sheet dated on or after the date the current impairment is cured and audited by an independent certified public accounting firm.

IT IS FURTHER ORDERED THAT Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia while the impairment of Defendant's surplus exists and until further order of the Commission.

**CASE NO. INS-2001-00264
JULY 24, 2003**

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

ORDER DENYING PETITION FOR RECONSIDERATION

On July 10, 2003, the State Corporation Commission ("Commission") issued an Impairment Order directing Superior Insurance Company ("Superior" or "Company") on or before September 10, 2003, to: (i) eliminate the impairment of its surplus and restore the same to at least \$3,000,000; (ii) advise the Commission of the elimination of the impairment by affidavit from the Company's president or other authorized officer; (iii) provide the Commission with a balance sheet dated on or after the current impairment is cured audited by an independent certified public accounting firm; and (iv) issue no new contract or policies of insurance in Virginia while the impairment of surplus exists and until further notice of the Commission.

On July 17, 2003, Superior, by counsel, filed a Petition for Reconsideration ("Petition") with the Clerk of the Commission. Therein, Superior requested that the Impairment Order be stayed or amended to allow it to continue conducting business in Virginia pending receipt by the Commission of statutory audited financial statements for the Company. In the alternative, Superior requested an immediate hearing to present evidence that no impairment exists.

NOW THE COMMISSION, having considered the Petition, is of the opinion that it should be denied.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

ACCORDINGLY, IT IS ORDERED THAT:

- (1) The Petition for Reconsideration filed on behalf of Superior Insurance Company, be and the same is hereby, DENIED.
- (2) The Impairment Order and the directives therein issued by the Commission in this matter on July 10, 2003, remains in full force and effect.
- (3) This matter is continued generally pending further order of the Commission.

**CASE NO. INS-2001-00264
DECEMBER 10, 2003**

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

ORDER TO TAKE NOTICE

By an Impairment Order entered herein July 10, 2003, Defendant was ordered to eliminate the impairment in its surplus, restore the same to at least \$3,000,000, and advise the Commission of the accomplishment thereof by affidavit of Defendant's president or other authorized officer on or before September 10, 2003.

The Impairment Order prohibited Defendant from issuing any new contracts or policies of insurance in this Commonwealth while the impairment existed in Defendant's surplus.

Defendant failed to cure the impairment in its surplus on or before September 10, 2003.

By an Extension Order entered herein October 1, 2003, the terms of the Impairment Order were extended until further order of the Commission to allow the Florida Department of Financial Services, which, on August 29, 2003, had been appointed Receiver of Defendant, time to assess Defendant's financial situation.

On November 3, 2003, the Florida Department of Financial Service issued its Report of Examination as of December 31, 2002, of Defendant, which states that as of December 31, 2002, Defendant's surplus as regards policyholders was negative \$16,058,071; Defendant had reported this figure to be \$10,389,442 in its December 31, 2002 Annual Statement filed with the Bureau of Insurance.

The Report of Examination concluded by stating that the foregoing deficit in Defendant's surplus as regards to policyholders fails to meet the minimum surplus requirements set forth in 624.408 of the Florida Statutes and places Defendant in an insolvent position.

Section 38.2-1040 of the Code of Virginia provides, inter alia, that the 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.

The Bureau of Insurance has recommended that, based on the material impairment in Defendant's surplus of \$22,058,071 (negative \$16,058,071 less the reported capital of \$3,000,000 and less Virginia's minimum surplus requirement of \$3,000,000) and the statutory insolvency, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be suspended and that Defendant be prohibited from renewing any contracts or policies of insurance in this Commonwealth and from issuing any new contracts or policies of insurance in this Commonwealth until further order of the Commission.

THEREFORE, IT IS ORDERED that Defendant TAKE NOTICE that the Commission shall enter an order subsequent to December 15, 2003, suspending the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before December 15, 2003, 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 Defendant's license.

**CASE NO. INS-2001-00264
DECEMBER 31, 2003**

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

ORDER SUSPENDING LICENSE

In an order entered herein December 10, 2003, Defendant was ordered to take notice that the Commission would enter an order subsequent to December 15, 2003, suspending the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before December 15, 2003, Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed suspension of Defendant's license.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed suspension of Defendant's license.

In addition, the Quarterly Financial Statement of Defendant, dated September 30, 2003, and filed with the Commission's Bureau of Insurance on December 19, 2003, indicates surplus as regards policyholders of negative \$11,185,142.

THEREFORE, IT IS ORDERED THAT:

(1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be, and it is hereby, **SUSPENDED**;

(2) Defendant shall issue no new contracts or policies of insurance or renew any contracts or policies of insurance in the Commonwealth of Virginia until further order of the Commission;

(3) The appointments of Defendant's agents to act on behalf of Defendant in the Commonwealth of Virginia be, and they are hereby, **SUSPENDED**;

(4) Defendant's agents shall transact no new insurance business or any renewal insurance business on behalf of 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 Defendant's agents appointed to act on behalf of 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 Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2002-00059
MAY 9, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
NEW YORK LIFE AND HEALTH INSURANCE COMPANY,
Defendant

FINAL ORDER

New York Life and Health Insurance Company, a foreign corporation domiciled in the State of Delaware ("Defendant"), initially was licensed to transact the business of insurance in the Commonwealth of Virginia on August 2, 1983.

Section 38.2-1028 of the Code of Virginia requires that insurers licensed to transact the business of insurance in the Commonwealth of Virginia are required to maintain minimum capital of \$1,000,000 and minimum surplus of \$3,000,000.

By order entered herein April 16, 2002, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended due to Defendant's failure to comply with such minimum surplus requirement.

Subsequently, Defendant filed its 2002 Annual Statement with the Bureau evidencing compliance with Virginia's minimum capital and surplus requirements as set forth in § 38.2-1028.

The Bureau of Insurance has recommended that the Order Suspending License entered by the Commission be vacated and this case be closed.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

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.

THEREFORE, IT IS ORDERED THAT:

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

**CASE NO. INS-2002-00118
JANUARY 29, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting Revisions to the Rules Governing Long-Term Care Insurance

ORDER ADOPTING REVISIONS TO RULES

By Order Granting, in Part, the Petition for Reconsideration (the "Order") entered herein December 16, 2002, the Commission suspended the Order Canceling Hearing and Adopting Revisions to Rules entered herein November 26, 2002. The Commission further directed the Bureau of Insurance (the "Bureau") to consider the comments filed by the American Council of Life Insurers (the "ACLI") to the proposed revisions to the Rules Governing Long-term Care Insurance and to file a response thereto on or before January 15, 2003.

The Order was issued in response to a Petition for Reconsideration (the "Petition") filed by the ACLI with the Clerk of the Commission on December 9, 2002. In the Petition the ACLI stated that although its comments to the proposed revisions were not received by the Clerk of the Commission until November 25, 2002, they had been mailed on November 21, 2002. The Order to Take Notice had required all comments to the proposed revisions to be filed on or before November 22, 2002.

The Petition requested that the Commission vacate the Order Canceling Hearing and Adopting Revisions to Rules, require the Bureau to consider the ACLI's comments, and allow for a hearing prior to adopting the proposed revisions.

The ACLI's comments stated a general objection to any provision in the proposed revisions that is not found in the model long-term care insurance regulation (the "Model") developed by the National Association of Insurance Commissioners (the "NAIC"). Specifically, the ACLI voiced several complaints about 14 VAC 5-200-77 B. First, the ACLI contended that the language of 14 VAC 5-200-77 B 2 b(i), which reads "the comparison of premium rates filed containing the moderately adverse experience and the premium rates that would apply without the margin," requires every company making an initial rate filing to produce information that will not be required in other states where the product may be filed.

In its response filed with the Clerk of the Commission on January 15, 2003, the Bureau agreed that the cited language may be interpreted to require companies making an initial rate filing to file two sets of rates and that not all companies develop rates in such a manner. The Bureau noted that it was not the Bureau's intent to require companies to develop rates in this manner and proposed that the following language be substituted as (i): "a description of the margin for moderately adverse experience that is included in the premium rates."

The ACLI stated that the methodology set forth in 14 VAC 5-200-77 B will delay speed to market and uniformity. The Bureau responded that forms would be approved far more quickly using the proposed methodology than that contained in the NAIC Model.

The ACLI expressed concern that under the requirements of 14 VAC 5-200-77 B 2 b(i) proprietary information filed with the Bureau could be disclosed. The Bureau responded that it can protect such information if a company requests that the information be kept confidential pursuant to § 38.2-221.1 of the Code of Virginia.

The ACLI noted that the proposed revisions were intended to reduce regulatory scrutiny of initial rate filings and that the information required by 14 VAC 5-200-77 B 2 b(ii) places the emphasis on the review of initial rate filings, not rate increases. The Bureau responded that under the proposed methodology initial rate filings that are complete will be filed at the Bureau without additional review, and the majority of filings should be reviewed more quickly that is now the case.

The Bureau did not recommend any amendment to the language of the proposed revisions in response to the ACLI's comments other than the change in the language of 14 VAC 5-200-77 B 2 b(i) as set forth above.

The Commission, having considered the proposed revisions, the filed comments, and the Bureau's responses to and recommendations regarding the filed comments, is of the opinion that the attached revisions to the rules, which reflect the recommendations of the Bureau, should be adopted.

THEREFORE, IT IS ORDERED THAT:

- (1) The revisions to the "Rules Governing Long-Term Care Insurance," which amend the rules at 14 VAC 5-200-20, 14 VAC 5-200-30, 14 VAC 5-200-40, 14 VAC 5-200-60, 14 VAC 5-200-75, 14 VAC 5-200-150, and 14 VAC 5-200-200, and propose new rules to be designated as 14 VAC 5-200-77 and 14 VAC 5-200-153, and which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective April 1, 2003.

(2) AN ATTESTED COPY hereof, together with a copy of the attached revisions, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Gerald A. Milsky, who forthwith shall give further notice of the adoption of the revisions to the rules by mailing a copy of this Order, together with a clean copy of the revised rules, to all insurers licensed by the Commission to write long-term care insurance in the Commonwealth of Virginia and interested parties designated by the Bureau of Insurance.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the attached revisions, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) On or before January 31, 2003, the Commission's Division of Information Resources shall make available this Order and the attached revisions on the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>.

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

NOTE: A copy of Attachment A entitled "Rules Governing Long-Term Care 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-2002-00130
JANUARY 13, 2003**

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

v.

PARTNERS NATIONAL HEALTH PLANS OF NORTH CAROLINA, INC.,
Defendant

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of a health maintenance organization in the Commonwealth of Virginia, in certain instances, violated subsection 2 of § 38.2-508 and §§ 38.2-316 A, 38.2-316 B, 38.2-316 C, 38.2-508.3, 38.2-510 A 4, 38.2-510 A 5, 38.2-510 A 14, 38.2-510 A 15, 38.2-511, 38.2-1812 A, 38.2-3407.4 A, 38.2-3407.15 B, 38.2-3407.15 C, 38.2-4304 B, 38.2-4306 A 2, 38.2-4306.1, 38.2-4313, 38.2-5804 A, 38.2-5804 B, and 38.2-5804 C of the Code of Virginia, as well as 14 VAC 5-210-70 B 2, 14 VAC 5-210-70 C 3, 14 VAC 5-210-70 H, and 14 VAC 5-210-110 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of twenty-eight thousand dollars (\$28,000) and waived its right to a hearing.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of 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-2002-00141
JANUARY 16, 2003**

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 appears that Defendant, duly licensed by the Commission to transact the business of a health maintenance organization in the Commonwealth of Virginia, in certain instances, violated §§ 38.2-316 A, 38.2-316 C, 38.2-503, 38.2-510 A 5, 38.2-510 A 15, 38.2-1833 A 1, 38.2-1834 C, 38.2-3407.4 A, 38.2-3407.15 B 1, 38.2-3407.15 B 2, 38.2-3407.15 B 3, 38.2-3407.15 B 4, 38.2-3407.15 B 5, 38.2-3407.15 B 6, 38.2-3407.15 B 8, 38.2-3407.15 B 9, 38.2-3431 C, 38.2-3433 D, 38.2-4306 A 2, 38.2-4306 B 1, 38.2-4306.1 B, and 38.2-5805 B of the Code of Virginia, as well as 14 VAC 5-90-170 A, 14 VAC 5-210-70 A, 14 VAC 5-210-70 B 2, 14 VAC 5-210-70 C 3, and 14 VAC 5-210-110 B.

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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of twenty-eight thousand dollars (\$28,000), 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 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of §§ 38.2-316 A, 38.2-316 C, 38.2-503, 38.2-510 A 5, 38.2-510 A 15, 38.2-1833 A 1, 38.2-1834 C, 38.2-3407.4 A, 38.2-3407.15 B 1, 38.2-3407.15 B 2, 38.2-3407.15 B 3, 38.2-3407.15 B 4, 38.2-3407.15 B 5, 38.2-3407.15 B 6, 38.2-3407.15 B 8, 38.2-3407.15 B 9, 38.2-3431 C, 38.2-3433 D, 38.2-4306 A 2, 38.2-4306 B 1, 38.2-4306.1 B, or 38.2-5805 B of the Code of Virginia, or 14 VAC 5-90-170 A, 14 VAC 5-210-70 A, 14 VAC 5-210-70 B 2, 14 VAC 5-210-70 C 3, or 14 VAC 5-210-110 B; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2002-00177
JULY 29, 2003**

PETITION OF
JAVIER AND VERONICA LOREDO

For review of HOW Insurance Company, Home Warranty Corporation and Home Owners Warranty Corporation Deputy Receiver's Determination of Appeal

ORDER

On October 14, 1994, the Circuit Court of the City of Richmond, Virginia, entered an order appointing the State Corporation Commission ("Commission") the Receiver of the HOW Insurance Company ("HOWIC"), Home Warranty Corporation ("HWC") and Home Owners Warranty Corporation ("HOW") (collectively "HOW Companies" or "HOW"). The receivership order granted the Commission the authority to proceed with the rehabilitation or liquidation of the HOW Companies and established a receivership appeal procedure to govern appeals and challenges to decisions rendered by the receiver or the receiver's duly authorized representatives.

On February 28, 2002, Javier and Veronica Loreda ("Petitioners" or "Loredos") filed a Petition for Review ("Petition") with the Clerk of the Commission. The Petition contests a Determination of Appeal issued in Claim No. 3842586 on February 1, 2002, whereby the Deputy Receiver denied Petitioners' claim for major structural defect coverage¹ under their homeowner warranty insurance policy on their residence located at 12610 Thornwell Court, Houston, Texas 77070.

¹ The HOW Insurance/Warranty defines a "Major Structural Defect" to be: Actual physical damage to [any of] the following designated load-bearing portions of the home caused by failure of such load-bearing portions which affects their load-bearing functions to the extent that the home becomes unsafe, unsanitary or otherwise unliveable: (1) Foundation systems and footings; (2) Beams; (3) Girders; (4) Lintels; (5) Columns; (6) Walls and partitions; (7) Floor systems; and (8) Roof framing systems. HOW Insurance/Warranty Documents at page 22.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

By order dated July 18, 2002, the Commission docketed the Petition, assigned the matter to a Hearing Examiner, and directed the Deputy Receiver to file an answer or other responsive pleading to the Petition on or before August 16, 2002.

On August 16, 2002, the Deputy Receiver, by counsel, filed a Motion to Dismiss and Answer to Petition for Review, and Memorandum in Support of the Motion to Dismiss ("Motion"). In its Motion, the Deputy Receiver contends, among other things, that the damage alleged by Petitioners does not constitute a major structural defect.

By Hearing Examiner Ruling ("Ruling") of September 23, 2002, Petitioners were provided an opportunity to file a response to the Motion. The Loredos filed a response in which they maintained that the current damage to the foundation and the upstairs walls and flooring system, of their home meets the definition of major structural defect as defined by the HOW Insurance/Warranty Documents.

By Ruling dated November 21, 2002, the Hearing Examiner denied the Deputy Receiver's Motion to Dismiss after determining that Petitioners' Petition was legally sufficient and was based upon question of facts that were in dispute. Consequently, it was necessary to receive evidence relative to the circumstances surrounding the claim, and the Hearing Examiner therefore set the case for hearing.

On February 20, 2003, a telephonic hearing was scheduled for receiving evidence on the Petition. The Loredos appeared *pro se*. Susan E. Salch, Esquire, represented the Deputy Receiver.

After reviewing the filings submitted and the applicable law the Hearing Examiner issued his Report on May 21, 2003. Therein, the Hearing Examiner made the following findings and recommendations:

- (1) Petitioners' home was enrolled in the HOW Program on April 26, 1991.
- (2) Petitioners' claim was filed in the tenth year of coverage and only major structural defect coverage is available.
- (3) The Special Deputy Receiver has found the terms "unsafe, unsanitary or otherwise unlivable" to be ambiguous, and so the Deputy Receiver has eliminated them as criteria in processing claims for a major structural defect.
- (4) Petitioners filed only photographs of damage to the bottom corners of the rear of their home as evidence in support of damage to the foundation.
- (5) Deputy Receiver witness Parker provided a reasonable explanation of the cause of the damage to the bottom corners of the rear of their home and why this damage failed to evidence a failure of the foundation system.
- (6) There is no major structural defect to Petitioners' home as to the foundation.
- (7) There is a loss of load-bearing function of the walls and flooring systems under the upstairs master bedroom and bathroom which witness Parker categorized as a "local framing issue."
- (8) The Loredos should be awarded \$750.00 in major structural defect coverage from HOW for "a localized framing issue."
- (9) The Commission should enter an order adopting his findings; reversing the Deputy Receiver's denial of Claim No. 3842586; and dismissing this case from the docket of active matters.

No comments were filed to the Report of the Hearing Examiner.

Upon consideration of the filings, the testimony and evidence presented, and the Report of the Hearing Examiner, the Commission is of the opinion and so finds that the findings and the recommendations of the Hearing Examiner should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The Petition of Appeal of Javier and Veronica Loredos be, and the same is hereby, GRANTED;
- (2) The Determination of Appeal in Claim No. 3842586 issued by the Deputy Receiver on February 1, 2002, be and the same is hereby, REVERSED;
- (3) Petitioners are awarded the amount of \$750 as a direct claim which shall be paid in accordance with current receivership payment procedure.
- (4) The case is dismissed, and the papers herein shall be passed to the file for ended causes.

**CASE NO. INS-2002-00178
MARCH 24, 2003**

PETITION OF
BOK SUN CORTEZ

For review of HOW Insurance Company, Home Warranty Corporation and Home Owners Warranty Corporation Deputy Receiver's Determination of Appeal

ORDER

On October 14, 1994, the Circuit Court of the City of Richmond, Virginia, entered an order appointing the State Corporation Commission ("Commission") the Receiver of the HOW Insurance Company ("HOWIC"), Home Warranty Corporation ("HWC"), and Home Owners Warranty Corporation ("HOW") (collectively "HOW Companies" or "HOW"). The receivership order granted the Commission the authority to proceed with the rehabilitation or liquidation of the HOW Companies and established a receivership appeal procedure to govern appeals and challenges to decisions rendered by the receiver or the receiver's duly authorized representatives.

On March 4, 2002, Bok Sun Cortez ("Petitioner") filed a Petition for Review ("Petition") with the Deputy Receiver of the HOW Companies via the HOW Claims Department, which was subsequently forwarded to the Commission on July 9, 2002. The Petition contested a Determination of Appeal issued in Claim No. 3768158 on February 1, 2002, whereby the Deputy Receiver denied Petitioner's claim for major structural defect coverage under its warranty insurance policy insuring Petitioner's residence located at 7701 Sumac Road, Irving, Texas 75063.

By Order dated July 18, 2002, the Commission docketed the Petition, assigned the matter to a Hearing Examiner, and directed the Deputy Receiver to file an answer or other responsive pleading to the Petition on or before August 9, 2002.

On August 8, 2002, the Deputy Receiver, by counsel, filed a Motion to Dismiss and Answer to Petition for Review, and Memorandum in Support of Motion to Dismiss ("Motion"). In its Motion, the Deputy Receiver contends, among other things, that Petitioner's claim is untimely pursuant to the express terms of the HOW Insurance/Warranty document.

By Hearing Examiner Ruling ("Ruling") dated August 16, 2002, Petitioner was provided an opportunity to file a response to the Motion. On September 4, 2002, Petitioner, by Jin Lee¹, filed a response to the Motion outlining, among other things, the history of communications between Petitioner and the Deputy Receiver.

By Ruling dated September 20, 2002, the Hearing Examiner denied the Deputy Receiver's Motion to Dismiss because it was unclear whether Petitioner failed to give timely notice of her claim to HOW. As a result, the Hearing Examiner set the case for hearing on December 10, 2002. By Ruling dated October 21, 2002, the hearing was rescheduled for January 7, 2003.

On the hearing date, Petitioner appeared *pro se* with Jin Lee as her translator. Susan E. Salch, Esquire, represented the Deputy Receiver.

After reviewing the filings and testimony submitted in the case and the applicable law, the Hearing Examiner issued his Report on January 30, 2003. Therein, the Hearing Examiner made the followings findings and recommendations:

- (1) Petitioner's home was enrolled in the HOW Program on February 26, 1991.
- (2) Petitioner's initial claim was received by INSpire Insurance Solutions, a third-party administrator of the HOW Receivership Estate, on November 4, 1999.
- (3) On November 12, 1999, the HOW Companies sent Petitioner a letter acknowledging receipt of the claim and informing her that additional information regarding the claim was needed to determine whether the defect was covered by the policy.
- (4) At that time, Petitioner did not provide additional information on the claim to the HOW Companies.
- (5) By correspondence dated December 6, 1999 and January 6, 2000, respectively, HOW again requested Petitioner to provide additional information on her claim.
- (6) By letter dated May 8, 2000, HOW informed Petitioner that her claim was being suspended pending receipt of the requested additional information, but it would be evaluated if she submitted the necessary information at any time prior to the expiration of her policy.
- (7) Petitioner testified that she received no correspondence from HOW after her initial claim was filed in November of 1999.
- (8) Donald Coleman, a HOW claims examiner involved in this case, testified that claim status letters were sent to the Petitioner by regular mail and were not returned by the postal service to the HOW Companies.
- (9) By letter to HOW dated November 29, 2002, Petitioner requested that her case be re-opened.
- (10) HOW informed the Petitioner that her policy had expired on February 26, 2001, and that her claim could not be considered because her policy coverage had expired.

¹ Jin Lee holds a power of attorney from Ms. Cortez and has assisted Ms. Cortez in pursuing her claim.

(11) The HOW Insurance/Warranty documents state that notice fully describing the defect must be received by HOW no later than thirty days after the expiration of the coverage.²

(12) Petitioner filed a claim with HOW within the coverage period, but did not provide additional information requested until well after the expiration of the policy coverage.³

(13) The requirements of filing a claim are clearly set out in the HOW documents and Petitioner failed to meet these requirements in a timely manner.

(14) The Deputy Receiver's denial of Petitioner's claim must be upheld.

(15) The Commission should enter an order dismissing the Petition of Appeal and affirming the Deputy Receiver's Determination of Appeal in Claim No. 3768158.

No comments were filed to the Report of the Hearing Examiner.

Upon consideration of the filings and testimony submitted 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.

Accordingly, IT IS ORDERED THAT:

(1) The Petition of Appeal of Bok Sun Cortez be, and the same is hereby, DENIED;

(2) The Determination of Appeal in Claim No. 3768158 issued by the Deputy Receiver on February 1, 2002 be, and the same is hereby, AFFIRMED; and

(3) The case is dismissed, and the papers herein are passed to the file for ended causes.

² Deputy Receiver's pre-filed testimony and exhibits. Exhibit 3, Tab K at 20.

³ Donald Coleman testified that the requested information was received by HOW in November of 2001. (Transcript at 33).

**CASE NO. INS-2002-00182
JANUARY 30, 2002**

APPLICATION OF
NATIONAL COUNCIL ON COMPENSATION INSURANCE, INC.

For revision of voluntary loss costs and assigned risk workers' compensation insurance rates

FINAL ORDER

The Commission heard the application filed in this matter on November 20, 2002. At the hearing appeared the National Council on Compensation Insurance, Inc. ("NCCI"), the Division of Consumer Counsel, the Office of the Attorney General ("OAG"), the Commission's Bureau of Insurance ("BOI"), and respondents Washington Construction Employers Association and the Iron Workers Employers Association ("Respondents").

The Commission has considered the record in its entirety, including the application, the pre-filed testimony admitted at the hearing, the evidence presented at the hearing, and the post-hearing briefs.

Accordingly, IT IS ORDERED THAT:

(1) The proposal by NCCI to use the frequency-severity methodology to calculate the occupational disease component of voluntary loss costs and assigned risk rates for coal mine classifications is hereby approved;

(2) Proposals to increase the frequency of approved occupational disease claims for coal mine classifications to reflect administrative rule changes under the Federal Coal Mine Health and Safety Act are hereby disapproved; in lieu thereof, no increase shall be assumed;

(3) The proposal by NCCI to measure the frequency of approved occupational disease claims for coal mine classifications using data from 1995 to 1999 is hereby disapproved; in lieu thereof, frequency based on the five most recent years of available data, with wage data trended for wage inflation, shall be utilized, as recommended by BOI witness Lefkowitz;

(4) The proposal by NCCI to calculate the life expectancy of coal miners suffering from black lung disease using the life expectancy table of the general public in the calculation of occupational disease claim severity for coal mine classifications is hereby disapproved; in lieu thereof, the life expectancy table of male smokers shall be utilized, as recommended by BOI witness Lefkowitz;

(5) The proposal by NCCI to use the actuarial assumption that 100% of all coal miners suffering from black lung disease are married and without other dependents is hereby disapproved; in lieu thereof, the actuarial assumption that 78.9% of all Virginia coal miners with black lung are married without other dependents shall be utilized, as recommended by BOI witness Lefkowitz;

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(6) The proposal by NCCI to apply the assigned risk differential to the occupational disease component of voluntary loss costs and assigned risk rates for coal mine classifications is hereby disapproved; in lieu thereof, the assigned risk differential shall not be utilized, as recommended by BOI witness Lefkowitz;

(7) The proposal by NCCI to use the profit and contingencies provision of the industrial classifications to determine the occupational disease component of the assigned risk rates for coal classifications is hereby disapproved; in lieu thereof, a profit and contingencies provision based on the expected payment of occupational disease benefits, -12.25%, shall be utilized, as recommended by BOI witness Lefkowitz;

(8) The proposal by NCCI to use the expense provision of the industrial classifications to determine the occupational disease component of the assigned risk rates for coal classifications is hereby disapproved; in lieu thereof, an expense provision based on the policy size data of coal mine employers shall be utilized, as recommended by BOI witness Ileo;

(9) The proposal by NCCI to change the maximum limit on individual claims used in class ratemaking is hereby disapproved;

(10) The recommendation made by OAG witness Fauerbach to change the methodology for determining the loss adjustment expense provision contained in loss costs is hereby disapproved;

(11) NCCI and any other persons participating in future voluntary loss costs and assigned risk rate applications 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 and/or rating values are based, shall be required to disclose the voluntary loss cost and/or assigned risk rate or rating values effect of the change employing both the methodology it proposes to replace as well as the newly proposed methodology;

(12) In accordance with the adjustments ordered herein, NCCI shall revise its voluntary loss costs and assigned risk rates as follows: (i) an increase of 1.5% in industrial class voluntary loss costs; (ii) an increase of 1% in "F" class voluntary loss costs; (iii) a decrease of 2.4% in underground coal mines voluntary loss costs; (iv) an increase of 7.9% in surface coal mines voluntary loss costs; (v) no change in industrial class assigned risk rates; (vi) an increase of 11.7% in "F" class assigned risk rates; (vii) a decrease of 2.4% in underground coal mines assigned risk rates; and (viii) an increase of 12.2% in surface coal mines assigned risk rates. For surface and underground coal mines voluntary loss costs and assigned risk rates, NCCI shall incorporate adjustments required to reflect application of the approved swing limit;

(13) Except as otherwise ordered herein, the proposed revisions to voluntary loss costs, assigned risk rates, minimum premiums, rating values, rules, regulations, and procedures for writing workers' compensation voluntary loss costs and assigned risk rates 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 business on and after April 1, 2003;

(14) NCCI, BOI, OAG, and the Respondents in this proceeding make their best efforts to recommend jointly to the Commission on or before June 1, 2003, a proposed schedule for any year 2003 voluntary loss cost/assigned risk rate revision proceeding before the Commission. Such proposed schedule shall address: (i) the "pre-filing" of any discovery requests by BOI, OAG, and any other parties; (ii) the date on which NCCI proposes to file with the Commission any voluntary loss cost/rate revision application and its direct testimony; (iii) the date on which NCCI proposes to respond to such pre-filed discovery requests; (iv) the dates for the pre-filing of the direct testimony of BOI, OAG, and any respondents and the rebuttal testimony of NCCI; and (v) the date of any proposed hearing before the Commission; and

(15) The Commission encourages the working group, consisting of representatives of NCCI, BOI, OAG, and any other interested party to continue to meet and seek consensus to the extent possible concerning methodological and other issues of concern to members of the group, including but not limited to, the extent to which administrative rule changes under the Federal Coal Mine Health and Safety Act will increase the frequency of approved occupational disease claims for coal mine classifications, as well as the proposal to change the maximum limit on individual claims used in class ratemaking.

**CASE NO. INS-2002-00182
FEBRUARY 3, 2003**

APPLICATION OF
NATIONAL COUNCIL ON COMPENSATION INSURANCE, INC.

For revision of voluntary loss costs and assigned risk workers' compensation insurance rates

VACATING ORDER

The Order entered herein on January 30, 2003, is hereby vacated.

**CASE NO. INS-2002-00182
FEBRUARY 3, 2003**

APPLICATION OF
NATIONAL COUNCIL ON COMPENSATION INSURANCE, INC.

For revision of voluntary loss costs and assigned risk workers' compensation insurance rates

FINAL ORDER

The Commission heard the application filed in this matter on November 20, 2002. At the hearing appeared the National Council on Compensation Insurance, Inc. ("NCCI"), the Division of Consumer Counsel, the Office of the Attorney General ("OAG"), the Commission's Bureau of Insurance ("BOI"), and respondents Washington Construction Employers Association and the Iron Workers Employers Association ("Respondents").

The Commission has considered the record in its entirety, including the application, the pre-filed testimony admitted at the hearing, the evidence presented at the hearing, and the post-hearing briefs.

Accordingly, IT IS ORDERED THAT:

(1) The proposal by NCCI to use the frequency-severity methodology to calculate the occupational disease component of voluntary loss costs and assigned risk rates for coal mine classifications is hereby approved;

(2) Proposals to increase the frequency of approved occupational disease claims for coal mine classifications to reflect administrative rule changes under the Federal Coal Mine Health and Safety Act are hereby disapproved; in lieu thereof, no increase shall be assumed;

(3) The proposal by NCCI to measure the frequency of approved occupational disease claims for coal mine classifications using data from 1995 to 1999 is hereby disapproved; in lieu thereof, frequency based on the five most recent years of available data, with wage data trended for wage inflation, shall be utilized, as recommended by BOI witness Lefkowitz;

(4) The proposal by NCCI to calculate the life expectancy of coal miners suffering from black lung disease using the life expectancy table of the general public in the calculation of occupational disease claim severity for coal mine classifications is hereby disapproved; in lieu thereof, the life expectancy table of male smokers shall be utilized, as recommended by BOI witness Lefkowitz;

(5) The proposal by NCCI to use the actuarial assumption that 100% of all coal miners suffering from black lung disease are married and without other dependents is hereby disapproved; in lieu thereof, the actuarial assumption that 78.9% of all Virginia coal miners with black lung are married without other dependents shall be utilized, as recommended by BOI witness Lefkowitz;

(6) The proposal by NCCI to apply the assigned risk differential to the occupational disease component of voluntary loss costs and assigned risk rates for coal mine classifications is hereby disapproved; in lieu thereof, the assigned risk differential shall not be utilized, as recommended by BOI witness Lefkowitz;

(7) The proposal by NCCI to use the profit and contingencies provision of the industrial classifications to determine the occupational disease component of the assigned risk rates for coal classifications is hereby disapproved; in lieu thereof, a profit and contingencies provision based on the expected payment of occupational disease benefits, -12.25%, shall be utilized, as recommended by BOI witness Lefkowitz;

(8) The proposal by NCCI to use the expense provision of the industrial classifications to determine the occupational disease component of the assigned risk rates for coal classifications is hereby disapproved; in lieu thereof, an expense provision based on the policy size data of coal mine employers shall be utilized, as recommended by BOI witness Ileo;

(9) The proposal by NCCI to change the maximum limit on individual claims used in class ratemaking is hereby disapproved;

(10) The recommendation made by OAG witness Fauerbach to change the methodology for determining the loss adjustment expense provision contained in loss costs is hereby disapproved;

(11) NCCI and any other persons participating in future voluntary loss costs and assigned risk rate applications 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 and/or rating values are based, shall be required to disclose the voluntary loss cost and/or assigned risk rate or rating values effect of the change employing both the methodology it proposes to replace as well as the newly proposed methodology;

(12) In accordance with the adjustments ordered herein, NCCI shall revise its voluntary loss costs and assigned risk rates as follows: (i) an increase of 1.5% in industrial class voluntary loss costs; (ii) an increase of 1% in "F" class voluntary loss costs; (iii) a decrease of 2.4% in underground coal mines voluntary loss costs; (iv) an increase of 7.9% in surface coal mines voluntary loss costs; (v) an increase of 1.7% in industrial class assigned risk rates; (vi) an increase of 13.7% in "F" class assigned risk rates; (vii) a decrease of 2.4% in underground coal mines assigned risk rates; and (viii) an increase of 12.2% in surface coal mines assigned risk rates. For surface and underground coal mines voluntary loss costs and assigned risk rates, NCCI shall incorporate adjustments required to reflect application of the approved swing limit;

(13) Except as otherwise ordered herein, the proposed revisions to voluntary loss costs, assigned risk rates, minimum premiums, rating values, rules, regulations, and procedures for writing workers' compensation voluntary loss costs and assigned risk rates 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 business on and after April 1, 2003;

(14) NCCI, BOI, OAG, and the Respondents in this proceeding make their best efforts to recommend jointly to the Commission on or before June 1, 2003, a proposed schedule for any year 2003 voluntary loss cost/assigned risk rate revision proceeding before the Commission. Such proposed schedule shall address: (i) the "pre-filing" of any discovery requests by BOI, OAG, and any other parties; (ii) the date on which NCCI proposes to file with the Commission any voluntary loss cost/rate revision application and its direct testimony; (iii) the date on which NCCI proposes to respond to such pre-filed discovery requests; (iv) the dates for the pre-filing of the direct testimony of BOI, OAG, and any respondents and the rebuttal testimony of NCCI; and (v) the date of any proposed hearing before the Commission; and

(15) The Commission encourages the working group, consisting of representatives of NCCI, BOI, OAG, and any other interested party to continue to meet and seek consensus to the extent possible concerning methodological and other issues of concern to members of the group, including but not limited to, the extent to which administrative rule changes under the Federal Coal Mine Health and Safety Act will increase the frequency of approved occupational disease claims for coal mine classifications, as well as the proposal to change the maximum limit on individual claims used in class ratemaking.

**CASE NO. INS-2002-00201
MAY 2, 2003**

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

FINAL ORDER

Penn Mutual Insurance Company, a foreign corporation domiciled in the State of Pennsylvania ("Defendant"), initially was licensed to transact the business of insurance in the Commonwealth of Virginia on September 28, 1987.

By order entered herein September 3, 2002, Defendant was found to have an impairment in its required minimum surplus and ordered to eliminate its impairment on or before December 5, 2002.

By application filed with the Commission on December 16, 2002, Harleysville Mutual Insurance Company, a Pennsylvania-domiciled insurer licensed to transact the business of insurance in the Commonwealth of Virginia ("Harleysville"), requested approval of an assumption reinsurance agreement whereby Harleysville would assume all life insurance policies and annuity contracts of Defendant.

By order entered herein January 3, 2003, in Case No. INS-2002-01310, the Commission approved the application for approval of the assumption reinsurance agreement between Harleysville and Defendant.

By letter of Beth C. Sheligo, Assistant Secretary and Assistant General Counsel of Harleysville, dated April 16, 2003, and filed with the Commission on April 30, 2003, the Commission was advised that Defendant is no longer functioning as an active insurance company and wishes to withdraw its license to transact the business of insurance in the Commonwealth of Virginia.

The withdrawal of Defendant's license has been processed by the Bureau of Insurance, effective April 24, 2003.

The Bureau has recommended that the Impairment Order entered by the Commission be vacated and this case be closed.

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

THEREFORE, IT IS ORDERED THAT:

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

**CASE NO. INS-2002-00202
AUGUST 1, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
UNIVERSAL BONDING INSURANCE COMPANY,
Defendant

FINAL ORDER

Universal Bonding Insurance Company, a foreign corporation domiciled in the State of New Jersey ("Defendant"), initially was licensed to transact the business of insurance in the Commonwealth of Virginia on February 11, 2002.

By order entered herein September 13, 2002, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended.

By letter of Defendant's Chief Financial Officer dated June 23, 2003, and filed with the Commission on July 30, 2003, the Commission was advised that Defendant wishes to withdraw its license to transact the business of insurance in the Commonwealth of Virginia.

The withdrawal of Defendant's license has been processed by the Bureau of Insurance, effective July 16, 2003.

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.

THEREFORE, IT IS ORDERED THAT:

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

**CASE NO. INS-2002-00203
AUGUST 18, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
LONDON PACIFIC LIFE & ANNUITY COMPANY,
Defendant

ORDER TO TAKE NOTICE

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

London Pacific Life & Annuity 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.

On August 6, 2002, pursuant to the Unanimous Consent of Defendant's Board of Directors, by an Order of Rehabilitation and Preliminary Injunction, the Superior Court of Wake County, North Carolina found Defendant to be in a hazardous condition and placed Defendant in rehabilitation, and the North Carolina Commissioner of Insurance was appointed as rehabilitator of Defendant.

By order entered herein September 24, 2002, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended due to financial regulatory concerns.

Defendant's Virginia Certificate of Authority was revoked on February 28, 2003.

The North Carolina Department has notified the Bureau of Insurance that it does not object to the revocation of Defendant's license to transact the business of insurance in the Commonwealth of Virginia.

The Bureau of Insurance has recommended that Defendant's license to transact the business of insurance in the Commonwealth of Virginia be revoked.

IT IS THEREFORE ORDERED that Defendant TAKE NOTICE that the Commission shall enter an order subsequent to August 28, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before August 28, 2003, Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for a hearing before the Commission with respect to the proposed revocation of Defendant's license.

**CASE NO. INS-2002-00203
SEPTEMBER 8, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
LONDON PACIFIC LIFE & ANNUITY COMPANY,
Defendant

ORDER REVOKING LICENSE

In an order entered herein August 18, 2003, Defendant was ordered to take notice that the Commission would enter an order subsequent to August 28, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before August 28, 2003, Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed revocation of Defendant's license.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed revocation of Defendant's license.

THEREFORE, IT IS ORDERED THAT:

- (1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be, and it is hereby, REVOKED;
- (2) Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia;
- (3) The appointments of Defendant's agents to act on behalf of Defendant in the Commonwealth of Virginia be, and they are hereby, REVOKED;
- (4) The Bureau of Insurance shall cause an attested copy of this Order to be sent to each of Defendant's agents appointed to act on behalf of Defendant in the Commonwealth of Virginia as notice of the revocation of such agent's appointment; and
- (5) The Bureau of Insurance shall cause notice of the revocation of Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2002-00216
JANUARY 13, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
AMERICAN FAMILY LIFE ASSURANCE COMPANY OF COLUMBUS,
Defendant

SETTLEMENT ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, in certain instances, violated § 38.2-610 of the Code of Virginia by failing to give to an applicant for insurance written notice of an adverse underwriting decision in the form approved 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein 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 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 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of § 38.2-610 of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2002-00693
FEBRUARY 6, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

AMERICO FINANCIAL LIFE AND ANNUITY INSURANCE COMPANY,
Defendant

SETTLEMENT ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, in a certain instance, violated § 38.2-610 of the Code of Virginia by failing to give to applicants for insurance written notice of an adverse underwriting decision in the form approved 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violation.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of fifteen thousand dollars (\$15,000) and waived its right to a hearing, without admitting any violation of the Code of Virginia.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of 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-2002-00709
OCTOBER 24, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

KELCO VIATICAL SERVICES, INC.,
Defendant

ORDER TO TAKE NOTICE

Pursuant to § 38.2-6002 G of the Code of Virginia, the Commission may revoke the license of any viatical settlement provider to transact the business of viatical settlements in the Commonwealth of Virginia whenever the Commission finds that the licensee has been subject to a final administrative action or has otherwise been shown to be untrustworthy or incompetent to act as a viatical settlement provider or has been convicted of a felony or any misdemeanor involving fraud or moral turpitude.

Kelco Viatical Services, Inc. ("Defendant"), licensed by the Commission on January 1, 1998, to transact the business of a viatical settlement provider in the Commonwealth of Virginia, is a viatical settlement provider domiciled in the State of Kentucky in the name Kelco, Incorporated ("Kelco").

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

By order entered herein November 26, 2002, Defendant's license to transact the business of a viatical settlement provider in the Commonwealth of Virginia was suspended due to the issuance of an Order Suspending License by the Kentucky Department of Insurance based on an indictment filed in the United States District Court, Eastern District of Kentucky (the "Indictment"), whereby a federal grand jury charged Kelco and Stephen L. Keller, its owner, President and Chief Executive Officer ("Keller"), and two other Kelco officers with forty-seven (47) counts of mail fraud, wire fraud, and money laundering, and conspiracy to defraud and commit money laundering.

On March 14, 2003, in the United States District Court, Eastern District of Kentucky, Kelco, Keller, and the two other Kelco officers, were convicted of forty-six (46) counts of mail fraud, wire fraud, and money laundering, and conspiracy to defraud and commit money laundering.

On August 13, 2003, judgments were entered against Kelco, Keller and the two other Kelco officers, and each of the individuals was sentenced to fourteen (14) years in prison, and Defendant and each individual were ordered jointly and severally to pay restitution in the amount of \$661,292.

In light of the foregoing, the Bureau of Insurance has recommended that Defendant's license to transact the business of a viatical settlement provider in the Commonwealth of Virginia be revoked.

IT IS THEREFORE ORDERED that Defendant TAKE NOTICE that the Commission shall enter an order subsequent to November 6, 2003, revoking the license of Defendant to transact the business of a viatical settlement provider in the Commonwealth of Virginia unless on or before November 6, 2003, Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for a hearing before the Commission with respect to the proposed revocation of Defendant's license.

**CASE NO. INS-2002-00709
NOVEMBER 14, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
KELCO VIATICAL SERVICES, INC.,
Defendant

ORDER REVOKING LICENSE

In an order entered herein October 24, 2003, Defendant was ordered to take notice that the Commission would enter an order subsequent to November 6, 2003, revoking the license of Defendant to transact the business of a viatical settlement provider in the Commonwealth of Virginia unless on or before November 6, 2003, Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed revocation of Defendant's license.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed revocation of Defendant's license.

THEREFORE, IT IS ORDERED THAT:

- (1) Pursuant to § 38.2-6002 G of the Code of Virginia, the license of Defendant to transact the business of a viatical settlement provider in the Commonwealth of Virginia be, and it is hereby, REVOKED;
- (2) Defendant shall transact no further business in the Commonwealth of Virginia as a viatical settlement provider;
- (3) Defendant shall not apply to the Commission to be licensed as a viatical settlement provider in the Commonwealth of Virginia prior to five (5) years from the date of this Order; and
- (4) The Bureau of Insurance shall cause notice of the revocation of Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2002-01286
FEBRUARY 14, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CASUALTY RECIPROCAL EXCHANGE,
Defendant

ORDER TO TAKE NOTICE

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

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Casualty Reciprocal Exchange, a foreign reciprocal domiciled in the State of Missouri ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

By order entered herein November 6, 2002, Defendant was ordered to eliminate the impairment in its surplus and restore the same to at least \$4,000,000 and advise the Commission of the accomplishment thereof by affidavit of Defendant's president or other authorized officer on or before February 6, 2003.

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

IT IS THEREFORE ORDERED that Defendant TAKE NOTICE that the Commission shall enter an order subsequent to February 25, 2003, suspending the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before February 25, 2003, 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 Defendant's license.

**CASE NO. INS-2002-01286
MARCH 14, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CASUALTY RECIPROCAL EXCHANGE,
Defendant

ORDER SUSPENDING LICENSE

In an Order entered herein February 14, 2003, Defendant was ordered to take notice that the Commission would enter an order subsequent to February 25, 2003, suspending the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before February 25, 2003, Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed suspension of Defendant's license.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed suspension of Defendant's license.

THEREFORE, IT IS ORDERED THAT:

- (1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be, and it is hereby, SUSPENDED;
- (2) 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 Defendant's agents to act on behalf of Defendant in the Commonwealth of Virginia be, and they are hereby, SUSPENDED;
- (4) Defendant's agents shall transact no new insurance business on behalf of 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 Defendant's agents appointed to act on behalf of 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 Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2002-01289
JANUARY 7, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
JENNIFER W. MASON,
Defendant

VACATING ORDER

GOOD CAUSE having been shown, the Order Revoking License entered herein December 18, 2002, is hereby vacated.

**CASE NO. INS-2002-01296
OCTOBER 28, 2003**

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

FINAL ORDER

Nonprofits Insurance Company, a foreign corporation domiciled in the State of Minnesota ("Defendant"), initially was licensed to transact the business of insurance in the Commonwealth of Virginia on December 7, 1994.

Section 38.2-1028 of the Code of Virginia requires that insurers licensed to transact the business of insurance in the Commonwealth of Virginia to maintain minimum capital of \$1,000,000 and minimum surplus of \$3,000,000.

By Order Suspending License entered herein November 21, 2002, Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended due to Defendant's failure to comply with such minimum surplus requirement.

By affidavit of Michael T. Elsenpeter, Defendant's Treasurer, dated August 27, 2003, and letter of Lori Oleson dated September 12, 2003, and filed with the Clerk on September 26, 2003, and September 30, 2003, respectively, the Commission was advised that on August 15, 2003, Defendant received a capital contribution in the amount of \$10,000,000 from Berkley Insurance Company, a Delaware corporation and Defendant's immediate parent company, and as a result is in compliance with Virginia's minimum capital and surplus requirements as set forth in § 38.2-1028. Defendant also requested that the Commission remove the suspension from and reinstate its license.

The Bureau of Insurance 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.

THEREFORE, IT IS ORDERED THAT:

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

**CASE NO. INS-2002-01299
APRIL 8, 2003**

PETITION OF
JAMES F. LAPINSKI, *et al.*

For review of the Bureau of Insurance's approval of certain rate increases filed by Penn Treaty Network America Insurance Company

FINAL ORDER

On November 20, 2002, James F. Lapinski filed with the State Corporation Commission ("Commission") a Petition contesting the Bureau of Insurance's ("Bureau") approval, on March 25, 2002, of an increase in the rates filed by Penn Treaty Network America Insurance Company ("Penn Treaty") for certain of its long-term care insurance policies. The Petition requested that the Bureau limit the overall increase in the rates to fifteen percent (15%) above what is currently on file for policy forms PF2600(VA) and FPF2600(VA). Other individuals subsequently joined the Petition.

On January 23, 2003, the Bureau filed an Answer to Petition, Motion to Dismiss, and Response to Motion to Suspend Rate Increase. Also on that date, Penn Treaty filed an Answer and Response to Petitioners' Motion for Suspension of Rates and a Motion to Dismiss. Both the Bureau and Penn Treaty argued that the requested rate increase satisfies the minimum sixty percent (60%) loss ratio required pursuant to the Commission's Rules Governing Long-Term Care Insurance. They also argued that the Commission lacks the authority to grant the sole relief requested by Petitioners, which is to limit the overall rate increase to fifteen percent (15%). For these reasons, both the Bureau and Penn Treaty requested that the Petition be dismissed.

On February 12, 2003, the Hearing Examiner issued his Report, in which he made the following findings and recommendations:

- (1) The Commission has adopted Rules Governing Long-Term Care Insurance [14 VAC 5-200] pursuant to the authority granted it by §§ 38.2-223 and 38.2-5200 through 38.2-5208 of the Code of Virginia.
- (2) Section 14 VAC 5-200-150 A states in relevant part that benefits under individual long-term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least sixty percent (60%), provides for adequate reserving of the risk, and gives due consideration to a number of relevant factors.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(3) Penn Treaty's requested rate increase for its long-term care insurance policy forms satisfies the sixty percent (60%) loss ratio standard provided for in 14 VAC 5-200-150 A. Therefore, according to the rule, the benefits provided under Penn Treaty's policies are deemed reasonable, and the Commission has no authority to limit the overall rate increase to fifteen percent (15%) above what is currently on file for policy forms PF2600(VA) and PPF2600(VA).

(4) Because the Petition fails to state a claim upon which relief may be granted, the Bureau's and Penn Treaty's Motions to Dismiss should be granted.

Upon consideration of the filings 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.

Accordingly, IT IS ORDERED THAT:

- (1) The Petition of James F. Lapinski, et al. be, and the same is hereby, DISMISSED; and
- (2) The papers herein be passed to the file for ended causes.

**CASE NO. INS-2002-01310
JANUARY 3, 2003**

APPLICATION OF
HARLEYSVILLE MUTUAL INSURANCE COMPANY

For approval of an assumption reinsurance agreement pursuant to § 38.2-136 C of the Code of Virginia

ORDER APPROVING APPLICATION

By application filed with the Commission on December 16, 2002, Harleysville Mutual Insurance Company, a Pennsylvania-domiciled insurer licensed to transact the business of insurance in the Commonwealth of Virginia ("Harleysville"), requested approval of an assumption reinsurance agreement dated December 16, 2002, pursuant to § 38.2-136 C of the Code of Virginia, whereby Harleysville would assume all of the life insurance policies and annuity contracts of Penn Mutual Insurance Company, a Pennsylvania-domiciled insurer ("Penn Mutual").

Harleysville filed an amendment to the application with the Commission on December 18, 2002.

Penn Mutual is licensed to transact the business of insurance in the Commonwealth of Virginia; however, an Impairment Order was entered against Penn Mutual in Case No. INS-2002-00201 on September 3, 2002, which remains outstanding.

The Pennsylvania Insurance Commissioner, the domiciliary regulator of Harleysville and Penn Mutual, has approved the assumption reinsurance agreement, as evidenced by the Decision and Order entered December 13, 2002, copies of which were filed with the amendment to the application.

Harleysville has waived its right to a hearing pursuant to § 38.2-136 C of the Code of Virginia, as evidenced in the application.

The Bureau of Insurance, having reviewed the application and the amendment thereto (hereinafter collectively referred to as 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 of Virginia, 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 approved.

THEREFORE, IT IS ORDERED THAT the application of Harleysville Mutual Insurance Company for 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-2002-01310
JANUARY 21, 2003**

APPLICATION OF
HARLEYSVILLE MUTUAL INSURANCE COMPANY

For approval of an assumption reinsurance agreement pursuant to § 38.2-136 C of the Code of Virginia

CORRECTING ORDER

In the Order Approving Application entered herein January 3, 2003, the first paragraph, set forth on page one of the order, provides in part as follows: "Harleysville would assume all of the life insurance policies and annuity contracts of Penn Mutual Insurance Company...." In fact, Harleysville would be assuming all of the property and casualty policies of Penn Mutual Insurance Company; therefore, it is necessary to correct the language of the first paragraph of the order.

IT IS THEREFORE ORDERED THAT:

(1) The language of the first paragraph of the Order Approving Application entered January 3, 2003, shall be deleted in its entirety, and the following language shall be inserted in its place and stead:

By application filed with the Commission on December 16, 2002, Harleysville Mutual Insurance Company, a Pennsylvania-domiciled insurer licensed to transact the business of insurance in the Commonwealth of Virginia ("Harleysville"), requested approval of an assumption reinsurance agreement dated December 16, 2002, pursuant to § 38.2-136 C of the Code of Virginia, whereby Harleysville would assume all of the property and casualty insurance policies of Penn Mutual Insurance Company, a Pennsylvania-domiciled insurer ("Penn Mutual").

(2) All other provisions of the Order Approving Application entered January 3, 2003, shall remain in full force and effect.

**CASE NO. INS-2002-01314
JANUARY 30, 2003**

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

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, in certain instances, violated §§ 38.2-316 B, 38.2-316 C 1, 38.2-510 A 2, 38.2-610, 38.2-1318 C, 38.2-1812 A, 38.2-1822 A, 38.2-1833 A, 38.2-3115, 38.2-3407.1, and 38.2-3407.4 A of the Code of Virginia, as well as 14 VAC 5-400-60 B.

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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of fourteen thousand dollars (\$14,000) and waived its right to a hearing.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of 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-2002-01315
JANUARY 30, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
DENTAL BENEFIT PROVIDERS OF MARYLAND, INC.,
Defendant

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of a dental services plan in the Commonwealth of Virginia, in certain instances, violated §§ 38.2-316 A, 38.2-1834 C, 38.2-3407.4 A, 38.2-3407.15 B 1, 38.2-3407.15 B 2, 38.2-3407.15 B 3, 38.2-3407.15 B 4, 38.2-3407.15 B 5, 38.2-3407.15 B 6, 38.2-3407.15 B 7, 38.2-3407.15 B 8, and 38.2-3407.15 B 9 of the Code of Virginia.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of fifteen thousand dollars (\$15,000), 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 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of §§ 38.2-316 A, 38.2-1834 C, 38.2-3407.4 A, 38.2-3407.15 B 1, 38.2-3407.15 B 2, 38.2-3407.15 B 3, 38.2-3407.15 B 4, 38.2-3407.15 B 5, 38.2-3407.15 B 6, 38.2-3407.15 B 7, 38.2-3407.15 B 8, or 38.2-3407.15 B 9 of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00002
JANUARY 10, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
GORDON B. MARSHALL, JR.,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-512 and 38.2-1813 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 or commission, 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, and by failing to hold all premiums, return premiums, or other funds received by Defendant in a fiduciary capacity.

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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been notified of his right to a hearing before the Commission in this matter by certified letters dated November 6, 2002 and December 2, 2002, respectively, and mailed to Defendant's address shown in the records of the Bureau of Insurance, and has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of 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 Defendant has violated §§ 38.2-512 and 38.2-1813 of the Code of Virginia by making false statements or misrepresentations on or relative to an application for an insurance policy for the purpose of obtaining a fee or commission, 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, and by failing to hold all premiums, return premiums, or other funds received by Defendant in a fiduciary capacity.

THEREFORE, IT IS ORDERED THAT:

- (1) The licenses of Defendant to transact the business of insurance as an agent in the Commonwealth of Virginia be, and they are hereby, REVOKED;
- (2) All appointments issued under said licenses be, and they are hereby, VOID;
- (3) Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) 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 cause a copy of this Order to be sent to every insurance company for which 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-2003-00002
JANUARY 30, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
GORDON B. MARSHALL, JR.,
Defendant

VACATING ORDER

On January 10, 2003, the Commission entered an Order revoking the license of Defendant for violating §§ 38.2-512 and 38.2-1813 of the Code of Virginia. Prior to the entry of the Order, Defendant was notified of his right to a hearing in this matter by certified letters dated November 6, 2002, and December 2, 2002. Despite receiving these letters, Defendant failed to request a hearing or otherwise communicate with the Bureau.

On January 23, 2003, Defendant, by counsel, filed a motion requesting the Commission to reconsider the Order Revoking License. In support thereof, Defendant states that his failure to respond to the Bureau's letters was based upon a misunderstanding as to the nature of the letters. Furthermore, Defendant is requesting that he be given an opportunity to respond to the allegations raised by the Bureau.

The Bureau of Insurance has recommended to the Commission that it vacate the Order Revoking License in order to allow Defendant an opportunity to respond to the allegations.

THE COMMISSION, having considered Defendant's Motion to Reconsider, as well as the recommendation of the Bureau of Insurance, is of the opinion that the Order Revoking License should be vacated.

IT IS THEREFORE ORDERED THAT the Order Revoking License be, and it is hereby, VACATED.

**CASE NO. INS-2003-00003
JANUARY 15, 2003**

PETITION OF
PENN TREATY NETWORK AMERICA INSURANCE COMPANY

FINAL ORDER

On January 6, 2003, Penn Treaty Network America Insurance Company ("Penn Treaty") filed a petition ("Petition") with the State Corporation Commission ("Commission"), in which Penn Treaty challenges the withdrawal of approval of certain previously approved rate increases by the Bureau of Insurance ("Bureau"). Penn Treaty references §§ 38.2-316 and 38.2-1926 of the Code of Virginia in support of its request that the Commission overturn the decision of the Bureau. Penn Treaty further requests that the Commission suspend the Bureau's withdrawal of approval of the previously approved rate increases pending the outcome of this proceeding.

By Order dated January 8, 2003, the Commission docketed this case and ordered the Bureau to file any response to the Petition that it may have on or before January 13, 2003.

On January 13, 2003, Penn Treaty filed a motion requesting that it be permitted to withdraw its Petition because the Bureau's withdrawal of approval of the rate increases was not effectuated. Therefore, it is no longer necessary for the Commission to review the decision of the Bureau to withdraw approval of the rate increases.

THE COMMISSION is of the opinion that Penn Treaty should be allowed to withdraw its Petition.

Accordingly, IT IS ORDERED THAT:

- (1) Penn Treaty Network America Insurance Company's motion to withdraw its Petition is hereby GRANTED; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00005
MARCH 7, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
EMILY ELEANORE JOHNSON,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia as a surplus lines broker, in a certain instance, violated § 38.2-4806 D of the Code of Virginia by failing to file timely with the Commission the quarterly report summarizing the business transacted by Defendant for the third quarter of 2002.

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 to suspend or revoke Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violation.

Defendant has been notified of her right to a hearing before the Commission in this matter by certified letters dated December 9, 2002, January 8, 2003, and February 5, 2003, respectively, and mailed to Defendant's address shown in the records of the Bureau of Insurance.

Defendant, having been advised in the aforesaid 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 Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent and a surplus lines broker.

THE COMMISSION is of the opinion and finds that Defendant has violated § 38.2-4806 D of the Code of Virginia by failing to file timely with the Commission the quarterly report summarizing the business transacted by Defendant for the third quarter of 2002.

IT IS THEREFORE ORDERED THAT:

- (1) The licenses of Defendant to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia be, and they are hereby, REVOKED;
- (2) All appointments issued under said licenses be, and they are hereby, VOID;
- (3) Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or a surplus lines broker;
- (4) Defendant shall not apply to the Commission to be licensed as an insurance agent or a surplus lines broker in the Commonwealth of Virginia prior to five (5) 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 Defendant holds an appointment to act as an insurance agent or a surplus lines broker in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00009
JANUARY 30, 2003**

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

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-305, 38.2-317 A, 38.2-510 A 1, 38.2-510 A 10, 38.2-512 A, 38.2-604, 38.2-604.1, 38.2-610, 38.2-1318, 38.2-1906 D, 38.2-2014, 38.2-2113, 38.2-2114, 38.2-2118, 38.2-2208, 38.2-2210, 38.2-2212, 38.2-2220, and 38.2-2223 of the Code of Virginia, as well as 14 VAC 5-400-30, 14 VAC 5-400-40 A, 14 VAC 5-400-70 D, and 14 VAC 5-400-80 D.

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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of nineteen thousand two hundred dollars (\$19,200), 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 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of §§ 38.2-305, 38.2-317 A, 38.2-510 A 1, 38.2-510 A 10, 38.2-512 A, 38.2-604, 38.2-604.1, 38.2-610, 38.2-1318, 38.2-1906 D, 38.2-2014, 38.2-2113, 38.2-2114, 38.2-2118, 38.2-2208, 38.2-2210, 38.2-2212, 38.2-2220, or 38.2-2223 of the Code of Virginia, or 14 VAC 5-400-30, 14 VAC 5-400-40 A, 14 VAC 5-400-70 D, or 14 VAC 5-400-80 D; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00010
JANUARY 30, 2003**

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

ORDER TO TAKE NOTICE

Sections 38.2-1038 and 38.2-1040 of the Code of Virginia provide, *inter alia*, that the 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.

Acceptance Insurance Company, a foreign corporation domiciled in the state of Nebraska ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

By an Order of Supervision of the State of Nebraska Department of Insurance entered December 20, 2002, Cause No. C-1358, Defendant was placed under supervision, effective December 20, 2002, and the Chief Examiner of the Nebraska Department of Insurance was appointed Supervisor of Defendant and directed to oversee the operations of Defendant.

The Order of Supervision states that Defendant's surplus declined from \$73,695,587 for the year ending December 31, 2001, to \$39,790,284 as of September 30, 2002, a reduction in policyholder surplus in excess of fifty percent (50%) in a nine-month period, constituting a financial condition which renders the continuation of Defendant's business hazardous to the public and its insureds.

The Bureau of Insurance has recommended that, based on the foregoing, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be suspended.

THEREFORE, IT IS ORDERED that Defendant TAKE NOTICE that the Commission shall enter an order subsequent to February 10, 2003, suspending the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before February 10, 2003, Defendant files with the Clerk of the Commission, Document Control Center, P. O. Box 2118, Richmond, Virginia 23218, a request for hearing before the Commission with respect to the proposed suspension of Defendant's license.

**CASE NO. INS-2003-00010
FEBRUARY 14, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

ACCEPTANCE INSURANCE COMPANY,
Defendant

ORDER SUSPENDING LICENSE

In an order entered herein January 30, 2003, Defendant was ordered to take notice that the Commission would enter an order subsequent to February 10, 2003, suspending the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before February 10, 2003, Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed suspension of Defendant's license.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed suspension of Defendant's license.

THEREFORE, IT IS ORDERED THAT:

- (1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be, and it is hereby, **SUSPENDED**;
- (2) 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 Defendant's agents to act on behalf of Defendant in the Commonwealth of Virginia be, and they are hereby, **SUSPENDED**;
- (4) Defendant's agents shall transact no new insurance business on behalf of 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 Defendant's agents appointed to act on behalf of 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 Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2003-00012
FEBRUARY 14, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

NATIONWIDE MUTUAL INSURANCE COMPANY,
NATIONWIDE MUTUAL FIRE INSURANCE COMPANY,
NATIONWIDE GENERAL INSURANCE COMPANY,
NATIONWIDE ASSURANCE COMPANY,
Defendants

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it appears that Defendants, each of which is duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, violated the Code of Virginia and the Virginia Administrative Code as follows: Nationwide Mutual Insurance Company violated §§ 38.2-305, 38.2-604, 38.2-1822, 38.2-1906 D, 38.2-2202, 38.2-2206 A, 38.2-2208, 38.2-2210, and 38.2-2220 of the Code of Virginia, as well as 14 VAC 5-400-30 and 14 VAC 5-400-40 A of the Virginia Administrative Code; Nationwide Mutual Fire Insurance Company violated §§ 38.2-304, 38.2-510 A 1, 38.2-604, 38.2-1318, 38.2-1822, 38.2-1833, 38.2-1906 D, 38.2-2014, 38.2-2113, 38.2-2114, 38.2-2120, 38.2-2124, 38.2-2202, 38.2-2208, 38.2-2210, and 38.2-2220 of the Code of Virginia, as well as 14 VAC 5-400-30 and 14 VAC 5-400-70 D of the Virginia Administrative Code; Nationwide General Insurance Company violated §§ 38.2-305, 38.2-604, 38.2-610, 38.2-1318, 38.2-1833, 38.2-1906 D, 38.2-2014, 38.2-2202, 38.2-2208, 38.2-2210, and 38.2-2220 of the Code of Virginia, as well as 14 VAC 5-400-30 and 14 VAC 5-400-70 D of the Virginia Administrative Code; and Nationwide Assurance Company violated §§ 38.2-305, 38.2-1906 D, 38.2-2014, 38.2-2202, 38.2-2208, 38.2-2210, 38.2-2212, 38.2-2220 and 38.2-2230 of the Code of Virginia, as well as 14 VAC 5-400-30, 14 VAC 5-400-40 A and 14 VAC 5-400-70 D of the Virginia Administrative Code.

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 Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that Defendants have committed the aforesaid alleged violations.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Defendants have been advised of their right to a hearing in this matter, whereupon Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein Defendants collectively have tendered to the Commonwealth of Virginia the sum of sixty-four thousand eighty dollars (\$64,080), waived their 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 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 Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that Defendants' offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendants in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendants cease and desist from any conduct which constitutes a violation of the Code of Virginia or the Virginia Administrative Code as follows: Nationwide Mutual Insurance Company cease and desist from any conduct which constitutes a violation of §§ 38.2-305, 38.2-604, 38.2-1822, 38.2-1906 D, 38.2-2202, 38.2-2206 A, 38.2-2208, 38.2-2210, or 38.2-2220 of the Code of Virginia, or 14 VAC 5-400-30 or 14 VAC 5-400-40 A of the Virginia Administrative Code; Nationwide Mutual Fire Insurance Company cease and desist from any conduct which constitutes a violation of §§ 38.2-304, 38.2-510 A 1, 38.2-604, 38.2-1318, 38.2-1822, 38.2-1833, 38.2-1906 D, 38.2-2014, 38.2-2113, 38.2-2114, 38.2-2120, 38.2-2124, 38.2-2202, 38.2-2208, 38.2-2210, or 38.2-2220 of the Code of Virginia, or 14 VAC 5-400-30 or 14 VAC 5-400-70 D of the Virginia Administrative Code; Nationwide General Insurance Company cease and desist from any conduct which constitutes a violation of §§ 38.2-305, 38.2-604, 38.2-610, 38.2-1318, 38.2-1833, 38.2-1906 D, 38.2-2014, 38.2-2202, 38.2-2208, 38.2-2210, or 38.2-2220 of the Code of Virginia, or 14 VAC 5-400-30 or 14 VAC 5-400-70 D of the Virginia Administrative Code; and Nationwide Assurance Company cease and desist from any conduct which constitutes a violation of §§ 38.2-305, 38.2-1906 D, 38.2-2014, 38.2-2202, 38.2-2208, 38.2-2210, 38.2-2212, 38.2-2220 or 38.2-2230 of the Code of Virginia, or 14 VAC 5-400-30, 14 VAC 5-400-40 A or 14 VAC 5-400-70 D of the Virginia Administrative Code; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00016
JANUARY 24, 2003**

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

v.

HARRINGTON SETTLEMENT COMPANY, LLC,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance, it appears that Defendant, duly licensed by the 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 to suspend or revoke Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violation.

Defendant has been notified of Defendant's right to a hearing before the Commission in this matter by certified letter dated December 4, 2002, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

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 Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of 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 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 Defendant to transact the business of insurance as an agent in the Commonwealth of Virginia be, and they are hereby, REVOKED;
- (2) All appointments issued under said licenses be, and they are hereby, VOID;
- (3) Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

(4) 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 cause a copy of this Order to be sent to every insurance company for which 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-2003-00016
FEBRUARY 12, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
HARRINGTON SETTLEMENT COMPANY, LLC,
Defendant

VACATING ORDER

GOOD CAUSE having been shown, the Order Revoking License entered herein January 24, 2003, is hereby vacated.

**CASE NO. INS-2003-00021
FEBRUARY 3, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
KEVIN J. OWENS,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-1804, 38.2-1809, 38.2-1813, and 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 to suspend or revoke Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been notified of his right to a hearing before the Commission in this matter by certified letters dated December 12, 2002, and January 6, 2003, respectively, and mailed to Defendant's address shown in the records of the Bureau of Insurance.

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 Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of 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 Defendant has violated §§ 38.2-1804, 38.2-1809, 38.2-1813, and 38.2-1822 of the Code of Virginia.

IT IS THEREFORE ORDERED THAT:

(1) The licenses of Defendant to transact the business of insurance as an agent in the Commonwealth of Virginia be, and they are hereby, REVOKED;

(2) All appointments issued under said licenses be, and they are hereby, VOID;

(3) Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

(4) 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;

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(5) The Bureau of Insurance shall cause a copy of this Order to be sent to every insurance company for which 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-2003-00021
FEBRUARY 12, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
KEVIN J. OWENS,
Defendant

VACATING ORDER

GOOD CAUSE having been shown, the Order Revoking License entered herein February 3, 2003, is hereby vacated.

**CASE NO. INS-2003-00022
JUNE 4, 2003**

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 Code of Virginia §§ 38.2-3725, 38.2-3726, 38.2-3727 and 38.2-3730

ORDER TO TAKE NOTICE

TAKE NOTICE, pursuant to Code of Virginia § 38.2-3730.B., that the State Corporation Commission ("Commission") shall conduct a hearing on July 16, 2003 at 10:00 a.m. in its courtroom, Tyler Building, Second Floor, 1300 East Main Street, Richmond, Virginia 23219, for the purpose of receiving comments from interested parties with respect to proposed adjusted prima facie rates for credit life insurance and credit accident and sickness insurance to be effective for the triennium commencing January 1, 2004. The adjusted prima facie rates have been calculated and proposed on behalf of and by the Bureau of Insurance in accordance with the provisions of Chapter 37.1 of Title 38.2 of the Code of Virginia (§§ 38.2-3717 et seq.) and are attached hereto, designated as "Attachment 1" and made a part hereof.

AN ATTESTED COPY shall be sent by the Clerk of the Commission to: Gerald A. Milsky, Deputy Commissioner, Bureau of Insurance, State Corporation Commission who shall cause a copy hereof to be sent to every insurance company licensed by the Bureau of Insurance to transact the business of credit life and credit accident and sickness insurance in the Commonwealth of Virginia and who shall file in the record of this proceeding an affidavit evidencing notice compliance with this Order.

On or before June 10, 2003, the Commission's Division of Information Resources shall make available this Order and the attached adjusted rates on the Commission's website, <http://www.state.va.us/scc.caseinfo.htm>.

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

**CASE NO. INS-2003-00022
JULY 18, 2003**

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 Code of Virginia §§ 38.2-3725, 38.2-3726, 38.2-3727 and 38.2-3730

**ORDER ADOPTING ADJUSTED PRIMA FACIE RATES
FOR THE TRIENNIUM COMMENCING JANUARY 1, 2004**

PURSUANT to an order entered herein dated June 4, 2003, 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 Commission conducted a hearing on July 16, 2003, for the purpose of considering any public or other comment on the adoption of adjusted prima facie rates for credit life insurance and credit accident and sickness insurance proposed by the Bureau pursuant to Chapter 37.1 of Title 38.2 of the Code of Virginia and the Credit Insurance Experience Exhibits

filed by licensed insurers for the reporting years 2000, 2001, and 2002. Represented by its counsel, the Bureau, by its witness, appeared before the Commission in support of the proposed adjusted prima facie rates. One public witness appeared in her capacity as representing a group of insurance companies licensed in Virginia to write credit life and credit accident and sickness insurance, and provided testimony to the Commission on such matters.

AND THE COMMISSION, having considered the record herein, the recommendations of the Bureau, and the law applicable to these issues, is of the opinion, finds and ORDERS that 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 of Virginia and shall be effective for the triennium commencing January 1, 2004.

On or before July 23, 2003, the Commission's Division of Information Resources shall make available this Order and the attached adjusted rates on the Commission's website, <http://www.state.va.us/scc/caseinfo.htm>.

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

**CASE NO. INS-2003-00024
FEBRUARY 11, 2003**

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

Applicants,

v.

RECIPROCAL OF AMERICA, In Receivership,
THE RECIPROCAL GROUP, In Receivership
Respondents

ORDER IN AID OF RECEIVERSHIP

ON A FORMER DAY CAME the Deputy Receiver 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 Reciprocal of America ("ROA") and The Reciprocal Group ("TRG") (collectively referred to as the "Companies"). Specifically, the Deputy Receiver seeks an Order from the Commission that adopts supplemental rules of practice and procedure applicable to the Receivership Proceedings.

AND THE COMMISSION, having considered the Application, and the argument and evidence submitted by counsel in support thereof, finds that the Deputy Receiver's Application is, in all things, well taken and that it should be, and it is hereby, granted. Accordingly, the Commission now finds as follows:

1. On January 29, 2003, the Circuit Court for the City of Richmond, issued its Final Order Appointing Receiver for Rehabilitation or Liquidation (the "Receivership Order"), in a case styled Commonwealth of Virginia, ex rel. State Corporation Commission v. Reciprocal of America, The Reciprocal Group, and Jody M. Wagner, Treasurer of Virginia, Cause No. CH03-135, and appointed Alfred W. Gross, Commissioner of Insurance, as Deputy Receiver of the Companies, and authorized and directed him to proceed with the rehabilitation or liquidation of the Companies and to marshal the assets of the receivership estate by, among other things, the pursuit of claims and causes of action held by the estate by taking whatever steps are necessary or advisable, for the protection of the Companies' policyholders, creditors, members, subscribers and the public. In order to carry out the responsibilities imposed upon him by the Receivership Order, the Deputy Receiver should be given the ability to conduct investigations and discovery with respect to matters related to the receivership, and to investigate and approve or defend claims made against the receivership estate. Accordingly, supplementation of the Commission Rules is required in the receivership proceedings to allow the Deputy Receiver to carry out his responsibilities.

THEREFORE, IT IS ORDERED, upon good cause shown, that:

A. The Rules of Practice and Procedure of the State Corporation Commission (the "Commission 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 fully set forth below.

Accordingly, in the receivership proceedings, Case No. INS-2003-00024 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.

All questions as to the appropriateness of the Supplemental Rules and all conflicts between the Commission Rules and the Rules of the Supreme Court of Virginia shall be resolved by the Commission. With greater particularity, the Commission Rules are hereby supplemented herein as follows:

**Supplemental Rules of Practice and Procedure
in Aid of Receivership Proceedings
Table of Contents**

1. Scope

- 1:1 Application of Supplemental Rules
- 1:2 Application of Certain Rules of Supreme Court of Virginia

- 2. Pretrial Procedures, Depositions and Production
- 3. Investigative Subpoena Power; Examination of Witnesses Under Oath in Receivership Proceedings
 - 3:1 Investigative Depositions and Production of Documents
 - 3:2 Protection From Investigative Depositions and Production of Documents
 - 3:3 Sanctions for Disobedience
 - 3:4 Application To Witnesses Outside of Virginia

- 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 Reciprocal of America and The Reciprocal Group, In Receivership (collectively "the Companies"), 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 Supreme Court of Virginia ("Virginia Rules") as may be 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 appropriate language modifications 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 appropriate language modifications in accordance with Supplemental Rule 1:2, Virginia Rules 4:0, 4:1, 4:2, 4:3, 4:4, 4:5, 4:6, 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 the Companies and may, upon good cause shown, compel such attendance and production of records at the Deputy Receiver's offices in Richmond, Virginia, at such other place as the Deputy Receiver may designate in Richmond, Virginia, as well as adjacent cities or counties 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 may be punished as contempt by the Commission.

3:4 Application To Witnesses Outside of 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.

B. 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-2003-00024
JUNE 20, 2003**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION,
Applicant
v.
RECIPROCAL OF AMERICA
and
THE RECIPROCAL GROUP,
Respondents

**ORDER OF LIQUIDATION WITH A FINDING OF INSOLVENCY AND
DIRECTING THE CANCELLATION OF DIRECT INSURANCE POLICIES**

ON A FORMER DATE CAME Alfred W. Gross, as Deputy Receiver (the "Deputy Receiver") of Reciprocal of America ("ROA") and The Reciprocal Group ("TRG") (collectively, the "Companies"), and filed with the Clerk of the Commission his Application for Orders Setting Hearing on Liquidation of Reciprocal of America and the Reciprocal Group, Establishing Response Dates, Ordering Liquidation, Approving Claims Bar Dates, and Related Matters (the "Application"), seeking, *inter alia*, that the Commission enter an order declaring the Companies to be insolvent, ordering that the Companies be liquidated, permitting the payment of certain workers' compensation benefits, and authorizing the cancellation of ROA's direct insurance policies.

A hearing was held before the Commission on June 19, 2003, with respect to such matters, at which appearances were made by counsel on behalf of the Deputy Receiver; John Knox Walkup, Special Deputy Receiver for Doctors Insurance Reciprocal, RRG; Robert S. Brandt, Special Deputy Receiver for American National Lawyers Insurance Reciprocal, RRG; Michael D. Pearigen, Special Deputy Receiver for The Reciprocal Alliance, RRG, (together the "SDRs"); Clark Regional Medical Center, T.J. Samson Community Hospital, Pineville Community Hospital, Highlands Regional Medical Center, Twin Lakes Regional Medical Center, Hardin Memorial Hospital, Gateway Regional Medical Center, Regional Medical Center/Trover Clinic Foundation, Murray-Calloway County Hospital, Owensboro Mercy Health System, Harrison Memorial Hospital, River Valley Behavioral Health Hospital, Muhlenberg Community Hospital, and Lincoln Trail Hospital (together the "Kentucky Claimants"); and Coastal Region Board of Directors ("Coastal").

AND THE COMMISSION having considered the Application, and the evidence and argument of counsel, makes the following findings:

1. Reciprocal of America is insolvent, as that term is defined in Va. Code Ann. § 38.2-1501 (Michie 2001).
2. The Reciprocal Group is insolvent, as that term is defined in Va. Code Ann. § 38.2-1501 (Michie 2001).
3. Further efforts to rehabilitate ROA and TRG would be useless, and the Companies should be liquidated as contemplated in Va. Code Ann. § 38.2-1519 (Michie 2001).
4. The direct insurance policies issued by ROA should be cancelled on or before the date on which claims arising thereunder cease to be covered by the applicable insurance guaranty associations. Notice of such cancellation should be provided the affected insureds as soon as practicably possible.
5. The Deputy Receiver should continue making workers' compensation Disability Payments, as more fully described in the Application, until such time as such payments are assumed by the applicable insurance guaranty associations. Such payments are generally essential to the daily sustenance of the recipients in this Commonwealth and in other states. The Deputy Receiver should continue to pursue reimbursement agreements with the associations, with respect to any such payments made by the Deputy Receiver for which a guaranty association is liable.
6. The rights and liabilities of creditors, policyholders, insureds, stockholders, members, and all other persons interested in the property and assets of the Companies will be fixed as of the date of the entry of this Order of Liquidation by operation of Va. Code Ann. § 38.2-1512 (Michie 2001). The determination of the classification to be accorded a particular claim is not foreclosed by operation of the said § 38.2-1512.

THE COMMISSION further finds that, as to the matters considered at such hearing, the Application should be granted.

THEREFORE, IT IS ORDERED THAT:

1. TRG and ROA are hereby found and declared to be insolvent.
2. The Deputy Receiver be, and he is hereby, directed to proceed with the liquidation of ROA and TRG in accordance with the provisions of Title 38.2, Chapter 15, of the Virginia Code, other applicable Virginia law, and the orders of the Commission, and all subject to the further orders of the Commission.
3. Pending further Orders of the Commission, the Deputy Receiver be, and he is hereby, authorized to continue making Disability Payments arising under ROA workers' compensation insurance policies as described hereinabove until such time as such Disability Payments can be made by the guaranty associations.

4. The Deputy Receiver be, and he is hereby, authorized to cancel all direct insurance policies issued by ROA, such cancellation to be effective on or before the last date for which claims arising thereunder would be covered by the applicable insurance guaranty association.
5. The Deputy Receiver shall provide notice of such cancellation to affected policyholders by publication and mailing as described in the Application filed by the Deputy Receiver of ROA and TRG on April 30, 2003.
6. This matter is continued.

**CASE NO. INS-2003-00024
OCTOBER 28, 2003**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION,
Applicant,
v.
RECIPROCAL OF AMERICA
and
THE RECIPROCAL GROUP,
Respondents

**ORDER SETTING FINAL BAR DATE AND GRANTING DEPUTY RECEIVER
CONTINUING AUTHORITY TO LIQUIDATE COMPANIES**

ON A FORMER DAY CAME Alfred W. Gross, as Deputy Receiver (the "Deputy Receiver") of Reciprocal of America ("ROA") and The Reciprocal Group ("TRG") (collectively, the "Companies"), and filed with the Clerk of the Commission an Application for Orders Setting Hearing On Liquidation of Reciprocal of America and The Reciprocal Group, Establishing Response Dates, Ordering Liquidation, Approving Claims Bar Dates, and Related Matters (the "Application"), seeking, *inter alia*, that the Commission enter an order granting the Deputy Receiver the authority to enact a proposed plan of liquidation, which focused primarily on marshaling the Companies' assets and allocating and distributing those assets among the Companies' creditors in accordance with applicable priorities, and the subsequent wind-down and liquidation of their affairs.

A hearing was held before the Commission on September 17, 2003, with respect to such matters, at which appearances were made by counsel on behalf of the Deputy Receiver; John Knox Walkup, Special Deputy Receiver for Doctors Insurance Reciprocal, RRG; Robert S. Brandt, Special Deputy Receiver for American National Lawyers Insurance Reciprocal, RRG; Michael D. Pearigen, Special Deputy Receiver for The Reciprocal Alliance, RRG (together the "SDRs"); Clark Regional Medical Center, T.J. Samson Community Hospital, Pineville Community Hospital, Highlands Regional Medical Center, Twin Lakes Regional Medical Center, Hardin Memorial Hospital, Gateway Regional Medical Center, Regional Medical Center/ Trover Clinic Foundation, Murray-Calloway County Hospital, Owensboro Mercy Health System, Harrison Memorial Hospital, River Valley Behavioral Health Hospital, Muhlenberg Community Hospital, and Lincoln Trail Hospital (together the "Kentucky Claimants"); Coastal Region Board of Directors ("Coastal"); PhyAmerica Physician Group, Inc.; Children's Hospital of Alabama; Indiana Insurance Guaranty Association, Kansas Insurance Guaranty Association, Mississippi Insurance Guaranty Association, Tennessee Insurance Guaranty Association, Texas Property and Casualty Insurance Guaranty Association, Virginia Property and Casualty Insurance Guaranty Association, and the Virginia Workers' Compensation Commission.

AND THE COMMISSION, having considered the Application, and the argument and evidence submitted by counsel in support thereof, finds that the relief sought by the Deputy Receiver should be granted as herein set forth.

Accordingly, IT IS ORDERED THAT:

(1) The Final Bar Date is hereby set for September 30, 2004. Claims subject to, and not received by, the Deputy Receiver on or before the Final Bar Date shall not be paid until all approved timely filed claims and all approved late claims of higher priority are paid in full. Claims must be received at the following address on or before the Final Bar Date:

Proof of Claim Department
The Reciprocal Group/Reciprocal of America
4200 Innslake Drive
Glen Allen, Virginia 23060

(2) There are only two types of claims not subject to the Final Bar Date:

- a. Claims arising under direct policies of insurance issued by ROA that have already been properly submitted to ROA or the Deputy Receiver as of the date of this order (the "Pending Direct Claims"), provided, however, that all general creditor claims (including reinsurance claims) must be submitted on or before the Final Bar Date; and
- b. Proper administrative expense claims against TRG or ROA (*e.g.*, claims for payment of services rendered, or goods supplied, to the Companies at the request of the Deputy Receiver after January 29, 2003) (the "Administrative Claims").

(3) The Commission will set a Claims Liquidation Date upon motion of the Deputy Receiver a reasonable time prior to the closure of the receivership. Notice of such motion shall be provided to all parties of record and all interested parties and a hearing thereon will be set by the Commission if so requested. Any and all claims shall have been submitted properly and rendered non-contingent and liquidated by the Claims Liquidation Date, or the claims will be permanently barred from sharing in the assets of the estate.

(4) The Deputy Receiver shall provide written notice of the Final Bar Date (and any extension thereof) and proof of claim instructions, by first-class United States mail to all known claimants, creditors, and policyholders at their last known address disclosed in the books and records of the Companies, in a form reasonably calculated to provide interested persons with notice of the Final Bar Date, the consequences of failing to timely file claims against the Companies, and an explanation regarding the Claims Liquidation Date, except the Deputy Receiver is not required to mail a notice if he reasonably believes that the last known address is no longer valid.

(5) The Deputy Receiver shall publish notice of the Final Bar Date (and any extension thereof) and proof of claim instructions for one day each week for two consecutive weeks in the Richmond Times-Dispatch, The Wall Street Journal, and USA Today. The publication notice must be in a form reasonably calculated to provide sufficient notice to any claimant, creditor, or policyholder who does not receive direct notice by first-class United States mail of the Final Bar Date and proof of claim instructions.

(6) The Commission further orders that the Deputy Receiver shall have the authority to continue the liquidation of the Companies, including the power to:

- a. Continue managing the affairs of the Companies until such time as they are liquidated and dissolved;
- b. Pay the costs and expenses of administration, pursuant to Va. Code Ann. §§ 38.2-1509(B)(1) and 38.2-1510;
- c. Adjudicate and pay the claims of all secured creditors with a perfected security interest not voidable under Va. Code Ann. § 38.2-1513 to the extent of the value of their security;
- d. Following an Order of the Commission so authorizing, adjudicate and pay the claims of the insurance guaranty associations for "covered claims" as defined in Va. Code Ann. § 38.2-1603 and other similar provisions under other applicable statutes, and the claims of other policyholders arising out of ROA insurance contracts, apportioned without preference;
- e. Pay taxes owed to the United States and other debts owed to any person, including the United States, which by the laws of the United States are entitled to priority;
- f. Adjudicate and pay claims for wages entitled to priority as provided in Va. Code Ann. § 38.2-1514;
- g. Maintain a reasonable reserve for claims, costs, expenses, unknown claims, and contingencies, over and above any existing reserves for direct insurance obligations, until final liquidation of ROA and TRG;
- h. Adjudicate and pay, on a *pro rata* basis to the extent assets are available, claims of all other creditors;
- i. In the event that the Deputy Receiver is unable to find any particular person owed funds by the Companies, deliver such unclaimed funds to the custody of the State of that person's last known address, as shown by the Companies' books and records, pursuant to the procedures established by that State's unclaimed property laws;
- j. Create a trust to hold any unclaimed funds if the applicable State unclaimed property laws did not permit him to deliver any such unclaimed funds to the relevant States prior to the date that ROA and TRG would cease to exist and the receivership would terminate;
- k. Cause a third party or contractor of the Companies to assume remaining obligations and contingencies of ROA or TRG in exchange for reasonable consideration, and obtain an independent opinion from an actuarial or accounting firm regarding the reasonableness of consideration paid for the assumption of ROA or TRG obligations or contingencies; and
- l. Take all steps necessary and appropriate to liquidate and dissolve ROA and TRG as soon as reasonably practicable.

(7) This matter is continued.

**CASE NO. INS-2003-00024
NOVEMBER 12, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION,

Applicant,

v.

RECIPROCAL OF AMERICA and THE RECIPROCAL GROUP,
Respondents

ORDER

On July 11, 2003, the Deputy Receiver of Reciprocal of America¹ filed an Application for Order Authorizing the Continuation of Workers' Compensation Disability Payments by Reciprocal of America and The Reciprocal Group for Workers' Compensation Claims Denied Coverage by State Guaranty Associations ("Application"). Therein, the Deputy Receiver of ROA seeks a Commission Order authorizing him to continue payment of medical

¹ Reciprocal of America and The Reciprocal Group are collectively referred to herein as "ROA."

and recurring partial or total disability payments for workers' compensation claims that were assumed by ROA through assumption reinsurance, or similar transactions, and denied or likely to be denied coverage by the applicable state guaranty associations.²

The Deputy Receiver of ROA specifically asserts that the guaranty associations of the applicable states have refused, or likely will refuse, to make certain workers' compensation insurance policy payments for workers' compensation claims that ROA assumed from Self-Insured Trusts ("SITs") in Alabama, Arkansas, Kentucky, and Missouri and Group Self-Insurance Associations ("GSIA's") in Mississippi, North Carolina, Tennessee and Virginia (collectively referred to as the "Assumed Businesses") as a result of assumption reinsurance or similar transactions ("Assumed Claims").³ The Deputy Receiver of ROA notes that the Assumed Claims will likely not be paid, because the Assumed Businesses were not member insurers and/or the policies under which the claims arose were not ROA policies. These payments total approximately \$125,139 weekly.

The Deputy Receiver of ROA further asserts that the insureds of the Assumed Businesses are direct insureds of ROA and, due to the necessity for continued payment by the recipients thereof, requests authorization from the Commission to continue making such payments.⁴ The Deputy Receiver of ROA classifies the Agreements as "assumption reinsurance."⁵ The Deputy Receiver of ROA asserts that the livelihood of many injured workers is dependent upon continued receipt of the payments and that a discontinuation of such payments would cause the recipients to suffer a substantial hardship.⁶ The Deputy Receiver accordingly seeks an Order from the Commission authorizing the continued payment of workers' compensation insurance policy claims assumed by ROA through assumption reinsurance or similar transactions and denied or likely to be denied coverage by the applicable state guaranty associations.⁷

On July 25, 2003, the SDRs⁸ of the Tennessee Companies filed Objections to ROA/TRG Deputy Receiver Continuing to Make Certain Workers' Compensation Payments that Could be Paid from Alternative "Safety Net" Sources ("Objections"). The SDRs of the Tennessee Companies contend that the case for payment of the Assumed Claims is weak here, and it is unfair to create a priority for these claimants, because such claimants may be able to turn to uninsured employers funds (e.g., the Virginia Uninsured Employers Fund), self-insured guaranty funds, bonds or other surety posted by uninsured employers, and recovery from the employer against which the workers' compensation payment was awarded.⁹ The SDRs of the Tennessee Companies state that they are not opposed generally to the payment of "hardship" workers' compensation claims that truly are "essential to the daily sustenance of the recipients." They challenge the payment of non-"hardship" medical payments to health care professionals and institutions, such as hospitals, on the grounds that these payments represent "an unfair priority payment to persons or entities who are, in general, indistinguishable from the [Tennessee Companies'] insureds and third-party claimants."¹⁰

The SDRs of the Tennessee Companies request that (i) ROA/TRG be required to make good faith efforts to obtain coverage by the applicable state guaranty association(s) for, and to resist the denial by such association(s) of, the workers' compensation claims in question, including legal action where necessary, and to report its efforts and the results of those efforts to the Commission and to any other party that has entered an appearance in this matter; (ii) the Commission hold a hearing at which ROA/TRG would bear the burden of proving that the SITs and GSIA's in question were in fact "direct insureds" of ROA/TRG; (iii) if the Commission determines that the SITs and GSIA's in question were in fact ROA/TRG "direct insureds," ROA/TRG be required to prove which of the claims in question represent "hardship" claims that are truly "disability" claims "essential to the daily sustenance of the recipients" and that ROA/TRG be permitted to continue to pay only such "hardship" claims; (iv) sufficient time be given before the requested hearing to conduct reasonable discovery on the "direct insured" and "hardship" issues; (v) to the extent recipients of the workers' compensation payments in question have access to "safety net" sources of payment, such as (1) the Virginia Uninsured Employers Fund or to a similar fund or mechanism in another state, (2) a bond or other surety posted by a self-insured employer, or (3) recovery from the employer against which the workers' compensation payments were awarded, a stay be issued prohibiting ROA/TRG from continuing to pay the workers' compensation claims in question until a final decision is made on the merits of the "direct insured" and "hardship" issues; (vi) the ROA/TRG Deputy Receiver be ordered to determine as soon as possible what such "safety net" payments exist in each affected state and to make arrangements for the workers' compensation claimants in question to seek immediate recovery in each state from that safety net, including the notification of those claimants of the availability of such payments; and (vii) the ROA/TRG Deputy Receiver be ordered to respond to the objections raised by the SDRs of the Tennessee Companies within 10 business days detailing ROA/TRG's efforts and progress (1) in securing guaranty fund payments for the former SIT and GSIA policyholders in question, (2) in obtaining alternate funding from "safety net" sources in applicable guaranty fund states, and (3) in obtaining reimbursement agreements with the applicable guaranty funds.¹¹

² Application at 1.

³ Such Assumed Claims and assets of the Assumed Businesses were purportedly assumed by ROA through merger agreements or different forms of assumption agreements ("Agreements"). Application at 4.

⁴ Id.

⁵ Id. at 6-7.

⁶ Id. at 9. The Deputy Receiver of ROA states that payments to approximately 450 injured workers are at stake. Id. at 10.

⁷ Id.

⁸ The Special Deputy Receivers of Doctors Insurance Reciprocal ("DIR"), Risk Retention Group ("RRG"), American National Lawyers Insurance Reciprocal ("ANLIR"), RRG, and The Reciprocal Alliance ("TRA"), RRG are referred to herein as the "SDRs." DIR, ANLIR, and TRA are referred to herein collectively as the "Tennessee Companies."

⁹ Objections at 3.

¹⁰ Id. at 8.

¹¹ Id. at 11-12, 24-25.

The SDRs of the Tennessee Companies request that the Commission stay the continuation of workers' compensation payments until the "direct insured" and "hardship" issues are resolved on their merits.¹² The SDRs of the Tennessee Companies also argue that the Deputy Receiver of ROA has failed to support the Application legally and factually.¹³

On August 8, 2003, the Deputy Receiver of ROA filed his Response to the Tennessee Receivers' Objections to ROA/TRG Deputy Receiver Continuing to Make Certain Worker's Compensation Payments that Could be Paid from Alternative "Safety Net" Sources ("Response to Objections"). Therein, the Deputy Receiver claims that he is pursuing systematically different resources (aside from receivership assets) for payment of the workers' compensation insurance policy benefits, including the so-called "Safety Net," but asserts that to prevent substantial hardship to the recipients, continuation of these payments by the Deputy Receiver of ROA is necessary. He claims again that the policyholders of the SITs and the GSIA's are "direct insureds" and a direct responsibility of ROA, and he submits that the method of case-by-case segregation suggested by the SDRs of the Tennessee Companies among the recipients of those deemed to constitute true "hardship" claims would be highly subjective and impermissibly discriminate among similarly situated creditors.¹⁴ The Deputy Receiver of ROA further outlines his ongoing efforts to seek reimbursement from other sources for these claims and asserts that there are potential problems with some of the proposed "Safety Net" sources.¹⁵ The Deputy Receiver of ROA continues to maintain that claimants of the SITs and the GSIA's are "direct insureds" of ROA, that such payments constitute "hardship" payments, and that the Deputy Receiver of ROA proposes continued payments as an "interim measure" until reimbursement or payment from other sources can be secured.¹⁶ The Deputy Receiver of ROA concludes by seeking a Commission Order that authorizes him to continue workers' compensation insurance policy benefits for claims assumed by ROA through assumption reinsurance, or similar transactions, and denied or likely to be denied coverage by the applicable state guaranty associations.¹⁷

On August 14, 2003, the Commission entered an Order Scheduling Hearing on Application and on August 18, 2003, the Commission entered an Order Clarifying Previous Order ("Orders"). In the Orders, the Commission scheduled a hearing for September 17, 2003, to determine whether the insureds of the Assumed Businesses are direct insureds of ROA and therefore a direct responsibility of ROA or, if not, whether such insureds' claims should be treated as "hardship" claims. The Commission further ordered that the Deputy Receiver of ROA is not directed or authorized to make any workers' compensation insurance policy payments to claimants of the SITs or GSIA's until further Order of the Commission.

On August 14, 2003, the Virginia Property and Casualty Insurance Guaranty Association ("VPCIGA") filed the Objection of Virginia Property and Casualty Insurance Guaranty Association to Payment by Reciprocal of America and The Reciprocal Group of Workers' Compensation Claims ("VPCIGA Objection"). Therein, the VPCIGA avers that § 38.2-1509 of the Code of Virginia¹⁸ addresses how the assets of the ROA estate may be distributed and that the Commission has no authority to deviate therefrom.¹⁹ The VPCIGA also asserts that if workers' compensation claims under ROA insurance policies are paid now, it is likely that the claimants will receive a greater percentage of their claims than will the guaranty associations and other claimants with similar priorities.²⁰ Hence, the VPCIGA requests that the Commission not permit: (i) any payments to be made on any workers' compensation claim unless it is a claim under a policy issued by ROA; (ii) any payment of any claim under any policy of ROA other than payments under § 38.2-1509 A until it can be determined that such payments can be made without creating an improper preference; (iii) any payment on any workers' compensation claim until the Deputy Receiver of ROA provides the Commission and other parties additional information to support the Application; and (iv) any payment to any provider of medical services until it can be determined that such payments can be made without creating an improper preference.²¹

On August 18, 2003, the Indiana Insurance Guaranty Association, the Kansas Insurance Guaranty Association, the Mississippi Insurance Guaranty Association, the Tennessee Insurance Guaranty Association, and the Texas Property and Casualty Insurance Guaranty Association ("Guaranty Associations") filed a Notice of Participation of Certain Guaranty Funds ("Notice of Participation") and their Objection of Certain Guaranty Funds to ROA/TRG Deputy Receiver's Application to Continue to Make Certain Workers' Compensation Payments ("GA Objections"). Therein, the Guaranty Associations claim that giving special priority to workers' compensation claimants as requested in the Application would constitute an illegal preference in violation of § 38.2-1509 B. Moreover, the Guaranty Associations argue that no "hardship" exception to the order of priority of distribution exists in the Virginia insurer liquidation statute.²² The Guaranty Associations also aver that the Deputy Receiver of ROA's argument that the Assumed Businesses are direct insureds of ROA is without merit.²³ The Guaranty Associations request that the Commission deny the Application.

On August 22, 2003, the Coastal Region Board of Directors and the Alabama Subscribers it represents ("Coastal") filed the Coastal Region Board of Directors' Motion for Clarification of Order Scheduling Hearing and Application ("Motion"), wherein Coastal requests that the Commission clarify its previous Orders as to whether the hearing to be held on September 17, 2003 will be a final determination as to whether the insureds of the Assumed

¹² *Id.* at 15.

¹³ *Id.* at 16-22.

¹⁴ Response to Objections at 6.

¹⁵ *Id.* at 6-13.

¹⁶ *Id.* at 13-20.

¹⁷ *Id.* at 20.

¹⁸ All statutory references are to the Code of Virginia.

¹⁹ VPCIGA Objection at 3-4.

²⁰ *Id.* at 5.

²¹ *Id.* at 8-9.

²² Notice of Participation at 3-4.

²³ GA Objections at 8.

Businesses are direct insureds of ROA. Coastal requests that, if the Commission so intends, it should instead limit the hearing to determining whether or not to approve the Application without any prejudice to the right of any insured to present argument and evidence with respect to its status as a policyholder entitled to the priority created by § 38.2-1509 B 1 ii.²⁴

On August 27, 2003, the Kentucky Claimants²⁵ filed the Kentucky Claimants Joinder in Coastal Region Board of Directors' Motion for Clarification of Order Scheduling Hearing on Application ("Joinder Motion"). In their Joinder Motion, the Kentucky Claimants express the same concerns raised by Coastal as to the scope of the hearing to be held on September 17, 2003, on these issues and request that the Commission clarify what is to be determined at the aforesaid hearing and limit its scope appropriately in accordance with Coastal's Motion.

On August 28, 2003, the Deputy Receiver of ROA filed the Deputy Receiver's Response to Objection of Virginia Property and Casualty Insurance Guaranty Association to Payment by Reciprocal of America and The Reciprocal Group of Workers' Compensation Claims ("Response to VPCIGA"). Therein, the Deputy Receiver of ROA claims that the VPCIGA Objection was not timely filed. The Deputy Receiver of ROA renews his request that the Commission enter an Order authorizing him to continue making medical and recurring partial or total disability payments for certain workers' compensation claims assumed by ROA.²⁶ The Deputy Receiver of ROA expresses his willingness to provide evidence at the September 17, 2003, hearing to support the propositions that ROA treated the Assumed Business insureds as direct insureds not only by characterizing the transaction as direct insurance in financial documents but also, where applicable, by paying the premium tax and the guaranty fund assessment for the Assumed Business.²⁷

On September 2, 2003, the Deputy Receiver of ROA filed the Deputy Receiver's Response to Objection of Certain Guaranty Funds to ROA/TRG Deputy Receiver's Application to Continue to Make Certain Workers' Compensation Payments ("Response to Guaranty Associations"). Therein, the Deputy Receiver of ROA makes similar arguments to those made in his Response to VPCIGA. The Deputy Receiver of ROA argues that the GA Objections should be overruled and that payments to, or for the benefit of, certain injured workers and their families should not be further disrupted.²⁸

On September 4, 2003, the SDRs of the Tennessee Companies filed the Special Deputy Receivers' Motion for Clarification of Order Scheduling Hearing on Application ("Motion for Clarification"). Therein, the SDRs of the Tennessee Companies request clarification on the issues to be addressed at the September 17, 2003, hearing pertaining to the workers' compensation policy payments issues raised in the Application. The SDRs of the Tennessee Companies assert that there are three issues to be determined at the September 17, 2003, hearing for which the Deputy Receiver of ROA bears the burden of proof: (i) whether payment of the workers' compensation policy claims will create an illegal preference; (ii) whether the employers that were members of the SITs and GSIAAs in question became "direct insureds" of ROA and, if so, on what date, and (iii) whether the claims of the workers' compensation claimants in question are in fact "hardship" claims.²⁹

On September 9, 2003, the Commission issued a Clarifying Order wherein it directed the parties to this case to be prepared to address at the September 17, 2003, hearing the following issues: (i) whether the payments requested to be made by the Deputy Receiver of ROA in his Application are permitted to be made in light of the provisions of § 38.2-1509; (ii) whether any or all of the SITs and GSIAAs or employers thereof may legally be considered direct insureds of ROA; (iii) whether the requested payments may be made under the "hardship" provisions of the Final Order Appointing Receiver for Rehabilitation or Liquidation entered by the Circuit Court for the City of Richmond on January 29, 2003, or whether such "hardship" payments may be made pursuant to some other statutory provision; and/or (iv) what criteria should govern the determination of what constitutes a "hardship" claim.

The Commission heard this matter on September 17, 2003. Present and represented by counsel at the hearing were the Deputy Receiver of ROA, the Bureau of Insurance, Children's Hospital of Alabama, the VPCIGA, the Guaranty Associations, the Kentucky Claimants, the SDRs of the Tennessee Companies, Coastal, and PhyAmerica Physician Group, Inc. At the conclusion of the hearing, the Commission requested that parties file briefs to address the legal issues raised in this case.³⁰

In their brief, the Deputy Receiver of ROA asserts that the Commission may authorize him to pay the Assumed Claims and deduct the amount of those payments from sums subsequently payable to the guaranty associations.³¹

The Guaranty Associations filed a Supplemental Memorandum of the Indiana Insurance Guaranty Association, the Kansas Insurance Guaranty Association, the Mississippi Insurance Guaranty Association, the Tennessee Insurance Guaranty Association and the Texas Property and Casualty Insurance Guaranty Association in Support of the Guaranty Associations' Objection to the Deputy Receiver's Proposed Disbursement of Estate Assets to Pay Certain

²⁴ Motion at 3.

²⁵ Clark Regional Medical Center, T.J. Samson Community Hospital, Pineville Community Hospital, Highlands Regional Medical Center, Twin Lakes Regional Medical Center, Hardin Memorial Hospital, Gateway Regional Medical Center, Regional Medical Center/Trover Clinic Foundation, Murray-Calloway County Hospital, Owensboro Mercy Health System, Harrison Memorial Hospital, River Valley Behavioral Health Hospital, Muhlenberg Community Hospital, and Lincoln Trail Hospital were the original "Kentucky Claimants." On September 17, 2003, counsel for the Kentucky Claimants filed a Supplemental Notice of Participation. Therein, six additional Kentucky hospitals—Rockcastle Hospital, Clinton County Hospital, St. Claire Medical Center, Marcum & Wallace Memorial Hospital, Monroe County Hospital and Marshall County Hospital gave notice that they desire to join the Kentucky Claimants in so far as they desire to participate in the September 17, 2003, hearing regarding the Assumed Claims. All of the Kentucky Hospitals will be referred to hereafter as the "Kentucky Claimants."

²⁶ Response to VPCIGA at 1.

²⁷ *Id.* at 8.

²⁸ Response to Guaranty Associations at 2.

²⁹ Motion for Clarification at 8.

³⁰ Transcript at 318-322.

³¹ Deputy Receiver's Brief in Support of the Application for Order Authorizing the Continuation of Workers' Compensation Disability Payments at 5.

Workers' Compensation Claims ("Memorandum"). Therein, the Guaranty Associations assert that § 38.2-1509 provides the exclusive authority for disbursements of the assets of ROA.³² The Guaranty Associations further contend that the Commission simply has no authority to alter the priority scheme established by the General Assembly.³³ They further argue that, even assuming that the SITs and GSIA's or employers thereof are considered policyholders by the Commission, such determination does not mean that the obligations thereunder would constitute "covered claims" under § 38.2-1603, nor does the Commission have the authority to determine whether such obligations are "covered claims."³⁴

The VPCIG A filed its Brief of Virginia Property and Casualty Insurance Guaranty Association in Opposition to the Payment by the Deputy Receiver of Reciprocal of America and The Reciprocal Group at this Time of Any Claims that Arose Under Workers' Compensation Coverage Provided by Group Self-Insurance Associations and Self-Insured Trusts ("VPCIGA Brief"). Therein, the VPCIGA also argues that § 38.2-1509 does not permit the Commission to authorize the Deputy Receiver of ROA to make the payments requested in the Application.³⁵ The VPCIGA further contends that the provisions of § 38.2-1509 are not ambiguous and the Commission may not deviate therefrom in disbursing the assets of ROA.³⁶

On September 29, 2003, Coastal filed the Coastal Region Board of Directors' Memorandum in Support of Deputy Receiver's Authority to Make Worker's Compensation Payments ("Coastal Brief"). Therein, Coastal supports the arguments of the Deputy Receiver of ROA and requests the Commission to follow the purpose and substance of § 38.2-1509 by approving the Deputy Receiver of ROA's request to make the Disability Payments. By doing this, the Commission will avoid continuing a preference that has been created by the Guaranty Associations' failure to pay the Assumed Claims.³⁷

The Kentucky Claimants filed their Joinder in Coastal Region Board of Directors' Memorandum in Support of Deputy Receiver's Authority to Make Worker's Compensation Payments. The Kentucky Claimants join in the Coastal Brief and support the Deputy Receiver's Application.

On September 29, 2003, the Virginia Workers' Compensation Commission ("VWCC") filed a Memorandum of Law in Support of Continued Payment by ROA of Certain Contested Claims ("VWCC Brief").³⁸ The VWCC supports the efforts of the Deputy Receiver of ROA to make the Disability Payments and submits that Commission approval of the Application will prevent a preference, rather than create one.³⁹ The VWCC also contends that it is possible that the injured workers will not have access to any "safety net" sources of payment.⁴⁰

NOW THE COMMISSION, having considered the evidence and arguments of the parties, the pleadings, and the applicable law, finds as follows. We direct the Deputy Receiver of ROA to pay the Assumed Claims as requested in the Application as limited herein. We hereby direct payments to claimants, whether weekly or monthly in frequency, that are indemnity or wage-replacement payments. We do not authorize the Deputy Receiver of ROA to make physician, hospital, or other health care facility payments at this time. We also refer to a Hearing Examiner the question of whether the SITs and GSIA's or employers thereof constitute "claims of other policyholders arising out of insurance contracts" as that term is used in § 38.2-1509 B 1 ii.

Section 38.2-1509 B 1 ii provides, in pertinent part, that

The Commission shall disburse the assets of an insolvent insurer as they become available in the following manner: . . . (ii) claims of the associations for "covered claims" and "contractual obligations" as defined in §§ 38.2-1603 and 38.2-1701 and claims of other policyholders arising out of insurance contracts apportioned without preference.

This section makes clear that the assets of the insolvent insurer are to be disbursed "as they become available" and that the assets are to be "apportioned without preference."

First, we must note that this Commission has not yet determined that any claims of any entities are either "covered claims" or "claims of other policyholders arising out of insurance contracts," including those currently being paid by the guaranty associations. Nor have we found that any claims are not within one of these two categories.

³² Memorandum at 2. The Guaranty Associations also filed a Supplemental Memorandum of Certain Guaranty Associations in Support of Their Objection to ROA/TRG Deputy Receiver's Application to Continue to Make Certain Workers' Compensation Payments on September 17, 2003, in which they advance similar arguments in urging the Commission to reject the Application.

³³ Memorandum at 3.

³⁴ *Id.* at 12-15.

³⁵ VPCIGA Brief at 2.

³⁶ *Id.* at 13.

³⁷ Coastal Brief at 2, 4.

³⁸ On September 17, 2003, the VWCC filed a Motion to Intervene. Therein, the VWCC asserts that the Uninsured Employers' Fund ("UEF"), which is administered by the VWCC, may become a significant creditor of ROA. On October 2, 2003, counsel for the VWCC and UEF filed a letter in which he stated that the VWCC's pleadings in this case were filed for the VWCC solely in its capacity as the administrator of the UEF, and not in its role as an adjudicative body. He further intends to submit future pleadings on behalf of the UEF, rather than the VWCC. The Commission received no objection to the Motion to Intervene filed by the VWCC. The Commission granted the Motion to Intervene on October 16, 2003.

³⁹ VWCC Brief at 2.

⁴⁰ *Id.* at 6.

The Commission is faced with the potential of two competing preferences. The Commission could direct the Deputy Receiver of ROA to pay the Assumed Claims now. If it is later determined that the claims are neither "covered claims" nor "claims of other policyholders arising out of insurance contracts," the payments might result in these claimants receiving more than they should.⁴¹ This, of course, would amount to a preference.

On the other hand, if the Commission denies payment of the Assumed Claims at this time, and it is later determined that any of these claims constitute "covered claims" or "claims of other policyholders arising out of insurance contracts," then the Commission will have permitted an ongoing preference. Currently a number of workers' compensation claimants are being paid their full workers' compensation entitlements, first by the Deputy Receiver and now by various guaranty associations that may be reimbursed by the Deputy Receiver. If other workers' compensation claimants who are not currently being paid are later determined to have either "covered claims" or "claims of other policyholders arising out of insurance contracts," then there will have been a preference. Simply paying a claimant a lump sum after months of nonpayment does not amount to an adjustment that eliminates the preference. This is particularly true if Virginia law prohibits claimants from earning interest on their claims;⁴² these claimants may have forever lost the time value of the money they should have been receiving. This, of course, would amount to a preference. In addition, the reality may be that claimants who rely on the payments for sustenance suffer the loss of their home or a significant deterioration of their health, because the needed income flow is interrupted. This preference is just as real as that which may result in an overpayment or underpayment to a claimant.

The Commission may not solve this conflict by stopping all payments for several reasons. First, the statute does not envision waiting until all issues related to apportionment have been finalized before beginning distribution. Rather, the assets are to be distributed "as they become available." Second, the Commission has already recognized the importance to the claimants of continued payment of the Assumed Claims.⁴³ Third, the reality is that in Virginia and a number of other states, workers' compensation payments are being made. As noted above, these payments create a preference possibility that must be addressed.

As a practical matter, payments by a receiver can rarely, if ever, be made without any possibility of a preference. The VPCIGA acknowledged in its comments that payments may be made that might result in a preference as long as it "can be subsequently adjusted so that ultimately there is no preference."⁴⁴ If it later turns out that the "adjustment" cannot be made, then there may be a preference. As noted above, this case presents just such a situation if we deny payments at this time. Also, after we made our determination that liquidation was required, the Deputy Receiver of ROA paid all workers' compensation claims for four weeks before the guaranty associations took over payments. That act has not been questioned or challenged although it might lead ultimately to small preferences if it is later determined that some of the claims were neither "covered claims" nor "claims of other policyholders arising out of insurance contracts." In short, the Deputy Receiver of ROA is not required to refuse to make all payments because they may possibly result in a small preference.

The Deputy Receiver of ROA must adhere to the statutory mandates of § 38.2-1509 that require us to distribute the assets as they become available without preference. We must, therefore, avoid both of the preferences described above to the extent possible. If we cannot avoid the possibility of at least one of the preferences, we must minimize the possibility and extent of any such preference.

Sometimes, we can avoid, or greatly minimize, the possibility of a preference by paying out only a small fraction of the available assets in equal percentages to all similarly situated claimants.⁴⁵ Here, however, we are limited because certain of the claimants have been and continue to be paid one hundred percent of their claims even though the Commission has not determined that they are any more entitled to the payments than those included as Assumed Claims. Thus, we find, in this case, we cannot avoid the possibility of one of the preferences described above.

In order to reduce any preferences that may be caused by the current payments to one group and not the other, we find that we must direct the Deputy Receiver of ROA to make indemnity and wage-replacement payments under what have been described as Assumed Claims. These payments should reduce or minimize possible preferences caused by the failure to pay any Assumed Claims that may later be determined to be payable under § 38.2-1509 B 1. On the other hand, if the Assumed Claims are found not to be covered by that section, the possibility of ultimate preferences should not be significant. First, others may be responsible for paying the Assumed Claims; during the hearing we were assured that these claimants will be paid.⁴⁶ Sources of possible payment include payments from guaranty associations, uninsured employers' funds, employers, self-insurance guaranty associations, and surety bonds. We fully expect the Deputy Receiver of ROA to pursue diligently every such alternative avenue of payment.

⁴¹ In order for this to occur, the Commission would have to determine ultimately that the Assumed Claims are not "covered claims" or "claims of other policyholders arising out of insurance contracts." We make no such determination at this time; instead, we refer that question to a Hearing Examiner to take evidence and file a Report with the Commission. If that question is ultimately decided adversely to the Deputy Receiver of ROA, then a preference would exist only if the Deputy Receiver of ROA is unable to recover the funds paid and there is less money left in the estate to pay general creditors than the recipients of the Assumed Claims had already received.

⁴² Cf. Swiss Re Life Company America v. Gross, 253 Va. 139, 147 (1997) (Virginia law prohibits creditors of an insolvent estate from earning interest on their claims).

⁴³ Case No. INS-2003-00024, Order of Liquidation With a Finding of Insolvency and Directing the Cancellation of Direct Insurance Policies, filed on June 20, 2003, at 2, 3 (Deputy Receiver of ROA authorized to continue making certain ROA workers' compensation policy payments until such time as the payments can be made by the guaranty associations).

⁴⁴ VPCIGA Objection at 5.

⁴⁵ While, as noted above, we have made no determination at this time as to whether the Assumed Claims are "covered claims" or "claims of other policyholders arising out of insurance contracts," the Deputy Receiver of ROA has argued that these claimants are ROA policyholders. Certain guaranty associations agree. Certain other guaranty associations, on the other hand, have determined that the Assumed Claims are not "covered claims" under their respective state laws. See, e.g., Kentucky Claimants Joinder in Coastal Region Board of Directors' Memorandum in Support of Deputy Receiver's Authority to Make Worker's Compensation Payments, filed on September 29, 2003, at 2, fn. 1 (Kentucky Claimants assert that the Kentucky Insurance Guaranty Association and Arkansas Insurance Guaranty Association are currently paying the Assumed Claims in their respective states); Response to Objections at 6 and Exhibit A; Transcript at 168 (counsel to the Deputy Receiver of ROA represents that three of the eight guaranty associations are currently paying the Assumed Claims).

⁴⁶ Transcript at 259 (Counsel to the SDRs of the Tennessee Companies); 337 (Counsel to the VWCC).

The extent of any preference, if one is created, should also be minimized by several factors. First, the payments will only be made until a decision is rendered by this Commission on the "policyholder arising out of insurance contracts" issues referred herein to a Hearing Examiner. Second, we are only authorizing those payments that are indemnity and wage-replacement payments. Finally, we note that the total amount of payments authorized herein appears to represent a small fraction of the estate's total assets.⁴⁷ Hence, we find that the possibility and extent of any preference that might ultimately be determined to result from our decision will be very small.⁴⁸

We direct the Deputy Receiver of ROA to pay the Assumed Claims only insofar as they constitute indemnity and wage-replacement payments. We do not authorize the payment of physician or hospital bills at this time.

Accordingly, IT IS ORDERED THAT:

(1) The Application of the Deputy Receiver is APPROVED, except as modified herein;

(2) The determination of whether the SITs and GSIA's or employers thereof constitute "other policyholders arising out of insurance contracts" pursuant to § 38.2-1509 B 1 ii is hereby assigned to a Hearing Examiner and is assigned Case No. INS-2003-00239. The Hearing Examiner shall conduct all further proceedings associated with making the aforesaid determination, concluding with the filing of the Hearing Examiner's final report to the Commission. In the discharge of such duties, the Hearing Examiner shall exercise all the inquisitorial powers possessed by the Commission, including, but not limited to, the power to administer oaths, require the appearance of witnesses and parties either in person or by any other means, require the production of documents, schedule and conduct prehearing conferences, admit or exclude evidence, grant or deny continuances, and rule on motions, matters of law, and procedural questions. An objection to a ruling by the Hearing Examiner shall be stated with the reasons therefore at the time of the ruling, and the objection 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;

(3) The Hearing Examiner appointed shall cause the testimony taken at any hearing to be reduced to writing and promptly deliver his written findings and recommendations together with the transcript of the hearing to the Commission for its consideration and judgment; and

(4) This matter is continued.

Morrison, Commissioner, Concurring in Part and Dissenting in Part,

I do not believe that § 38.2-1509 permits the conclusion reached by the majority. I must respectfully dissent from that portion of the majority's finding that permits disbursement of ROA assets at this time to pay the Assumed Claims.

However, I concur with the decision insofar as it refers to a Hearing Examiner the question of whether the SITs and GSIA's or employers thereof constitute "other policyholders arising out of insurance contracts" pursuant to § 38.2-1509 B 1 ii.

⁴⁷ Application at 4, 10 (Assumed Claims include approximately 450 injured workers and \$125,139 in weekly payments). The total amount should be substantially less than this, since we are herein authorizing only the indemnity and wage-replacement portion of the Assumed Claims and not direct payments to physicians, hospitals, or other health care facilities. Moreover, at least some of the guaranty associations are paying the Assumed Claims. See fn. 45. ROA has over \$400 million in assets. Response to Objections at 19.

⁴⁸ Nor do we believe that our interpretation of § 38.2-1509 B 1 should result in a flood of applications from other claimants. The present situation is unusual, if not unique. Our decision in this proceeding is further supported by the "hardship" exception to the priority scheme encompassed within § 38.2-1509; it is clearly within this Commission's authority to consider and balance the equities in determining when it is appropriate to distribute estate assets. The authority conferred on the Commission to act as a court of equity and to enter appropriate orders in §§ 38.2-1502, 38.2-1507, and 38.2-1508 also permits us to consider the hardships involved when an applicant seeks to receive or disburse assets under § 38.2-1509. In addition to the "hardship" arguments advanced in this particular case, we also note the special status given to workers' compensation claimants by the General Assembly in § 38.2-1606 A 1 a i, which requires that a claimant receive "the full amount of a covered claim for benefits under a workers' compensation insurance coverage."

**CASE NO. INS-2003-0024
DECEMBER 2, 2003**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION,
Applicant,
v.
RECIPROCAL OF AMERICA and
THE RECIPROCAL GROUP,
Respondents

ORDER

On November 12, 2003, the Commission entered an Order in this matter, in which it approved an Application¹ filed by the Deputy Receiver of ROA,² except as modified therein. The Order directed the Deputy Receiver of ROA to make payments to certain claimants, whether weekly or monthly in frequency, that are indemnity or wage-replacement payments, as requested in the Application, but did not authorize physician, hospital, or other health care facility payments at the present time. The Commission also referred to a Hearing Examiner the question of whether the Self-Insured Trusts and Group Self-Insurance Associations or employers thereof that were the subject of the Application constitute "other policyholders arising out of insurance contracts" pursuant to § 38.2-1509 B 1 ii of the Code of Virginia.³

On December 1, 2003, the Indiana Insurance Guaranty Association, the Kansas Insurance Guaranty Association, the Mississippi Insurance Guaranty Association, the Tennessee Insurance Guaranty Association, and the Texas Property and Casualty Insurance Guaranty Association (the "Guaranty Associations") filed the Certain Guaranty Associations' Petition for Rehearing or Reconsideration ("Petition"). Therein, the Guaranty Associations request that the Commission rehear or reconsider its November 12, 2003, Order in this matter. The Guaranty Associations assert that the Commission erred in authorizing the aforementioned payments and that the Commission has permitted an unlawful preference in violation of § 38.2-1509 B. The Guaranty Associations further assert that the Commission's Order will cause them irreparable harm.⁴ The Guaranty Associations request that the Commission rehear or reconsider the November 12, 2003, Order and deny the Application.

The Commission will grant the Petition for the purpose of receiving responses thereto from all parties in this case. We direct the Deputy Receiver of ROA to not make any of the aforementioned payments until we have decided the issues addressed in the Petition. We also direct the Hearing Examiner to proceed in Case No. INS-2003-00239 without waiting for us to render a decision on the Petition.

Accordingly, IT IS ORDERED THAT:

- (1) The Guaranty Associations' Petition for Rehearing or Reconsideration is GRANTED;
- (2) All parties to this case shall file any response they may have to the Petition on or before December 15, 2003;
- (3) The Deputy Receiver shall not make any payments that were approved by Order entered on November 12, 2003, in this matter until further Order of the Commission;
- (4) The Hearing Examiner shall proceed with the resolution of the issues in Case No. INS-2003-00239; and
- (5) This matter is continued.

¹ Application for Order Authorizing the Continuation of Workers' Compensation Disability Payments by Reciprocal of America and The Reciprocal Group for Workers' Compensation Claims Denied Coverage by State Guaranty Associations, filed by the Deputy Receiver of ROA on July 11, 2003 ("Application").

² Reciprocal of America and The Reciprocal Group are collectively referred to herein as "ROA."

³ *Application of Reciprocal of America and The Reciprocal Group, For a Determination Whether Certain Workers' Compensation Insurance Policy Payments May be Made to Claimants Formerly Covered by SITs and GSIA's*, Case No. INS-2003-00239. All statutory cites herein are to the Code of Virginia.

⁴ Petition at 7-8.

**CASE NO. INS-2003-00025
MARCH 4, 2003**

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 appears that Defendant, duly licensed by the Commission to transact the business of a health maintenance organization in the Commonwealth of Virginia, in certain instances, violated subsection 7 b (1) of § 38.2-606, subsection 7 b (2) of § 38.2-606, subsection 8 of § 38.2-606, and §§ 38.2-316 A, 38.2-316 B, 38.2-316 C, 38.2-503, 38.2-510 A 5, 38.2-510 A 15, 38.2-604 C 4, 38.2-610, 38.2-1812 A, 38.2-1833 A 1, 38.2-1834 C, 38.2-3407.4 A, 38.2-3407.15 B 1, 38.2-3407.15 B 2, 38.2-3407.15 B 3, 38.2-3407.15 B 7, 38.2-4306 A, 38.2-4306.1, and 38.2-5804 A of the Code of Virginia, as well as 14 VAC 5-90-50 A, 14 VAC 5-210-70 A 1, 14 VAC 5-210-70 C 3, 14 VAC 5-210-70 H, 14 VAC 5-210-100 A, and 14 VAC 5-210-110 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of one hundred twenty-five thousand dollars (\$125,000), 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 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

(1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;

(2) Defendant cease and desist from any conduct which constitutes a violation of subsection 7 b (1) of § 38.2-606, subsection 7 b (2) of § 38.2-606, subsection 8 of § 38.2-606 or §§ 38.2-316 A, 38.2-316 B, 38.2-316 C, 38.2-503, 38.2-510 A 5, 38.2-510 A 15, 38.2-604 C 4, 38.2-610, 38.2-1812 A, 38.2-1833 A 1, 38.2-1834 C, 38.2-3407.4 A, 38.2-3407.15 B 1, 38.2-3407.15 B 2, 38.2-3407.15 B 3, 38.2-3407.15 B 7, 38.2-4306 A, 38.2-4306.1 or 38.2-5804 A of the Code of Virginia, or 14 VAC 5-90-50 A, 14 VAC 5-210-70 A 1, 14 VAC 5-210-70 C 3, 14 VAC 5-210-70 H, 14 VAC 5-210-100 A, or 14 VAC 5-210-110 A; and

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

**CASE NO. INS-2003-00026
MARCH 13, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

AMERICAN REPUBLIC INSURANCE COMPANY,
Defendant

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, in certain instances, violated subsection 7 b (1) of § 38.2-606, subsection 7 b (2) of § 38.2-606, subsection 8 of § 38.2-606, and §§ 38.2-503, 38.2-1834 C, 38.2-3407.4 A, 38.2-3407.15 B 3, 38.2-3412.1 B, 38.2-4306.1, and 38.2-5805 B of the Code of Virginia, as well as 14 VAC 5-40-40 A 6, 14 VAC 5-40-40 E 2, and 14 VAC 5-400-60 A.

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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of twenty-one thousand dollars (\$21,000), waived its right to a hearing, and agreed to the entry by the Commission of a cease and desist order.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of subsection 7 b (1) of § 38.2-606, subsection 7 b (2) of § 38.2-606, or subsection 8 of § 38.2-606, or §§ 38.2-503, 38.2-1834 C, 38.2-3407.4 A, 38.2-3407.15 B 3, 38.2-3412.1 B, 38.2-4306.1, or 38.2-5805 B of the Code of Virginia, or 14 VAC 5-40-40 A 6, 14 VAC 5-40-40 E 2, or 14 VAC 5-400-60 A; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00028
MARCH 31, 2003**

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

v.

FIDELITY & GUARANTY LIFE INSURANCE COMPANY,
Defendant

SETTLEMENT ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, in certain instances, violated § 38.2-610 of the Code of Virginia by failing to give to applicants for insurance written notice of an adverse underwriting decision in the form approved 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violation.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of twenty thousand dollars (\$20,000), 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 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of § 38.2-610 of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00031
MARCH 13, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

ATLANTA LIFE INSURANCE COMPANY,
Defendant

SETTLEMENT ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, in certain instances, violated § 38.2-610 of the Code of Virginia by failing to give to applicants for insurance written notice of an adverse underwriting decision in the form approved 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein 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 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of § 38.2-610 of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00033
MARCH 13, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

CIGNA DENTAL HEALTH OF VIRGINIA, INC.,
Defendant

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of a health maintenance organization in the Commonwealth of Virginia, in certain instances, violated §§ 38.2-316 A, 38.2-316 B, 38.2-316 C, 38.2-510 A 5, 38.2-510 A 14, 38.2-510 A 15, 38.2-511, 38.2-606, 38.2-1812 A, 38.2-1822 A, 38.2-1833 A 1, 38.2-3407.4 A, 38.2-3407.15 B 1, 38.2-3407.15 B 3, 38.2-4306 A 2, 38.2-4306 A 4 g, 38.2-4306.1, 38.2-4313, 38.2-5804 A, 38.2-5804 C, and 38.2-5805 C of the Code of Virginia, as well as 14 VAC 5-210-60 H 1, 14 VAC 5-210-70 H, 14 VAC 5-210-100 B 9, and 14 VAC 5-210-110 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of thirty thousand dollars (\$30,000) and waived its right to a hearing.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of 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-2003-00035
MARCH 24, 2003**

COMMONWEALTH OF VIRGINIA
 At the relation of the
 STATE CORPORATION COMMISSION
 v.
 ERIE INSURANCE COMPANY
 and
 ERIE INSURANCE EXCHANGE,
 Defendants

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it appears that Defendants, each of which is duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, violated the Code of Virginia as follows: Erie Insurance Company violated §§ 38.2-510 A 10, 38.2-510 C, 38.2-1822, 38.2-1833, 38.2-1906 D, 38.2-2212, and 38.2-2214 of the Code of Virginia; and Erie Insurance Exchange violated §§ 38.2-305, 38.2-510 A 10, 38.2-610, 38.2-1833, 38.2-1906 D, 38.2-2114, 38.2-2118, and 38.2-2214 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 Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that Defendants have committed the aforesaid alleged violations.

Defendants have been advised of their right to a hearing in this matter, whereupon Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein Defendants have tendered to the Commonwealth of Virginia the sum of six thousand two hundred dollars (\$6,200), waived their 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 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 Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that Defendants' offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendants in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Erie Insurance Company cease and desist from any conduct which constitutes a violation of §§ 38.2-510 A 10, 38.2-510 C, 38.2-1822, 38.2-1833, 38.2-1906 D, 38.2-2212, or 38.2-2214 of the Code of Virginia; and Erie Insurance Exchange cease and desist from any conduct which constitutes a violation of §§ 38.2-305, 38.2-510 A 10, 38.2-610, 38.2-1833, 38.2-1906 D, 38.2-2114, 38.2-2118, or 38.2-2214 of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00037
FEBRUARY 28, 2003**

COMMONWEALTH OF VIRGINIA
 At the relation of the
 STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting Revisions to the Rules Governing Annual Audited Financial Reports

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the 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.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Bureau of Insurance (the "Bureau") has submitted to the Commission proposed revisions to Chapter 270 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Annual Audited Financial Reports," which amend the rules at 14 VAC 5-270-40 and 14 VAC 5-270-80.

The revisions proposed for 14 VAC 5-270-40 add a definition for "indemnification." The revisions proposed for 14 VAC 5-270-80, concerning the qualifications of accountants, prohibit indemnification, but allow certain mediation and arbitration agreements.

The Commission is of the opinion that the proposed revisions submitted by the Bureau should be considered for adoption with an effective date of July 1, 2003.

IT IS THEREFORE ORDERED THAT:

(1) The proposed revisions to the "Rules Governing Annual Audited Financial Reports," which amend the rules at 14 VAC 5-270-40 and 14 VAC 5-270-80, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or to request a hearing to oppose the adoption of, the proposed revisions shall file such comments or hearing request on or before May 23, 2003, 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-2003-00037.

(3) If no written request for a hearing on the proposed revisions is filed on or before May 23, 2003, 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 Douglas C. Stolte, who forthwith shall give further notice of the proposed adoption of the revisions to the rules by mailing a copy of this Order, together with the attached proposed revisions, to all insurers, burial societies, fraternal benefit societies, health services plans, health maintenance organizations, legal services plans, and dental or optometric services plans licensed by the Commission.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the attached proposed revisions, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) On or before March 7, 2003, the Commission's Division of Information Resources shall make available this Order and the attached proposed revisions on the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>.

(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 Annual Audited Financial Reports" 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-2003-00037
MAY 29, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting Revisions to the Rules Governing Annual Audited Financial Reports

ORDER ADOPTING REVISIONS TO RULES

By order entered herein February 28, 2003, all interested persons were ordered to take notice that the Commission would consider the entry of an order subsequent to May 23, 2003, adopting revisions proposed by the Bureau of Insurance to the Commission's Rules Governing Annual Audited Financial Reports, set forth in Chapter 270 of Title 14 of the Virginia Administrative Code, which amend the rules concerning the qualification of accountants and prohibit indemnification but allow certain mediation and arbitration, effective July 1, 2003, unless on or before May 23, 2003, any person objecting to the adoption of the proposed rules filed a request for a hearing with the Clerk of the Commission.

The February 28, 2003, Order also required all interested persons to file their comments in support of or in opposition to the proposed revisions on or before May 23, 2003.

As of the date of this Order, no request for a hearing has been filed with the Clerk of the Commission, and, as of the date of this Order, no comments have been filed with the Clerk of the Commission.

The Bureau has recommended that the proposed revisions be adopted; and

THE COMMISSION, having considered the proposed revisions and the Bureau's recommendation, is of the opinion that the proposed revisions should be adopted.

THEREFORE, IT IS ORDERED THAT:

(1) The proposed revisions to Chapter 270 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Annual Audited Financial Reports," which amend the rules at 14 VAC 5-270-40 and 14 VAC 5-270-80, and which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective July 1, 2003.

(2) AN ATTESTED COPY hereof 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 adoption of the revisions to the rules by mailing a copy of this Order, including a copy of the attached revised rules, to all insurers, burial societies, fraternal benefit societies, health services plans, health maintenance organizations, legal services plans, and dental or optometric services plans licensed by the Commission.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, including a copy of the attached rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) On or before June 3, 2003, the Commission's Division of Information Resources shall make available this Order and the attached rules on the Commission's website, <http://www.state.va.us/scc/caseinfo.htm>.

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

NOTE: A copy of Attachment A entitled "Rules Governing Annual Audited Financial Reports" 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-2003-00043 (Formerly CASE NO. INS-1999-00138)
MARCH 7, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
FIRST NATIONAL LIFE INSURANCE COMPANY OF AMERICA,
Defendant

ORDER TO TAKE NOTICE

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

First National Life Insurance Company of America, a foreign corporation domiciled in the State of Mississippi ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

By order entered herein June 7, 1999, Defendant's license to transact the business of insurance on the Commonwealth of Virginia was suspended due to financial regulatory concerns.

On June 7, 1999, by a Final Order of Liquidation and Finding of Insolvency, the Chancery Court of the First Judicial District of Hinds County, Mississippi, found Defendant to be insolvent and ordered Defendant to be liquidated by the Mississippi Department of Insurance.

Defendant's Virginia Certificate of Authority was revoked on November 1, 1999.

By order entered herein December 22, 1999, the Commission approved Defendant's application for approval of an assumption reinsurance agreement, whereby Madison National Life Insurance Company, a Wisconsin-domiciled insurer licensed to transact the business of insurance in the Commonwealth of Virginia, assumed all of the life insurance policies and annuities issued by Defendant.

The Mississippi Department has notified the Bureau of Insurance that it does not object to the revocation of Defendant's license to transact the business of insurance in the Commonwealth of Virginia.

The Bureau of Insurance has recommended that Defendant's license to transact the business of insurance in the Commonwealth of Virginia be revoked.

IT IS THEREFORE ORDERED that Defendant TAKE NOTICE that the Commission shall enter an order subsequent to March 17, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before March 17, 2003, Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for a hearing before the Commission with respect to the proposed revocation of Defendant's license.

**CASE NO. INS-2003-00044
APRIL 9, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

CIGNA HEALTHCARE OF VIRGINIA, INC.,
Defendant

SETTLEMENT ORDER

Based on a target market conduct examination performed by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of a health maintenance organization in the Commonwealth of Virginia, in certain instances, violated §§ 38.2-510 A 15, 38.2-3407.15 B 1, 38.2-3407.15 B 2, 38.2-3407.15 B 3, 38.2-3407.15 B 4, 38.2-3407.15 B 5, 38.2-3407.15 B 6, 38.2-3407.15 B 7, 38.2-3407.15 B 8, 38.2-3407.15 B 9, and 38.2-3407.15 C of the Code of Virginia.

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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of thirty-one thousand dollars (\$31,000) and waived its right to a hearing.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of 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-2003-00045
MARCH 7, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

MONITOR LIFE INSURANCE COMPANY OF NEW YORK,
Defendant

IMPAIRMENT ORDER

Monitor Life Insurance Company of New York, a foreign corporation domiciled in the State of New York and licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia ("Defendant"), is required to maintain minimum capital of \$1,000,000 and minimum surplus of \$3,000,000.

Section 38.2-1036 of the Code of Virginia provides, *inter alia*, 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 2002 Annual Statement of Defendant, dated December 31, 2002, and filed with the Commission's Bureau of Insurance, indicates capital of \$1,000,000, and surplus of \$2,778,371.

The Bureau of Insurance has recommended that, based on the foregoing, the Commission enter an impairment order against Defendant.

IT IS THEREFORE ORDERED THAT, on or before June 9, 2003, 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 Defendant's president or other authorized officer.

IT IS FURTHER ORDERED that Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia while the impairment of Defendant's surplus exists and until further order of the Commission.

**CASE NO. INS-2003-00045
JUNE 19, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
MONITOR LIFE INSURANCE COMPANY OF NEW YORK,
Defendant

ORDER SUSPENDING LICENSE

Monitor Life Insurance Company of New York, a foreign corporation domiciled in the State of New York and licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia ("Defendant"), is required to maintain minimum capital of \$1,000,000 and minimum surplus of \$3,000,000.

The 2002 Annual Statement of Defendant, dated December 31, 2002, and filed with the Bureau of Insurance, indicates capital of \$1,000,000, and surplus of \$2,778,371.

By Impairment Order entered herein March 7, 2003, Defendant was ordered to eliminate the impairment in its surplus on or before June 9, 2003.

By letter dated May 16, 2003, of David R. Milner, General Counsel and Secretary of Defendant, and accompanying affidavit of Donald E. Joslin, President of Defendant, dated May 16, 2003, and filed with the Clerk of the Commission on June 10, 2003, Defendant has voluntarily consented to the suspension of its license to transact the business of insurance in the Commonwealth of Virginia until such time as Defendant shall have increased its surplus to the amount required by law.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed suspension of Defendant's license.

THEREFORE, IT IS ORDERED THAT:

- (1) Pursuant to Defendant's voluntary consent and § 38.2-1040 of the Code of Virginia, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be, and it is hereby, SUSPENDED;
- (2) Defendant shall issue no contracts or policies of insurance in the Commonwealth of Virginia until further order of the Commission;
- (3) The appointments of Defendant's agents to act on behalf of Defendant in the Commonwealth of Virginia be, and they are hereby, SUSPENDED;
- (4) Defendant's agents shall transact no new insurance business on behalf of 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 Defendant's agents appointed to act on behalf of 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 Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2003-00052
JULY 30, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
ANTHONY CARREA
and
SENIOR RETIREMENT SERVICES, INC.,
Defendants

JUDGMENT ORDER

On March 21, 2003, the State Corporation Commission ("Commission") entered a Rule to Show Cause ordering Defendants to appear in the Commission's Courtroom on May 12, 2003, and show cause, if any, why the Commission should not, in addition to a penalty under § 38.2-218 of the Code of Virginia, revoke the licenses of Defendants to transact the business of insurance in the Commonwealth of Virginia.

The Rule to Show Cause alleged that Defendants had violated §§ 38.2-502 1, 38.2-502 6, 38.2-512 A, 38.2-512 B, 38.2-512 C, 38.2-1804, 38.2-1831 5, 38.2-1831 10, and 38.2-1838 A of the Code of Virginia.

On May 12, 2003, a hearing was conducted whereby the Bureau of Insurance appeared represented by counsel, and Defendant appeared pro se. The Bureau presented the testimony of five individuals who had purchased life insurance or annuities from Defendants, as well as testimony from a staff investigator. The Bureau presented evidence that Defendants had committed the following violations of Virginia's insurance laws: (1) 10 violations of § 38.2-502 1; (2) 10 violations of §§ 38.2-502 6 or 38.2-1831 5; (3) 4 violations of § 38.2-512 A; (4) 19 violations of § 38.2-512 B; (5) 1 violation of § 38.2-1804; and (6) 7 violations of § 38.2-1831 10. The Bureau asked that Defendants' insurance licenses be permanently revoked and that each Defendant be assessed a monetary penalty of \$2,500 for the 51 total violations alleged at the hearing.

On July 8, 2003, the Hearing Examiner issued his Report, in which he made the following findings and recommendations:

1. With the exception of 1 violation of §§ 38.2-502 6 or 38.2-1831, the Bureau established by clear and convincing evidence that Defendants had committed each of the statutory violations alleged by the Bureau at the hearing.
2. In addition to those violations alleged by the Bureau, the evidence demonstrated that Defendants had committed an additional violation of § 38.2-502 1 and two additional violations of §§ 38.2-502 6 or 38.2-1831.
3. The alleged violations pertaining to §§ 38.2-502 6 and 38.2-1831 5, which the Bureau had combined, should be treated separately, resulting in a total of 22 violations with respect to those two statutes. When added to the other violations, this results in a total of 63 violations.
4. Each Defendant should be assessed the maximum statutory penalty of \$5,000 for the 63 violations, resulting in a total monetary penalty of \$315,000 for each Defendant.
5. Defendants should have their insurance licenses permanently revoked.

UPON CONSIDERATION of the Rule to Show Cause, the evidence presented at the hearing, and the Hearing Examiner's Report, the Commission adopts the findings of fact and recommendations made by the Hearing Examiner in his Report.

IT IS THEREFORE ORDERED THAT:

- (1) Each Defendant be, and each is hereby, penalized in the amount of \$315,000 for their 63 violations of §§ 38.2-502 1, 38.2-502 6, 38.2-512 A, 38.2-512 B, 38.2-1804, 38.2-1831 5, and 38.2-1831 10 of the Code of Virginia;
- (2) The licenses of Defendants to transact the business of insurance as insurance agents in the Commonwealth of Virginia be, and they are hereby, PERMANENTLY REVOKED;
- (3) All appointments issued under said licenses be, and they are hereby, VOID;
- (4) Defendants shall transact no further business in the Commonwealth of Virginia as insurance agents;
- (5) The Bureau of Insurance shall cause a copy of this Order to be sent to every insurance company for which Defendants hold an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein shall be placed in the file for ended causes.

**CASE NO. INS-2003-00053
MARCH 24, 2003**

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

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-304, 38.2-317 A, 38.2-510 A 1, 38.2-510 A 10, 38.2-510 C, 38.2-610, 38.2-1812, 38.2-1822, 38.2-1833, 38.2-1905 A, 38.2-1906 D, 38.2-2014, 38.2-2113, 38.2-2114, 38.2-2208, 38.2-2210, and 38.2-2212 of the Code of Virginia, as well as 14 VAC 5-400-40 A and 14 VAC 5-400-70 D.

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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of twenty-eight thousand one hundred dollars (\$28,100), 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 Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

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

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of §§ 38.2-304, 38.2-317 A, 38.2-510 A 1, 38.2-510 A 10, 38.2-510 C, 38.2-610, 38.2-1812, 38.2-1822, 38.2-1833, 38.2-1905 A, 38.2-1906 D, 38.2-2014, 38.2-2113, 38.2-2114, 38.2-2208, 38.2-2210, or 38.2-2212 of the Code of Virginia, as well as 14 VAC 5-400-40 A or 14 VAC 5-400-70 D; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-0055
MARCH 31, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
KEITH ALLEN BOLEN,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance as an insurance agent in the Commonwealth of Virginia, in certain instances, violated §§ 38.2-512 and 38.2-1813 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 or commission, and by failing to maintain an accurate record and itemization of funds deposited into a separate fiduciary account.

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

Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated March 11, 2003, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

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 Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of 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 Defendant has violated § 38.2-512 and § 38.2-1813 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 or commission, and by failing to maintain an accurate record and itemization of funds deposited into a separate fiduciary account.

IT IS THEREFORE ORDERED THAT:

- (1) The licenses of Defendant to transact the business of insurance as an agent in the Commonwealth of Virginia be, and they are hereby, REVOKED;
- (2) All appointments issued under said licenses be, and they are hereby, VOID;
- (3) Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) 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 cause a copy of this Order to be sent to every insurance company for which 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-2003-00056
APRIL 8, 2003**

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

SETTLEMENT ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-510 A 3, 38.2-510 C, 38.2-511, 38.2-512 A, 38.2-604, 38.2-604.1, 38.2-610, 38.2-1318, 38.2-1812, 38.2-1822, 38.2-1833, 38.2-1905 A, 38.2-1906 D, 38.2-2014, 38.2-2202, 38.2-2204, 38.2-2206 A, 38.2-2208, 38.2-2212, 38.2-2214, 38.2-2220, and 38.2-2223 of the Code of Virginia, as well as 14 VAC 5-390-40 D, 14 VAC 5-390-40 F, 14 VAC 5-400-30, 14 VAC 5-400-40 A, 14 VAC 5-400-70 D, and 14 VAC 5-400-80 D.

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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of forty-eight thousand dollars (\$48,000), 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 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of §§ 38.2-510 A 3, 38.2-510 C, 38.2-511, 38.2-512 A, 38.2-604, 38.2-604.1, 38.2-610, 38.2-1318, 38.2-1812, 38.2-1822, 38.2-1833, 38.2-1905 A, 38.2-1906 D, 38.2-2014, 38.2-2202, 38.2-2204, 38.2-2206 A, 38.2-2208, 38.2-2212, 38.2-2214, 38.2-2220, or 38.2-2223 of the Code of Virginia, or 14 VAC 5-390-40 D, 14 VAC 5-390-40 F, 14 VAC 5-400-30, 14 VAC 5-400-40 A, 14 VAC 5-400-70 D, or 14 VAC 5-400-80 D; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00060
OCTOBER 28, 2003**

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

SETTLEMENT ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, in certain instances, violated § 38.2-316 C 2 of the Code of Virginia by using premium rate changes prior to written 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein Defendant has agreed to: (i) reimburse, with interest, on or before October 25, 2003, all affected policyholders the amount of the premium overpayment resulting from the implementation of the unapproved rate increase in 2001; (ii) provide a draft of the letter that will accompany the reimbursements to affected policyholders to the Bureau of Insurance for its review prior to dissemination; (iii) upon finalization of the reimbursement process, provide to the Bureau of Insurance the total number of policyholders reimbursed and the total amount and date(s) of the reimbursements; (iv) waive its right to a hearing; and (v) the entry by the Commission of a cease and desist order.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant reimburse, with interest, on or before October 25, 2003, all affected policyholders the amount of the premium overpayment resulting from the implementation of the unapproved rate increase in 2001;
- (3) Defendant provide a draft of the letter that will accompany the reimbursements to affected policyholders to the Bureau of Insurance for its review prior to dissemination;
- (4) Defendant, upon finalization of the reimbursement process, provide to the Bureau of Insurance the total number of policyholders reimbursed and the total amount and date(s) of the reimbursements;
- (5) Defendant cease and desist from any conduct which constitutes a violation of § 38.2-316 C 2 of the Code of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00062
APRIL 1, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

VICTORIA FIRE & CASUALTY COMPANY,
VICTORIA SELECT INSURANCE COMPANY,
and
VICTORIA AUTOMOBILE INSURANCE COMPANY,
Defendants

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it appears that Defendants, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, violated the Code of Virginia and the Virginia Administrative Code as follows: Victoria Fire & Casualty Company violated §§ 38.2-510 A 1, 38.2-510 A 10, 38.2-610, 38.2-1906 D, 38.2-2212, and 38.2-2220 of the Code of Virginia, as well as 14 VAC 5-400-40 A, 14 VAC 5-400-70 D, and 14 VAC 5-400-80 D; Victoria Select Insurance Company violated §§ 38.2-510 A 1, 38.2-510 A 10, 38.2-510 C, 38.2-610, 38.2-1833, 38.2-1905 A, 38.2-1906 D, 38.2-2212, and 38.2-2220 of the Code of Virginia, as well as 14 VAC 5-400-40 A, 14 VAC 5-400-70 D, and 14 VAC 5-400-80 D; and Victoria Automobile Insurance Company violated §§ 38.2-610, 38.2-1318, 38.2-1812, 38.2-1833, 38.2-1906 D, 38.2-2212, and 38.2-2220 of the Code of Virginia, as well as 14 VAC 5-400-40 A, 14 VAC 5-400-70 D, and 14 VAC 5-400-80 D.

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 Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that Defendants have committed the aforesaid alleged violations.

Defendants have been advised of their right to a hearing in this matter, whereupon Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein Defendants have tendered to the Commonwealth of Virginia the sum of twenty-nine thousand dollars (\$29,000), waived their 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 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 Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that Defendants' offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendants in settlement of the matter set forth herein be, and it is hereby, accepted;

(2) Victoria Fire & Casualty Company cease and desist from any conduct that constitutes a violation of §§ 38.2-510 A 1, 38.2-510 A 10, 38.2-610, 38.2-1906 D, 38.2-2212, or 38.2-2220 of the Code of Virginia, or 14 VAC 5-400-40 A, 14 VAC 5-400-70 D, or 14 VAC 5-400-80 D; Victoria Select Insurance Company cease and desist from any conduct that constitutes a violation of §§ 38.2-510 A 1, 38.2-510 A 10, 38.2-510 C, 38.2-610, 38.2-1833, 38.2-1905 A, 38.2-1906 D, 38.2-2212, or 38.2-2220 of the Code of Virginia, or 14 VAC 5-400-40 A, 14 VAC 5-400-70 D, or 14 VAC 5-400-80 D; and Victoria Automobile Insurance Company cease and desist from any conduct that constitutes a violation of §§ 38.2-610, 38.2-1318, 38.2-1812, 38.2-1833, 38.2-1906 D, 38.2-2212, or 38.2-2220 of the Code of Virginia, or 14 VAC 5-400-40 A, 14 VAC 5-400-70 D, or 14 VAC 5-400-80 D; and

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

**CASE NO. INS-2003-00063
APRIL 1, 2003**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

RELIANCE UNIVERSAL INSURANCE COMPANY,

Defendant

ORDER TO TAKE NOTICE

Section 38.2-1040 of the Code of Virginia provides, inter alia, 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 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.

Reliance Universal Insurance Company, a foreign corporation domiciled in the Commonwealth of Pennsylvania ("Defendant"), originally was licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia on May 29, 1998.

On February 13, 2001, Defendant was merged with and into Reliance Insurance Company, the surviving corporation, a foreign corporation domiciled in the Commonwealth of Pennsylvania and licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia ("Reliance").

On October 3, 2001, by an Order of Liquidation, the Commonwealth Court of Pennsylvania found Reliance to be insolvent and ordered Reliance to be liquidated by the Pennsylvania Insurance Commissioner and her designees.

Defendant's Virginia Certificate of Authority was revoked on October 1, 2001.

The Pennsylvania Department's Office of Liquidations, Rehabilitations and Special Funds has notified the Bureau of Insurance that it does not object to the revocation of Defendant's license to transact the business of insurance in the Commonwealth of Virginia.

The Bureau of Insurance has recommended that, based on the foregoing, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be revoked.

THEREFORE, IT IS ORDERED that Defendant TAKE NOTICE that the Commission shall enter an Order subsequent to April 14, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before April 14, 2003, Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for hearing before the Commission with respect to the proposed revocation of Defendant's license.

**CASE NO. INS-2003-00063
APRIL 22, 2003**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

RELIANCE UNIVERSAL INSURANCE COMPANY,

Defendant

ORDER REVOKING LICENSE

In an order entered herein April 1, 2003, Defendant was ordered to take notice that the Commission would enter an order subsequent to April 14, 2003, revoking the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before April 14, 2003, Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed revocation of Defendant's license.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed revocation of Defendant's license.

THEREFORE, IT IS ORDERED THAT:

- (1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be, and it is hereby, REVOKED;
- (2) Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia;
- (3) The appointments of Defendant’s agents to act on behalf of Defendant in the Commonwealth of Virginia be, and they are hereby, REVOKED;
- (4) The Bureau of Insurance shall cause an attested copy of this Order to be sent to each of Defendant’s agents appointed to act on behalf of Defendant in the Commonwealth of Virginia as notice of the revocation of such agent’s appointment; and
- (5) The Bureau of Insurance shall cause notice of the revocation of Defendant’s license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2003-00064
APRIL 16, 2003**

COMMONWEALTH OF VIRGINIA
 At the relation of the
 STATE CORPORATION COMMISSION
 v.
 THE CINCINNATI INSURANCE COMPANY
 and
 THE CINCINNATI INDEMNITY COMPANY,
 Defendants

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it appears that Defendants, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, violated the Code of Virginia and the Virginia Administrative Code as follows: The Cincinnati Insurance Company violated §§ 38.2-231 A, 38.2-305 A, 38.2-510 A 10, 38.2-610, 38.2-1318, 38.2-1906 D, 38.2-2113, 38.2-2114, 38.2-2118, 38.2-2202, 38.2-2206, 38.2-2208, 38.2-2210, 38.2-2212, and 38.2-2220 of the Code of Virginia, as well as 14 VAC 5-400-30, 14 VAC 5-400-40 A, and 14 VAC 5-400-70 D; and The Cincinnati Indemnity Company violated §§ 38.2-305 A, 38.2-610, 38.2-1318, 38.2-1804, 38.2-1905 A, 38.2-1906 D, 38.2-2118, 38.2-2202, 38.2-2206, 38.2-2210, 38.2-2212, and 38.2-2220 of the Code of Virginia, as well as 14 VAC 5-400-30, 14 VAC 5-400-40 A, and 14 VAC 5-400-70 D.

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 Defendants’ licenses upon a finding by the Commission, after notice and opportunity to be heard, that Defendants have committed the aforesaid alleged violations.

Defendants have been advised of their right to a hearing in this matter, whereupon Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein Defendants have tendered to the Commonwealth of Virginia the sum of thirty thousand dollars (\$30,000) and waived their right to a hearing.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of 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 Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that Defendants’ offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of 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-2003-00066
MAY 8, 2003**

IN RE:
JOINT APPLICATION OF SPECIAL DEPUTY RECEIVERS
of
DOCTORS INSURANCE RECIPROCAL, RRG, In Receivership,
AMERICAN NATIONAL LAWYERS INSURANCE RECIPROCAL, RRG, In Receivership,
and
THE RECIPROCAL ALLIANCE, RRG, In Receivership,
Joint Applicants

FINAL ORDER

On March 21, 2003, the Special Deputy Receivers ("SDR") for Doctors Insurance Reciprocal, Risk Retention Group ("DIR"), American National Lawyers Insurance Reciprocal, Risk Retention Group ("ANLIR"), and The Reciprocal Alliance, Risk Retention Group ("TRA") (collectively, the "Companies"), by counsel, filed with the State Corporation Commission ("Commission") a Joint Application for Order in Aid of Receiverships and Request for Expedited Review and Relief ("Joint Application"). The Companies seek an Order from the Commission giving aid in Virginia to the rights, powers and duties of the SDRs in Tennessee, the state in which the Companies are chartered. Specifically, the SDRs sought, in the Joint Application, "the entry of an Order by the Commission giving certain effect in Virginia to Tennessee orders entered in the [Tennessee] Receivership Proceedings¹ providing for stays of certain proceedings against the [Companies], their estates and insureds, and the [SDRs]." The SDRs further seek expedited review and relief by the Commission.²

The Tennessee Orders provide for stays of actions or proceedings in which the Companies are a party or are obligated to defend a party for 90 days and such additional time as is necessary for the SDRs to obtain proper representation and prepare for further proceedings.³

The SDRs further allege that they have sent letters to numerous Virginia tribunals informally requesting stays. According to the SDRs, "[r]esponses to such letters, if any, have not been similar. . . . Due to the nature of receivership proceedings generally, it would be impractical to attempt specifically to name, join, or give notice of [the Joint Application] to all current or potential claimants."⁴ The SDRs assert that §§ 38.2-1521 B and 38.2-5110 of the Code of Virginia⁵ support their request. The SDRs further contend that full faith and credit and/or interstate comity should be extended by the Commission to the Tennessee Orders as they pertain to stays.⁶ The SDRs conclude that "an Order from the Commission will significantly aid the [SDRs] as they attempt to discharge their obligations to petition tribunals or other entities in Virginia for stays."⁷

On March 25, 2003, the Commission entered a Scheduling Order in this case giving the Deputy Receiver of Reciprocal of America, In Receivership, and The Reciprocal Group, In Receivership (collectively, "ROA") an opportunity to respond to the Joint Application.

On April 4, 2003, the Deputy Receiver of ROA filed a response ("Response") to the Joint Application. In the Response, the Deputy Receiver opposed the Joint Application filed by the Companies and requested oral argument before the Commission.

More specifically, the Deputy Receiver asserts that the Commission does not have jurisdiction to order the relief sought, that an insufficient foundation is offered for such relief, and that granting the relief sought would interfere with the Commission's receivership responsibilities with regard to ROA.⁸

The Deputy Receiver contends that the Commission has no authority to prevent other courts, tribunals and agencies of the Commonwealth from hearing claims asserted against the Companies, because the Commission has not been vested with jurisdiction as to the assets of the Companies. Because no ancillary receiver has been appointed in the Commonwealth, the Deputy Receiver further argues that § 38.2-1521 does not support the Companies' position. The Deputy Receiver also claims that the Commission may be preempted by federal law from entering an Order in aid of the Companies.⁹

¹ DIR, ANLIR, and TRA were placed into receivership at the behest of the Commissioner of Commerce and Insurance for the State of Tennessee by the Chancery Court of the State of Tennessee, Twentieth Judicial District, Davidson County, by separate Consent Orders filed on January 31, 2003 (the "Tennessee Orders").

² Joint Application at 2.

³ *Id.* at 5. On April 16, 2003, the SDRs filed Exhibit 8 to the Joint Application. Exhibit 8 contains the 3 SDRs' Receiver's Motion to Stay that was filed on April 11, 2003, in the Chancery Court of Davidson County, Tennessee. The SDRs sought further extensions of all actions or proceedings against insureds of the Companies for an additional 90 days, or through July 30, 2003. At the hearing, counsel for the SDRs represented that Orders had been entered in the Tennessee Court extending the stays of litigation involving the insureds of ANLIR and TRA through July 30, 2003. See Transcript ("Tr.") at 11-12. The SDRs subsequently filed the Tennessee Orders, which extended the stays in the ANLIR and TRA matters.

⁴ Joint Application at 6.

⁵ All citations are to the Code of Virginia, unless otherwise noted.

⁶ *Id.* at 7.

⁷ The Tennessee Orders granting stays are applicable to litigation pending in that state. The SDRs seek a similar result with respect to Virginia litigation involving the Companies. Joint Application at 8.

⁸ Response at 2, 7.

⁹ The Deputy Receiver cites 15 U.S.C. § 3902(a) of the Federal Products Liability Risk Retention Act in support of this proposition.

The Deputy Receiver further argues that the Full Faith and Credit Clause, art. IV, § 1 of the Constitution of the United States, does not give Tennessee courts the power to enjoin other Tennessee courts from entertaining claims against Virginia assets, nor does it give the Commission the authority to enjoin Virginia courts from entertaining claims against Tennessee assets.¹⁰ The Deputy Receiver further contends that there is an insufficient factual basis to grant the relief sought by the Companies.

Finally, the Deputy Receiver argues that the relief sought by the SDRs, if granted, would undermine the Virginia receivership of ROA, because the Companies are seeking in other proceedings at the Commission to have the claims of the Companies' policyholders paid by ROA. Granting the requested relief might, the Deputy Receiver argues, force the Deputy Receiver to choose between complying with the Virginia receivership Order or complying with the Tennessee Orders.¹¹ The Deputy Receiver requested oral argument on the Joint Application and requested that the Joint Application be denied in all respects.

The Commission, by Order entered on April 10, 2003, scheduled this matter for oral argument on April 22, 2003. The Commission heard this matter on April 22, 2003. Curtis G. Manchester, Esquire, and H. Lane Kneedler, Esquire, appeared on behalf of the SDRs. Patrick H. Cantilo, Esquire and Pierre J. Riou, Esquire appeared on behalf of the Deputy Receiver, and Peter B. Smith, Esquire appeared on behalf of the Bureau of Insurance.

During oral argument, counsel for the SDRs attempted to clarify the relief sought by the Companies. Counsel stated that "[the SDRs] are asking the Commission to recognize the Tennessee Rehabilitation Orders and adopt it as its own for purposes of stays *with regard to its own proceedings*. . . *We have asked that it be solely for your proceedings.*"¹² The SDRs stated further at the hearing that "we're not asking you to order any other court to do anything."¹³ In response to additional questioning, the SDRs stated that "we are asking for you to adopt the Tennessee orders for purposes of [SCC] proceedings. . . This is not a request for a statewide stay."¹⁴

We have considered the Joint Application, the Response, and the arguments of the parties. The Commission understands and shares the concerns of professionals in Virginia who fear that they may ultimately be left without insurance coverage. We are also mindful of the uncertainty that has been caused among these Virginia professionals and others by the Virginia and Tennessee receiverships. The Commission is also sympathetic to the efforts of the SDRs of DIR, ANLIR, and TRA to obtain stays in other Virginia courts, and we are hopeful that the Tennessee companies will be successful in that regard.

We nonetheless do not find that we have been provided with sufficient factual or legal justification to order the requested relief. The SDRs appear to have retreated from their request that this Commission order other Virginia courts to respect the stays issued in Tennessee as to Tennessee proceedings. The SDRs now seek only a Commission Order granting the Tennessee orders, with respect to stays, full faith and credit with regard to Commission proceedings. As there are no pending proceedings brought by parties against DIR, ANLIR, or TRA at the Commission, we are hard-pressed to determine how such an Order achieves anything. As claims arise at the Commission against DIR, ANLIR, or TRA, the Commission will certainly consider arguments that such claims are stayed by the provisions of the Tennessee orders and should be stayed here.

Accordingly, IT IS ORDERED THAT:

- (1) The Joint Application is hereby DENIED; and
- (2) This matter is dismissed and the papers herein be placed in the file for ended causes.

¹⁰ Response at 16.

¹¹ *Id.* at 20.

¹² Tr. at 14 (emphasis added).

¹³ *Id.* at 15.

¹⁴ Tr. at 17-18. The SDRs stated that they are only seeking a stay of claims against the SDRs at the Commission, of which there are none. Tr. at 30-31.

**CASE NO. INS-2003-00067
JUNE 6, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
OPTIMUM CHOICE, INC.,
Defendant

SETTLEMENT ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of a health maintenance organization in the Commonwealth of Virginia, in certain instances, violated § 38.2-3405 B of the Code of Virginia, as well as the Cease and Desist Order entered by the Commission in Case No. INS-2001-00090, by requiring a beneficiary of a health services plan to pay back to Defendant benefits paid to the beneficiary pursuant to the terms of such plan from the proceeds of a recovery by the beneficiary from another source, and §§ 38.2-510 A (1) and (6) of the Code of Virginia by misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue and by not attempting in good faith to make prompt, fair, and equitable settlements of claims in which liability has become reasonably clear with such frequency as to indicate a general business practice.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-4316 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of fifteen thousand dollars (\$15,000), 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 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of §§ 38.2-3405 B, 38.2-510 A (1), or 38.2-510 A (6) of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00068
JUNE 6, 2003**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

MAMSI LIFE AND HEALTH INSURANCE COMPANY,

Defendant

SETTLEMENT ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of a health maintenance organization in the Commonwealth of Virginia, in certain instances, violated § 38.2-3405 B of the Code of Virginia by requiring a beneficiary of a health services plan to pay back to Defendant benefits paid to the beneficiary pursuant to the terms of such plan from the proceeds of a recovery by the beneficiary from another source.

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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein 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 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of § 38.2-3405 B of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00068
JUNE 19, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
MAMSI LIFE AND HEALTH INSURANCE COMPANY,
Defendant

CORRECTING ORDER

In the Settlement Order entered herein June 6, 2003, the first paragraph, set forth on page 1 of the order, provides in part that Defendant is "duly licensed by the Commission to transact the business of a health maintenance organization in the Commonwealth of Virginia." The second paragraph, also on page 1 of the order, provides in part that, as to Defendant, the Commission is authorized to take certain actions by "§§ 38.2-218, 38.2-219, and 38.2-4316 of the Code of Virginia."

In fact, Defendant is licensed as an insurer in the Commonwealth, and the Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia; therefore, it is necessary to correct the language of the first and second paragraphs of the order.

IT IS THEREFORE ORDERED THAT:

(1) The language of the first paragraph of the Settlement Order entered herein June 6, 2003, shall be deleted in its entirety, and the following language shall be inserted in its place and stead:

"Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-3405 B of the Code of Virginia by requiring a beneficiary of a health services plan to pay back to Defendant benefits paid to the beneficiary pursuant to the terms of such plan from the proceeds of a recovery by the beneficiary from another source."

(2) The language of the second paragraph of the Settlement Order entered herein June 6, 2003, shall be deleted in its entirety, and the following language shall be inserted in its place and stead:

"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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations."

(3) All other provisions of the Settlement Order entered June 6, 2003, shall remain in full force and effect

**CASE NO. INS-2003-00070
APRIL 1, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
PEOPLES BONDING, INC.,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-510 A 6 of the Code of Virginia by failing to make prompt, fair and equitable settlements of claims in which liability has become reasonably clear.

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 to suspend or revoke Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been notified of its right to a hearing before the Commission in this matter by certified letters dated January 31, 2003, and February 27, 2003, respectively, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

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 Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

THE COMMISSION is of the opinion and finds that Defendant has violated § 38.2-510 A 6 of the Code of Virginia by failing to make prompt, fair and equitable settlements of claims in which liability has become reasonably clear.

IT IS THEREFORE ORDERED THAT:

- (1) The licenses of Defendant to transact the business of insurance as an agent in the Commonwealth of Virginia be, and they are hereby, REVOKED;
- (2) All appointments issued under said licenses be, and they are hereby, VOID;
- (3) Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) 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 cause a copy of this Order to be sent to every insurance company for which 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-2003-00075
MAY 21, 2003**

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

v.

LAWRENCE J. O'DONOHUE, JR.

and

TOTAL INSURANCE MARKETING, LLC,
Defendants**ORDER REVOKING LICENSE**

Based on an investigation by the Bureau of Insurance, it appears that Defendants, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-1809 and 38.2-1813 of the Code of Virginia, as well as the Cease and Desist Order entered by the Commission in Case No. INS-2002-00181, by failing to make records available promptly upon request for examination by the Commission or its employees, and by failing to hold all premiums, return premiums, or other funds received by Defendant in a fiduciary capacity.

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 to suspend or revoke Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that Defendants have committed the aforesaid alleged violations.

Defendants have been notified of their right to a hearing before the Commission in this matter by certified letters dated April 2, 2003, and April 23, 2003, respectively, and mailed to the Defendants' address shown in the records of the Bureau of Insurance.

Defendants, having been advised in the above manner of their right to a hearing in this matter, have failed to request a hearing and have not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon Defendants' failure to request a hearing, has recommended that the Commission enter an order revoking all of Defendants' 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 Defendants have violated §§ 38.2-1809 and 38.2-1813 of the Code of Virginia by failing to make records available promptly upon request for examination by the Commission or its employees, and by failing to hold all premiums, return premiums, or other funds received by Defendant in a fiduciary capacity.

IT IS THEREFORE ORDERED THAT:

- (1) The licenses of Defendants to transact the business of insurance as an agent in the Commonwealth of Virginia be, and they are hereby, REVOKED;
- (2) All appointments issued under said licenses be, and they are hereby, VOID;
- (3) Defendants transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) Defendants 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 cause a copy of this Order to be sent to every insurance company for which Defendants hold an appointment to act as an insurance agent in the Commonwealth of Virginia; and

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

**CASE NO. INS-2003-00075
JUNE 11, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
LAWRENCE J. O'DONOHUE, JR.
and
TOTAL INSURANCE MARKETING, LLC,
Defendants

VACATING ORDER

GOOD CAUSE having been shown, the Order Revoking License entered herein May 21, 2003, is hereby vacated.

**CASE NO. INS-2003-00081
MAY 14, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
PRINCIPAL LIFE INSURANCE COMPANY,
Defendant

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, in certain instances, violated §§ 38.2-3407.15 B 1, 38.2-3407.15 B 2, 38.2-3407.15 B 3, 38.2-3407.15 B 4, 38.2-3407.15 B 5, 38.2-3407.15 B 6, 38.2-3407.15 B 7, 38.2-3407.15 B 8, 38.2-3407.15 B 9, and 38.2-5805 C 8 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of ten thousand dollars (\$10,000), waived its right to a hearing, and agreed to the entry by the Commission of a cease and desist order.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of §§ 38.2-3407.15 B 1, 38.2-3407.15 B 2, 38.2-3407.15 B 3, 38.2-3407.15 B 4, 38.2-3407.15 B 5, 38.2-3407.15 B 6, 38.2-3407.15 B 7, 38.2-3407.15 B 8, 38.2-3407.15 B 9 or 38.2-5805 C 8 of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00083
MAY 1, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

THE INSURANCE CORPORATION OF NEW YORK,
Defendant

ORDER TO TAKE NOTICE

Section 38.2-1040 of the Code of Virginia provides, *inter alia*, 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 of Virginia 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.

The Insurance Corporation of New York, 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.

Defendant timely filed its December 31, 2002 Annual Statement with the Bureau of Insurance ("Bureau"), reporting capital of \$11,140,000 and surplus of \$7,158,402.

The Bureau's review of Defendant's December 31, 2002, Annual Statement indicates that Defendant sustained an eighty-seven percent (87%) decrease in excess surplus to policyholders over and above its statutory requirement for the year ended December 31, 2002.

In addition, Defendant's December 31, 2002, Annual Statement indicates Defendant reported a risk-based capital level at its mandatory control level risk-based capital.

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 (50%) in the preceding twelve (12) 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 of Insurance has recommended that, based on the foregoing, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be suspended.

THEREFORE, IT IS ORDERED that Defendant TAKE NOTICE that the Commission shall enter an order subsequent to May 15, 2003, suspending the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before May 15, 2003, Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for hearing before the Commission with respect to the proposed suspension of Defendant's license.

**CASE NO. INS-2003-00083
MAY 27, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

THE INSURANCE CORPORATION OF NEW YORK,
Defendant

ORDER SUSPENDING LICENSE

In an Order entered herein May 1, 2003, Defendant was ordered to take notice that the Commission would enter an Order subsequent to May 15, 2003, suspending the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before May 15, 2003, Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed suspension of Defendant's license.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed suspension of Defendant's license.

THEREFORE, IT IS ORDERED THAT:

(1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be, and it is hereby, SUSPENDED;

(2) Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia until further order of the Commission;

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(3) The appointments of Defendant's agents to act on behalf of Defendant in the Commonwealth of Virginia be, and they are hereby, SUSPENDED;

(4) Defendant's agents shall transact no new insurance business on behalf of 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 Defendant's agents appointed to act on behalf of 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 Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2003-00084
MAY 2, 2003**

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

v.

LIFE SETTLEMENTS INTERNATIONAL, LLC,
Defendant

ORDER TO TAKE NOTICE

Pursuant to § 38.2-5701 of the Code of Virginia, the Commission may deny an application for a license or may suspend or revoke a license of any viatical settlement provider in the Commonwealth of Virginia whenever the Commission finds that the company has violated any provisions of this chapter or other applicable provisions of this title.

Section 38.2-5701 I of the Code requires all viatical settlement providers to be bonded and the bonds to be filed with the Commission.

Life Settlements International, LLC, a foreign corporation domiciled in the State of Delaware ("Defendant"), is licensed by the Commission to transact the business of a viatical settlement provider in the Commonwealth of Virginia.

On April 1, 2003, Defendant filed with the Bureau of Insurance ("Bureau") its Application for Renewal of License and 2002 Annual Statement.

In a letter accompanying Defendant's filing and signed by its President, Defendant notified the Bureau that it is unable to comply with the surety bond requirement of § 38.2-5701 I.

The Bureau of Insurance has recommended that, based on the foregoing, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be suspended.

IT IS THEREFORE ORDERED that Defendant TAKE NOTICE that the Commission shall enter an order subsequent to May 15, 2003, suspending the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before May 15, 2003, 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 Defendant's license.

**CASE NO. INS-2003-00084
MAY 27, 2003**

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

v.

LIFE SETTLEMENTS INTERNATIONAL, LLC,
Defendant

ORDER SUSPENDING LICENSE

In an Order entered herein May 2, 2003, Defendant was ordered to take notice that the Commission would enter an Order subsequent to May 15, 2003, suspending the license of Defendant to transact the business of a viatical settlement provider in the Commonwealth of Virginia unless on or before May 15, 2003, Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed suspension of Defendant's license.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed suspension of Defendant's license.

THEREFORE, IT IS ORDERED THAT:

(1) Pursuant to § 38.2-5701 of the Code of Virginia, the license of Defendant to transact the business of a viatical settlement provider in the Commonwealth of Virginia be, and it is hereby, SUSPENDED;

(2) Defendant shall issue no new viatical settlement contracts or otherwise transact any new viatical settlement provider business in the Commonwealth of Virginia until further order of the Commission; and

(3) The Bureau of Insurance shall cause notice of the suspension of Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2003-00086
APRIL 29, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
SHAWPIN JONG
and
REALTY TITLE,
Defendants

ORDER TO TAKE NOTICE

On April 28, 2003, the Bureau of Insurance, by counsel, filed a Motion for Permanent Injunction asking that Defendants be permanently enjoined from transacting the business of insurance in the Commonwealth of Virginia based on Defendants' violations of §§ 38.2-502 and 38.2-1822 of the Code of Virginia. The Bureau also requested that Defendant Realty Title be permanently enjoined from conducting settlements in the Commonwealth of Virginia for its violations of § 6.1-2.21 of the Code of Virginia.

IT IS THEREFORE ORDERED that Defendants TAKE NOTICE that the Commission shall enter a Judgment Order permanently enjoining Defendants from transacting the business of insurance and/or conducting settlements in the Commonwealth of Virginia unless on or before June 1, 2003, Defendants file with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a responsive pleading and a request for a hearing.

**CASE NO. INS-2003-00086
JUNE 4, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
SHAWPIN JONG
and
REALTY TITLE,
Defendants

JUDGMENT ORDER

By order entered on April 29, 2003, Defendants were ordered to take notice that the Commission would enter a Judgment Order subsequent to June 1, 2003, permanently enjoining Defendants from transacting the business of insurance and/or conducting settlements in the Commonwealth of Virginia, unless on or before June 1, 2003, Defendants filed with the Clerk of the Commission a responsive pleading and a request for a hearing.

The Order to Take Notice was entered in response to a Motion for Permanent Injunction filed by the Bureau of Insurance wherein the Bureau alleged that Defendants Shawpin Jong and Realty Title violated §§ 38.2-502 and 38.2-1822 of the Code of Virginia, and Realty Title violated § 6.1-2.21 of the Code of Virginia.

As of the date of this Order, Defendants have failed to file a responsive pleading to object to the entry of a Judgment Order, nor have Defendants requested a hearing.

THEREFORE, IT IS ORDERED THAT:

(1) Defendants Shawpin Jong and Realty Title be, and they are hereby, permanently enjoined from transacting the business of insurance in the Commonwealth of Virginia;

(2) Defendant Realty Title be, and it is hereby, permanently enjoined from conducting settlements in the Commonwealth of Virginia; and

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

**CASE NO. INS-2003-00091
MAY 5, 2003**

LIBERTY LIFE INSURANCE COMPANY

Ex Parte, In re: Approval of a regulatory settlement agreement by and between Liberty Life Insurance Company, and the Director of Insurance for the State of South Carolina, for and on behalf of the State of South Carolina, the Virginia Bureau of Insurance and the Insurance Regulators of the affected states in the United States and the District of Columbia

ORDER APPROVING SETTLEMENT AGREEMENT

ON THIS DAY came the Bureau of Insurance (the "Bureau"), by counsel, and requested (i) Commission approval and acceptance of a certain multi-state Regulatory Settlement Agreement (the "Agreement") dated January 16, 2003, a copy of which is attached hereto and made a part hereof, by and between the Director of Insurance for the State of South Carolina, for and on behalf of the State of South Carolina, the Bureau, and the Insurance Regulators of each of the affected states in the United States and the District of Columbia, and Liberty Life Insurance Company, a foreign insurer domiciled in the State of South Carolina and licensed to transact the business of insurance in the Commonwealth of Virginia, and (ii) authority to execute any documents attendant to the Agreement necessary to evidence the Commission's acceptance of the Agreement;

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 (i) the Agreement be, and it is hereby, APPROVED AND ACCEPTED, and (ii) the Commissioner of Insurance be, and he is hereby, authorized to execute any attendant documents necessary to evidence the Commission's approval and acceptance of the Agreement.

NOTE: A copy of Attachment A entitled "Regulatory 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-2003-00093
JUNE 12, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

FREEDOM LIFE INSURANCE COMPANY OF AMERICA,
Defendant

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, in certain instances, violated §§ 38.2-316 A, 38.2-316 B, 38.2-316 C, 38.2-502, 38.2-503, 38.2-510 A 15, 38.2-604, 38.2-1812 A, 38.2-1833 A 1, 38.2-1834 C, 38.2-1834 D, 38.2-3405, 38.2-3407.4 A, 38.2-3407.15 B 1, 38.2-3407.15 B 2, 38.2-3407.15 B 3, 38.2-3407.15 B 4, 38.2-3407.15 B 5, 38.2-3407.15 B 6, 38.2-3407.15 B 7, 38.2-3407.15 B 8, and 38.2-3407.15 B 9 of the Code of Virginia, as well as 14 VAC 5-90-50 A, 14 VAC 5-90-60 A 1, 14 VAC 5-90-60 B 1, and 14 VAC 5-100-50 3.

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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of fifteen thousand dollars (\$15,000), 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 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of §§ 38.2-316 A, 38.2-316 B, 38.2-316 C, 38.2-502, 38.2-503, 38.2-510 A 15, 38.2-604, 38.2-1812 A, 38.2-1833 A 1, 38.2-1834 C, 38.2-1834 D, 38.2-3405, 38.2-3407.4 A, 38.2-3407.15 B 1, 38.2-3407.15 B 2, 38.2-3407.15 B 3, 38.2-3407.15 B 4, 38.2-3407.15 B 5, 38.2-3407.15 B 6, 38.2-3407.15 B 7, 38.2-3407.15 B 8, or 38.2-3407.15 B 9 of the Code of Virginia, or 14 VAC 5-90-50 A, 14 VAC 5-90-60 A 1, 14 VAC 5-90-60 B 1, or 14 VAC 5-100-50 3; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00094
MAY 27, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
ALLSTATE INSURANCE COMPANY
and
ALLSTATE INDEMNITY COMPANY,
Defendants

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it appears that Defendants, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, violated the Code of Virginia and the Virginia Administrative Code as follows: Allstate Insurance Company violated §§ 38.2-510 A 1, 38.2-510 A 10, 38.2-610, 38.2-1318, 38.2-1822, 38.2-1905 A, 38.2-1906 D, 38.2-2113, 38.2-2114, 38.2-2118, 38.2-2124, 38.2-2208, 38.2-2212, 38.2-2220, and 38.2-2223 of the Code of Virginia, as well as 14 VAC 5-400-30 and 14 VAC 5-400-70 D; and Allstate Indemnity Company violated §§ 38.2-304, 38.2-510 A 1, 38.2-510 A 10, 38.2-610, 38.2-1318, 38.2-1812, 38.2-1822, 38.2-1833, 38.2-1906 D, 38.2-2113, 38.2-2114, 38.2-2118, 38.2-2124, 38.2-2212, 38.2-2220, and 38.2-2223 of the Code of Virginia, as well as 14 VAC 5-400-30 and 14 VAC 5-400-70 D.

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 Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that Defendants have committed the aforesaid alleged violations.

Defendants have been advised of their right to a hearing in this matter, whereupon Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein Defendants have tendered to the Commonwealth of Virginia the sum of thirty-one thousand three hundred dollars (\$31,300), waived their 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 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 Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that Defendants' offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendants in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Allstate Insurance Company cease and desist from any conduct which constitutes a violation of §§ 38.2-510 A 1, 38.2-510 A 10, 38.2-610, 38.2-1318, 38.2-1822, 38.2-1905 A, 38.2-1906 D, 38.2-2113, 38.2-2114, 38.2-2118, 38.2-2124, 38.2-2208, 38.2-2212, 38.2-2220, or 38.2-2223 of the Code of Virginia, or 14 VAC 5-400-30 or 14 VAC 5-400-70 D; and Allstate Indemnity Company cease and desist from any conduct which constitutes a violation of §§ 38.2-304, 38.2-510 A 1, 38.2-510 A 10, 38.2-610, 38.2-1318, 38.2-1812, 38.2-1822, 38.2-1833, 38.2-1906 D, 38.2-2113, 38.2-2114, 38.2-2118, 38.2-2124, 38.2-2212, 38.2-2220, or 38.2-2223 of the Code of Virginia, or 14 VAC 5-400-30 or 14 VAC 5-400-70 D; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00099
SEPTEMBER 16, 2003**

PETITION OF
RICHARD B. JACKSON

For review of HOW Insurance Company, Home Warranty Corporation and Home Owners Warranty Corporation Deputy Receiver's Determination of Appeal

ORDER

On October 14, 1994, the Circuit Court of the City of Richmond entered an order appointing the State Corporation Commission (the "Commission") the Receiver of HOW Insurance Company ("HOWIC"), Home Warranty Corporation ("HWC") and Home Owners Warranty Corporation ("HOW") (collectively, the "HOW Companies"). The receivership order granted the Commission authority to proceed with the rehabilitation or liquidation of the HOW Companies and established a Receivership Appeal Procedure ("RAP") to govern any appeals or challenges to any decision rendered by the Receiver or the Receiver's duly authorized representatives.

On May 5, 2003, Richard B. Jackson ("Petitioner") filed a Petition for Review ("Petition") with the Commission contesting a Determination of Appeal issued in Claim No. 2336269-F in which the Deputy Receiver denied Petitioner's claim for Major Structural Defect damage to his resident located at 1236 Shirlton Road, Midlothian, Virginia 23114-4540. By letter dated October 14, 2002, Petitioner made the present claim on his HOW policy for

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

continuing structural defects in his home. Petitioner acknowledged that his HOW policy had expired, but contended that the defects developed while the policy was in effect.¹

By order dated May 16, 2003, the Commission docketed the case, assigned the matter to a Hearing Examiner, and directed the Deputy Receiver to file an Answer or other responsive pleading to the Petition on or before June 13, 2003.

On June 12, 2003, the Deputy Receiver filed a Motion to Dismiss and Answer to Petition for Review, and a Memorandum in Support of the Motion to Dismiss ("Motion"). In its Motion, the Deputy Receiver contends, among other things, that Petitioner fails to assert a claim upon which relief may be granted because: (i) the claim is untimely pursuant to the express terms of the HOW insurance/warranty documents; and (2) Petitioner executed three releases and accepted settlement payments, constituting an accord and satisfaction.

Petitioner filed no response to the Deputy Receiver's Motion to Dismiss.

After reviewing the filing submitted in the case, the Hearing Examiner issued his Report on July 16, 2003. Therein, the Hearing Examiner made the following findings and recommendations:

1. The HOW insurance/warranty documents contain elements of "occurrence" and "claims made" insurance policies.
2. Before coverage is effective under the insurance/warranty documents, the defect must occur within the applicable coverage period and the claim must be made within thirty (30) days of the expiration of the applicable coverage period.
3. Petitioner's HOW Program coverage was effective on February 13, 1985.
4. Petitioner's Major Structural Defect coverage expired on February 13, 1995, and the thirty-day grace period expired on March 15, 1995.
5. Based on the Petitioner's pleadings, the most recent defects in Petitioner's home occurred after expiration of his HOW Program coverage.
6. Petitioner's claim was filed with HOW after the expiration of his HOW Program coverage.
7. Petitioner's claim is time-barred by the express terms of the HOW insurance/warranty documents.
8. The Deputy Receiver's Motion to Dismiss should be granted.
9. The Commission should enter an Order granting the Motion to Dismiss; affirming the Deputy Receiver's Determination of Appeal; and dismissing the Petition with prejudice.

No comments were filed to the Report of the Hearing Examiner.

Upon consideration of the filings 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.

Accordingly, IT IS ORDERED THAT:

1. The Motion to Dismiss submitted by the Deputy Receiver, be, and the same is hereby, GRANTED;
2. The Determination of Appeal in Claim No. 2336269-F issued by the Deputy Receiver on April 23, 2003, be, and the same is hereby, AFFIRMED;
3. The Petition of Review of Richard B. Jackson, be, and the same is hereby, DISMISSED with prejudice; and
4. The papers herein are passed to the file for ended causes.

¹ Prior to the claim submitted on October 14, 2002, Petitioner filed five previous claims with HOW for Major Structural Defect coverage: (i) a claim submitted by letter dated August 13, 1990, was denied because the criteria for a MSD was not met; (ii) a claim submitted by letter dated October 31, 1991, resulted in Petitioner accepting payment of \$23,263.76 and executing a release agreement; (iii) a claim submitted by letter dated July 28, 1993, resulted in Petitioner accepting the sum of \$15,921 and executing a release agreement; (iv) a claim submitted by letter dated February 22, 1995, resulted in Petitioner accepting payment of \$700 and executing a release; and (v) a letter claim dated June 2, 1999 resulted in HOW denying the claim because Petitioner's HOW policy expired on February 13, 1995.

**CASE NO. INS-2003-00100
JUNE 19, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

UNITEDHEALTHCARE OF THE MID-ATLANTIC, INC.,
Defendant

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of a health maintenance organization in the Commonwealth of Virginia, in certain instances, violated §§ 38.2-316 B, 38.2-316 C, 38.2-502 1, 38.2-503, 38.2-510 A 5, 38.2-510 A 15, 38.2-511, 38.2-1812 A, 38.2-1822 A, 38.2-1833 A 1, 38.2-1834 C, 38.2-1834 D, 38.2-3407.14 B, 38.2-3407.15 B 1, 38.2-3407.15 B 2, 38.2-3407.15 B 3, 38.2-3407.15 B 4, 38.2-3407.15 B 5, 38.2-3407.15 B 6, 38.2-3407.15 B 7, 38.2-3407.15 B 8, 38.2-3407.15 B 9, 38.2-3407.15 C, 38.2-3418.13, 38.2-3431 C 3, 38.2-3431 C 6, 38.2-3542 C, 38.2-4304 B, 38.2-4306 B 1, 38.2-4306.1, 38.2-4312 A, 38.2-4313, 38.2-5804 A, 38.2-5804 A 1, 38.2-5804 C, 38.2-5805 C, 38.2-5805 C 1, 38.2-5805 C 8, and 38.2-5805 C 10 of the Code of Virginia, as well as 14 VAC 5-90-50 B, 14 VAC 5-90-60 B 1, 14 VAC 5-90-80 D, 14 VAC 5-90-90 A, 14 VAC 5-90-90 C, 14 VAC 5-90-120 A, 14 VAC 5-90-130 A, 14 VAC 5-90-160, 14 VAC 5-90-170 A, 14 VAC 5-210-70 C, and 14 VAC 5-210-110 B.

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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of sixty thousand dollars (\$60,000) and waived its right to a hearing.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of 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-2003-00103
JULY 18, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

NORTH AMERICAN COMPANY FOR LIFE AND HEALTH INSURANCE,
Defendant

SETTLEMENT ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, in certain instances, violated §§ 38.2-608 D and 38.2-610 of the Code of Virginia by using an adverse underwriting decision notice in which Defendant reserves the right to charge a fee for providing a copy of personal information relating to an adverse underwriting decision provided under § 38.2-610, and by failing to give to applicants for insurance written notice of an adverse underwriting decision in the form approved 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of eight thousand dollars (\$8,000), 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 Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

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

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of §§ 38.2-608 D or 38.2-610 of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00104
MAY 27, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting Revisions to the Rules Governing Viatical Settlement Providers and Viatical Settlement Brokers

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the 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 has submitted to the Commission proposed revisions to Chapter 71 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Viatical Settlement Providers and Viatical Settlement Brokers," which amend the rules at 14 VAC 5-71-10, 14 VAC 5-71-20, 14 VAC 5-71-40, 14 VAC 5-71-60, 14 VAC 5-71-70, and 14 VAC 5-71-90, propose new rules at 14 VAC 5-71-31, 14 VAC 5-71-35, 14 VAC 5-71-91, 14 VAC 5-71-92, and 14 VAC 5-71-93, and repeal the rules at 14 VAC 5-71-30 and 14 VAC 5-71-80.

The proposed revisions reflect the enactment of Chapter 717 (HB 2613) of the 2003 Acts of Assembly, which, effective July 1, 2003, repeals Chapter 57 (§ 38.2-5700 et seq.) of Title 38.2 of the Code of Virginia and enacts provisions designated for Chapter 60 (§ 38.2-6000 et seq.) of Title 38.2 of the Code of Virginia, both entitled the Viatical Settlements Act.

The Commission is of the opinion that the proposed revisions submitted by the Bureau of Insurance should be considered for adoption with an effective date of August 4, 2003.

IT IS THEREFORE ORDERED THAT:

(1) The proposed revisions to the "Rules Governing Viatical Settlement Providers and Viatical Settlement Brokers," which amend the rules at 14 VAC 5-71-10, 14 VAC 5-71-20, 14 VAC 5-71-40, 14 VAC 5-71-60, 14 VAC 5-71-70, and 14 VAC 5-71-90, propose new rules at 14 VAC 5-71-31, 14 VAC 5-71-35, 14 VAC 5-71-91, 14 VAC 5-71-92, and 14 VAC 5-71-93, and repeal the rules at 14 VAC 5-71-30 and 14 VAC 5-71-80, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or to request a hearing to oppose the adoption of, the proposed revisions shall file such comments or hearing request on or before July 30, 2003, 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-2003-00104.

(3) If no written request for a hearing on the proposed revisions is filed on or before July 30, 2003, 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 Douglas C. Stolte, who forthwith shall give further notice of the proposed adoption of the revisions to the rules by mailing a copy of this Order, together with the proposed revisions, to all viatical settlement providers and viatical settlement brokers licensed by the Commission, and certain interested parties designated by the Bureau of Insurance.

(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) On or before May 30, 2003, the Commission's Division of Information Resources shall make available this Order and the attached proposed revisions on the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>.

(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 Viatical Settlement Providers and Viatical Settlement 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. INS-2003-00104
OCTOBER 29, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting Revisions to the Rules Governing Viatical Settlement Providers and Viatical Settlement Brokers

ORDER ADOPTING REVISIONS TO RULES

By order entered herein May 27, 2003, all interested persons were ordered to take notice that the Commission would consider the entry of an order subsequent to July 30, 2003, adopting revisions proposed by the Bureau of Insurance to the Commission's Rules Governing Viatical Settlement Providers and Viatical Settlement Brokers, set forth in Chapter 71 of Title 14 of the Virginia Administrative Code, effective August 4, 2003, unless on or before July 30, 2003, any person objecting to the adoption of the proposed rules filed a request for a 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 July 30, 2003.

The Life Settlement Institute filed comments to the proposed revisions and a request for a hearing with the Clerk on July 1, 2003, but withdrew its hearing request in a letter filed with the Clerk on July 28, 2003.

The Viatical and Life Settlement Association of America (the "VLSAA") filed comments to the proposed revisions and a request for a hearing with the Clerk on August 1, 2003.

By Order Setting Hearing entered herein August 29, 2003, the Commission scheduled a hearing for October 8, 2003, to consider the adoption of the revisions to the Rules Governing Viatical Settlement Providers and Viatical Settlement Brokers proposed by the Commission's Bureau of Insurance (and attached to the Order to Take Notice).

The Bureau filed its Statements of Position in response to the comments filed by the Life Settlement Institute and the VLSAA with the Clerk on September 11, 2003.

The Bureau and the VLSAA resolved all but one of the issues raised in the VLSAA's comments prior to the hearing. The Commission conducted a hearing on October 8, 2003, wherein testimony was received from the Bureau and the VLSAA on whether and how the standard of evaluating the reasonableness of payments to insureds who are terminally or chronically ill, which is located at 14 VAC 5-71-60, should be revised.

At the conclusion of the hearing, the Commission noted that it would consider an alternative standard to the present standard set forth in 14 VAC 5-71-60, provided the parties could agree upon an alternative standard. The Bureau and the VLSAA have been unable to reach agreement on this issue.

The Bureau, citing the need for rules to administer and support the Viatical Settlements Act, which was effective on July 1, 2003, has recommended that the revisions originally proposed by the Bureau and attached to the Order to Take Notice, amended as reflected in the Bureau's Exhibit #2 entered at the October 8, 2003, hearing, which are the revisions to the rules that are attached hereto, be adopted; and

THE COMMISSION, having considered the proposed revisions, the testimony at the October 8, 2003, hearing, and the Bureau's recommendation, is of the opinion that the attached revisions to the rules should be adopted.

THEREFORE, IT IS ORDERED THAT:

(1) The revisions to Chapter 71 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Viatical Settlement Providers and Viatical Settlement Brokers," which amend the rules at 14 VAC 5-71-10, 14 VAC 5-71-20, 14 VAC 5-71-40, 14 VAC 5-71-60, 14 VAC 5-71-70, and 14 VAC 5-71-90, propose new rules at 14 VAC 5-71-31, 14 VAC 5-71-35, 14 VAC 5-71-91, 14 VAC 5-71-92, and 14 VAC 5-71-93, and repeal the rules at 14 VAC 5-71-30 and 14 VAC 5-71-80, and which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective November 1, 2003.

(2) AN ATTESTED COPY hereof 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 adoption of the revisions to the rules by mailing a copy of this Order, including a copy of the attached revised rules, to all viatical settlement providers and viatical settlement brokers licensed by the Commission, 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 revisions to the rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) On or before October 29, 2003, the Commission's Division of Information Resources shall make available this Order and the attached revisions to the rules on the Commission's website, <http://www.state.va.us/scc/caseinfo.htm>.

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

NOTE: A copy of Attachment A entitled "Rules Governing Viatical Settlement Providers and Viatical Settlement 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. INS-2003-00104
NOVEMBER 12, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting Revisions to the Rules Governing Viatical Settlement Providers and Viatical Settlement Brokers

CORRECTING ORDER

In the Order Adopting Revisions to Rules entered herein October 29, 2003, the final revisions to the rules that were attached thereto were not the correct version of the final revisions. Therefore, although there have been no substantive changes to the version attached to the order entered October 29, 2003, it is the recommendation of the Bureau of Insurance that the corrected version of the revisions to the rules be filed with the Clerk of the Commission.

IT IS THEREFORE ORDERED THAT:

(1) The revisions to the rules attached to the Order Adopting Revisions to Rules entered herein October 29, 2003, shall be deleted in their entirety, and the corrected final revisions to the rules attached hereto shall be, and they are hereby, adopted in their place and stead.

(2) All provisions of the Order Adopting Revisions to Rules entered October 29, 2003, shall remain in full force and effect.

(3) AN ATTESTED COPY hereof 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 entry of this Order by mailing a copy of this Order, including a copy of the attached corrected final revisions to the rules, to all viatical settlement providers and viatical settlement brokers licensed by the Commission, and certain interested parties designated by the Bureau of Insurance.

(4) The Commission's Division of Information Resources forthwith shall make available this Order and the attached corrected final revisions to the rules on the Commission's website, <http://www.state.va.us/scc/caseinfo.htm>.

(5) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (3) above.

**CASE NO. INS-2003-00108
MAY 20, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
SOUTHERN TITLE COMPANY OF SOUTH CAROLINA, LLC,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance, it appears that Defendant, duly licensed by the 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 provide the Commission with a copy of 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that 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 to suspend or revoke Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violation.

Defendant has been notified of its right to a hearing before the Commission in this matter by certified letters dated August 1, 2002, August 16, 2002, November 14, 2002, and April 10, 2003, respectively, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

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 Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of 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 Defendant has violated § 6.1-2.21 of the Code of Virginia by failing to provide the Commission with a copy of Defendant's analysis or audit report of its escrow account.

IT IS THEREFORE ORDERED THAT:

(1) The licenses of Defendant to transact the business of insurance as an agent in the Commonwealth of Virginia be, and they are hereby, REVOKED;

(2) All appointments issued under said licenses be, and they are hereby, VOID;

(3) Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

(4) 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 cause a copy of this Order to be sent to every insurance company for which 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-2003-00111
JUNE 19, 2003**

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

SETTLEMENT ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, in certain instances, violated § 38.2-610 of the Code of Virginia by failing to give to applicants for insurance written notice of an adverse underwriting decision in the form approved 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of eight thousand dollars (\$8,000), 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 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

(1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;

(2) Defendant cease and desist from any conduct which constitutes a violation of § 38.2-610 of the Code of Virginia; and

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

**CASE NO. INS-2003-00112
MAY 27, 2003**

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

SETTLEMENT ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1904 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of fifty-two thousand six hundred fifty dollars (\$52,650), 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 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of § 38.2-1904 of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00120
AUGUST 1, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
ALLSTATE INSURANCE COMPANY and ALLSTATE INDEMNITY COMPANY,
Defendants

SETTLEMENT ORDER

Based on a target market conduct examination performed by the Bureau of Insurance, it appears that Defendants, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, are alleged to have 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 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 Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that Defendants have committed the aforesaid alleged violations.

Defendants have been advised of their right to a hearing in this matter, whereupon Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein Defendants have tendered to the Commonwealth of Virginia the sum of fifty thousand dollars (\$50,000), waived their 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 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 Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that Defendants' offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendants in settlement of the matter set forth herein be, and it is hereby, accepted;

- (2) Defendants cease and desist from any conduct which constitutes a violation of § 38.2-1906 D of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00121
JULY 14, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
UNITED HEALTHCARE INSURANCE COMPANY,
Defendant

SETTLEMENT ORDER

Based on a target market conduct examination performed by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, in certain instances, violated §§ 38.2-510 A 15, 38.2-3407.15 B 1, 38.2-3407.15 B 2, 38.2-3407.15 B 3, 38.2-3407.15 B 4, 38.2-3407.15 B 5, 38.2-3407.15 B 6, 38.2-3407.15 B 7, 38.2-3407.15 B 8, 38.2-3407.15 B 9, 38.2-3407.15 C, and 38.2-5802 C 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of twenty thousand dollars (\$20,000) and waived its right to a hearing.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of 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-2003-00123
JUNE 12, 2003**

MONUMENTAL LIFE INSURANCE COMPANY

Ex Parte: In re: Approval of a regulatory Consent Order by and between Monumental Life Insurance Company, and the Insurance Commissioner for the Maryland Insurance Administration, for and on behalf of the State of Maryland, the Virginia Bureau of Insurance and the Insurance Regulators of all states in the United States and the District of Columbia

ORDER APPROVING CONSENT ORDER

ON THIS DAY came the Bureau of Insurance ("the Bureau"), by counsel, and requested (i) Commission approval and acceptance of a certain multi-state regulatory Consent Order dated June 12, 2003 ("the Consent Order"), a copy of which is attached hereto and made a part hereof, by and between the Insurance Commissioner for the Maryland Insurance Administration, for and on behalf of the State of Maryland, the Bureau, and the Insurance Regulators of each of the states in the United States and the District of Columbia, and Monumental Life Insurance Company, a foreign insurer domiciled in the State of Maryland and licensed to transact the business of insurance in the Commonwealth of Virginia, and (ii) authority to execute any documents attendant to the Consent Order necessary to evidence the Commission's acceptance of the Consent Order;

AND THE COMMISSION, having considered the terms of the Consent Order together with the recommendation of the Bureau that the Commission approve and accept the Consent Order, is of the opinion, finds, and ORDERS that (i) the Consent Order be, and it is hereby, APPROVED AND ACCEPTED and (ii) the Commissioner of Insurance be, and he is hereby authorized to execute any attendant documents necessary to evidence the Commission's approval and acceptance of the Consent Order.

NOTE: A copy of the Attachment entitled "Consent Order" 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-2003-00124
JULY 9, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
KEITH P. HICKS
and
HICKS BONDING COMPANY,
Defendants

SETTLEMENT ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendants violated §§ 38.2-512, 38.2-1024, 38.2-1801, and 38.2-1822 of the Code of Virginia by making false statements or representations on or relative to an application or any document or communication relating to the business of insurance for the purpose of obtaining a fee or commission, by acting as a surety insurer without first obtaining a license in a manner and in a form prescribed by the Commission, by claiming to be an authorized agent of a particular insurer without becoming an appointed agent of that insurer, and by acting as an agent of an insurer without first obtaining a license.

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 upon a finding by the Commission, after notice and opportunity to be heard, that Defendants have committed the aforesaid alleged violations.

Defendants have been advised of their right to a hearing in this matter, whereupon Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein Defendants have waived their 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 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 Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that Defendants' offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendants in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendants cease and desist from any conduct which constitutes a violation of §§ 38.2-512, 38.2-1024, 38.2-1801 or 38.2-1822 of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00125
AUGUST 8, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
GROUP HOSPITALIZATION AND MEDICAL SERVICES, INC.,
Defendant

SETTLEMENT ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia as a health services plan and trading as CareFirst BlueCross BlueShield, in certain instances, violated § 38.2-3407.14 of the Code of Virginia by failing to provide in conjunction with the proposed renewal of certain of its contracts sixty (60) days' written notice to affected subscribers of its intent to increase by more than thirty-five percent (35%) the annual premium charged for coverage under such contracts.

The State Corporation Commission ("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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of fifteen thousand dollars (\$15,000), waived its right to a hearing, and agreed to the entry by the Commission of a cease and desist order.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

In addition, Defendant has agreed to (i) on or before August 22, 2003, reimburse all affected subscribers including, if applicable, those subscribers with anniversary dates of July, August, September, and October, the amount of any rate increase in excess of thirty-five percent (35%) for any month the subscriber did not receive a sixty (60) day notice prior to the rate increase, retroactive to July 1, 1999, the effective date of § 38.2-3407.14; (ii) on or before December 31, 2003, reimburse all affected subscribers with anniversary dates of July, August, September, and October, if applicable, any remaining amount of any rate increase in excess of thirty-five percent (35%) for any month the subscriber did not receive a sixty (60) day notice prior to the rate increase, retroactive to July 1, 1999, the effective date of § 38.2-3407.14; (iii) submit to the Bureau of Insurance for its review prior to each of the foregoing disseminations a draft of the letter that will accompany the reimbursement to affected subscribers; and (iv) upon completion of each of the foregoing reimbursement processes, notify the Bureau of Insurance in writing of the total number of subscribers so reimbursed and the total amount of the reimbursements.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of § 38.2-3407.14 of the Code of Virginia;
- (3) On or before August 22, 2003, Defendant reimburse all affected subscribers including, if applicable, those subscribers with anniversary dates of July, August, September, and October, the amount of any rate increase in excess of thirty-five percent (35%) for any month the subscriber did not receive a sixty (60) day notice prior to the rate increase, retroactive to July 1, 1999, the effective date of § 38.2-3407.14;
- (4) On or before December 31, 2003, reimburse all affected subscribers with anniversary dates of July, August, September, and October, if applicable, any remaining amount of any rate increase in excess of thirty-five percent (35%) for any month the subscriber did not receive a sixty (60) day notice prior to the rate increase, retroactive to July 1, 1999, the effective date of § 38.2-3407.14;
- (5) Defendant submit to the Bureau of Insurance for its review prior to each of the foregoing disseminations a draft of the letter that will accompany the reimbursement to affected subscribers; and
- (6) Upon completion of each of the foregoing reimbursement processes, Defendant notify the Bureau of Insurance in writing of the total number of subscribers so reimbursed and the total amount of the reimbursements.

**CASE NO. INS-2003-00126
JUNE 20, 2003**

APPLICATION OF
CENTRAL UNITED 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 application filed with the Commission on June 6, 2003, Central United Life Insurance Company, a Texas-domiciled insurer licensed to transact the business of insurance in the Commonwealth of Virginia ("Central United"), requested approval of an assumption reinsurance agreement pursuant to § 38.2-136 C of the Code of Virginia, whereby Central United would assume all of the life insurance and cancer expense policies of Providers Allcare Insurance Company, a Virginia-domiciled cooperative nonprofit life benefit company ("Providers Allcare").

The assumption reinsurance agreement does not require the approval of the Texas Department of Insurance, the domiciliary regulator of Central United.

Providers Allcare has waived its right to a hearing pursuant to § 38.2-136 C of the Code of Virginia, as evidenced by the letter of Carolyn Chrisman, Vice President of Providers Allcare, dated June 6, 2003, and filed with the Commission on June 9, 2003.

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 of Virginia, 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 approved.

THEREFORE, IT IS ORDERED THAT the application of Central United Life Insurance Company for 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-2003-00130
JULY 9, 2003**

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 a market conduct examination performed by the Bureau of Insurance, it appears that Defendants, each of which is duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, violated the Code of Virginia and the Virginia Administrative Code as follows: Farmers Insurance Exchange violated §§ 38.2-305, 38.2-510 A 10, 38.2-604.1, 38.2-610, 38.2-1812, 38.2-1822, 38.2-1833, 38.2-1905 A, 38.2-1906 D, 38.2-2113, 38.2-2114, 38.2-2120, 38.2-2202, 38.2-2206 A, 38.2-2208, 38.2-2210, 38.2-2212, 38.2-2223, and 38.2-2230 of the Code of Virginia, as well as 14 VAC 5-400-30, 14 VAC 5-400-40 A, and 14 VAC 5-400-70 D; and Mid-Century Insurance Company violated §§ 38.2-304, 38.2-305, 38.2-510 A 10, 38.2-510 C, 38.2-604.1, 38.2-610, 38.2-1822, 38.2-1905 A, 38.2-1906 D, 38.2-2014, 38.2-2202, 38.2-2206 A, 38.2-2208, 38.2-2210, 38.2-2212, 38.2-2220, 38.2-2223, and 38.2-2230 of the Code of Virginia, as well as 14 VAC 5-400-30, 14 VAC 5-400 40 A, and 14 VAC 5-400-70 D.

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 Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that Defendants have committed the aforesaid alleged violations.

Defendants have been advised of their right to a hearing in this matter, whereupon Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein Defendants have tendered to the Commonwealth of Virginia the sum of forty-two thousand dollars (\$42,000), waived their 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 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 Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that Defendants' offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendants in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Farmers Insurance Exchange cease and desist from any conduct which constitutes a violation of §§ 38.2-305, 38.2-510 A 10, 38.2-604.1, 38.2-610, 38.2-1812, 38.2-1822, 38.2-1833, 38.2-1905 A, 38.2-1906 D, 38.2-2113, 38.2-2114, 38.2-2120, 38.2-2202, 38.2-2206 A, 38.2-2208, 38.2-2210, 38.2-2212, 38.2-2223, or 38.2-2230 of the Code of Virginia, or 14 VAC 5-400-30, 14 VAC 5-400-40 A, or 14 VAC 5-400-70 D; and Mid-Century Insurance Company cease and desist from any conduct which constitutes a violation of §§ 38.2-304, 38.2-305, 38.2-510 A 10, 38.2-510 C, 38.2-604.1, 38.2-610, 38.2-1822, 38.2-1905 A, 38.2-1906 D, 38.2-2014, 38.2-2202, 38.2-2206 A, 38.2-2208, 38.2-2210, 38.2-2212, 38.2-2220, 38.2-2223, or 38.2-2230 of the Code of Virginia, or 14 VAC 5-400-30, 14 VAC 5-400 40 A, or 14 VAC 5-400-70 D; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00131
JUNE 26, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
MICHAEL DAVID PARTLOW,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance, it appears that 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 § 38.2-403 of the Code of Virginia by failing to pay the annual assessment on gross premium income for 2002 and related penalties.

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 to suspend or revoke Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violation.

Defendant has been notified of the apparent violation by certified letters dated April 10, 2003, and May 6, 2003, respectively, and of his right to a hearing before the Commission in this matter by certified letter May 27, 2003, all of which were mailed to Defendant's address shown in the records of the Bureau of Insurance.

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 Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of 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 Defendant has violated § 38.2-403 of the Code of Virginia by failing to pay the annual assessment on gross premium income for 2002 and related penalties.

IT IS THEREFORE ORDERED THAT:

- (1) The licenses of Defendant to transact the business of insurance as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia be, and they are hereby, REVOKED;
- (2) All appointments issued under said licenses be, and they are hereby, VOID;
- (3) Defendant transact no further business in the Commonwealth of Virginia as an insurance agent or as a surplus lines broker;
- (4) 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 five (5) 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 Defendant holds an appointment to act as an insurance agent or as a surplus lines broker in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00131
JULY 9, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
MICHAEL DAVID PARTLOW,
Defendant

VACATING ORDER

GOOD CAUSE having been shown, the Order Revoking License entered herein June 26, 2003, is hereby vacated.

**CASE NO. INS-2003-00140
JUNE 27, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
EQUITYQUEST FINANCIAL LLC,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance as an insurance agent in the Commonwealth of Virginia, violated § 6.1-2.21 of the Code of Virginia by failing to provide the Commission with a copy of 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violation.

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 to suspend or revoke Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violation.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Defendant has been notified of its right to a hearing before the Commission in this matter by certified letters dated May 1, 2003, and May 22, 2003, respectively, and mailed to Defendant's address shown in the records of the Bureau of Insurance, and has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of 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 Defendant has violated § 6.1-2.21 of the Code of Virginia by failing to provide the Commission with a copy of Defendant's analysis or audit report of its escrow account.

IT IS THEREFORE ORDERED THAT:

- (1) The licenses of Defendant to transact the business of insurance as an agent in the Commonwealth of Virginia be, and they are hereby, REVOKED;
- (2) All appointments issued under said licenses be, and they are hereby, VOID;
- (3) Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) 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 cause a copy of this Order to be sent to every insurance company for which 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-2003-00155
AUGUST 15, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
VIRGINIA PREMIER HEALTH PLAN, INC.,
Defendant

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it appears that 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, violated §§ 38.2-510 A 5, 38.2-510 A 10, 38.2-510 A 14, 38.2-511, 38.2-3407.4 A, 38.2-4306.1 B, and 38.2-5804 B of the Code of Virginia.

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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of fifty-three thousand dollars (\$53,000), 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 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of §§ 38.2-510 A 5, 38.2-510 A 10, 38.2-510 A 14, 38.2-511, 38.2-3407.4 A, 38.2-4306.1 B, or 38.2-5804 B of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00159
AUGUST 14, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

MASS MUTUAL LIFE INSURANCE COMPANY,
Defendant

SETTLEMENT ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, in certain instances, violated § 38.2-610 of the Code of Virginia by failing to give to applicants for insurance written notice of an adverse underwriting decision in the form approved 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of fifteen thousand dollars (\$15,000), 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 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of § 38.2-610 of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00165
AUGUST 5, 2003**

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

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the 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.

Section 38.2-3127.1 of the Code of Virginia provides that the Commission shall promulgate regulations governing the specifics of the annual actuarial opinion required pursuant to that section.

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 has submitted to the Commission proposed revisions to Chapter 310 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Actuarial Opinions and Memoranda," which amend the rules at 14 VAC 5-310-10 through 14 VAC 5-310-50, and 14 VAC 5-310-80 through 14 VAC 5-310-100, propose a new rule at 14 VAC 5-310-105, and repeal the rules at 14 VAC 5-310-60, 14 VAC 5-310-70, and 14 VAC 5-310-110.

The proposed revisions adopt for Virginia many of the provisions adopted by the National Association of Insurance Commissioners in 2001 for its Actuarial Opinion and Memorandum Regulation.

The Commission is of the opinion that the proposed revisions submitted by the Bureau of Insurance should be considered for adoption with an effective date of December 31, 2003.

IT IS THEREFORE ORDERED THAT:

(1) The proposed revisions to the "Rules Governing Actuarial Opinions and Memoranda," which amend the rules at 14 VAC 5-310-10 through 14 VAC 5-310-50, and 14 VAC 5-310-80 through 14 VAC 5-310-100, propose a new rule at 14 VAC 5-310-105, and repeal the rules at 14 VAC 5-310-60, 14 VAC 5-310-70, and 14 VAC 5-310-110, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or to request a hearing to oppose the adoption of, the proposed revisions shall file such comments or hearing request on or before October 15, 2003, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, in accordance with the Commission's Rules of Practice and Procedure and shall refer to Case No. INS-2003-00165.

(3) If no written request for a hearing on the proposed revisions is filed on or before October 15, 2003, 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 Douglas C. Stolte, who forthwith shall give further notice of the proposed adoption of the revisions to the rules by mailing a copy of this Order, together with the proposed revisions, to all companies subject to the provisions of § 38.2-3127.1 of the Code of Virginia, including fraternal benefit societies licensed under Chapter 41 of Title 38.2, and all other companies licensed by the Commission to write or reinsure policies or agreements providing any form of life, life insurance, or annuity benefits, and all life insurers licensed by the Commission to write or reinsure accident and sickness insurance.

(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) On or before August 11, 2003, the Commission's Division of Information Resources shall make available this Order and the attached proposed revisions on the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>.

(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 Actuarial Opinions and Memoranda" 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-2003-00165
OCTOBER 23, 2003**

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

ORDER ADOPTING REVISIONS TO RULES

By order entered herein August 5, 2003, all interested persons were ordered to take notice that the Commission would consider the entry of an order subsequent to October 15, 2003, adopting revisions proposed by the Bureau of Insurance to the Commission's Rules Governing Actuarial Opinions and Memoranda, set forth in Chapter 310 of Title 14 of the Virginia Administrative Code, which amend the rules concerning the specifics of the annual actuarial opinion required pursuant to § 38.2-3127.1 of the Code of Virginia effective December 31, 2003, unless on or before October 15, 2003, any person objecting to the adoption of the proposed rules filed a request for a hearing with the Clerk of the Commission.

The August 5, 2003, Order also required all interested persons to file their comments in support of or in opposition to the proposed revisions on or before October 15, 2003.

As of the date of this Order, no request for a hearing has been filed with the Clerk of the Commission, and, as of the date of this Order, no comments have been filed with the Clerk of the Commission.

The Bureau has recommended that the proposed revisions be adopted; and

THE COMMISSION, having considered the proposed revisions and the Bureau's recommendation, is of the opinion that the proposed revisions should be adopted.

THEREFORE, IT IS ORDERED THAT:

(1) The proposed revisions to Chapter 310 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Actuarial Opinions and Memoranda," which amend the rules at 14 VAC 5-310-10 through 14 VAC 5-310-50, and 14 VAC 5-310-80 through 14 VAC 5-310-100, propose a new rule at 14 VAC 5-310-105, and repeal the rules at 14 VAC 5-310-60, 14 VAC 5-310-70, and 14 VAC 5-310-110, and which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective December 31, 2003.

(2) AN ATTESTED COPY hereof 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 adoption of the revisions to the rules by mailing a copy of this Order, including a copy of the

attached revised rules, to all companies subject to the provisions of § 38.2-3127.1 of the Code of Virginia, including fraternal benefit societies licensed under Chapter 41 of Title 38.2, and all other companies licensed by the Commission to write or reinsure policies or agreements providing any form of life, life insurance, or annuity benefits, and all life insurers licensed by the Commission to write or reinsure accident and sickness insurance.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, including a copy of the attached rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) On or before October 28, 2003, the Commission's Division of Information Resources shall make available this Order and the attached rules on the Commission's website, <http://www.state.va.us/scc/caseinfo.htm>.

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

NOTE: A copy of Attachment A entitled "Rules Governing Actuarial Opinions and Memoranda" 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-2003-00168
AUGUST 14, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
AMERICA'S FIRST TITLE LLC,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, violated §§ 6.1-2.23 and 6.1-2.24 of the Code of Virginia, as well as 14 VAC 5-395-60, by failing to disburse funds in accordance with § 6.1-2.13 of the Code of Virginia, by failing to maintain sufficient records of its affairs so that the Bureau of Insurance may adequately ensure that Defendant is in compliance with the law, and by failing to maintain in a separate fiduciary account funds received in connection with an escrow, settlement or closing on property located in Virginia.

IT FURTHER APPEARING that the Commission is authorized by § 6.1-2.27 of the Code of Virginia to impose certain monetary penalties and to suspend or revoke Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that 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 to suspend or revoke Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been notified of its right to a hearing before the Commission in this matter by certified letters dated June 10, 2003, and July 2, 2003, respectively, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

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 Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of 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 Defendant has violated §§ 6.1-2.23 and 6.1-2.24 of the Code of Virginia, as well as 14 VAC 5-395-60, by failing to disburse funds in accordance with § 6.1-2.13 of the Code of Virginia, by failing to maintain sufficient records of its affairs so that the Bureau of Insurance may adequately ensure that Defendant is in compliance with the law, and by failing to maintain in a separate fiduciary account funds received in connection with an escrow, settlement or closing on property located in Virginia.

IT IS THEREFORE ORDERED THAT:

(1) The licenses of Defendant to transact the business of insurance as an agent in the Commonwealth of Virginia be, and they are hereby, REVOKED;

(2) All appointments issued under said licenses be, and they are hereby, VOID;

(3) Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

(4) 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;

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- (5) The Bureau of Insurance shall cause a copy of this Order to be sent to every insurance company for which 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-2003-00169
AUGUST 14, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
GRANITE SETTLEMENT SERVICES LLC,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, violated § 6.1-2.23 of the Code of Virginia by retaining interest received on funds deposited in connection with an escrow, settlement or closing, by failing to handle such funds in a fiduciary capacity, and by failing to maintain in a separate fiduciary account funds received in connection with an escrow, settlement or closing on property located in Virginia.

IT FURTHER APPEARING that the Commission is authorized by § 6.1-2.27 of the Code of Virginia to impose certain monetary penalties and to suspend or revoke Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that 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 to suspend or revoke Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been notified of its right to a hearing before the Commission in this matter by certified letters dated June 10, 2003, and July 3, 2003, respectively, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

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 Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of 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 Defendant has violated § 6.1-2.23 of the Code of Virginia by retaining interest received on funds deposited in connection with an escrow, settlement or closing, by failing to handle such funds in a fiduciary capacity, and by failing to maintain in a separate fiduciary account funds received in connection with an escrow, settlement or closing on property located in Virginia.

IT IS THEREFORE ORDERED THAT:

- (1) The licenses of Defendant to transact the business of insurance as an agent in the Commonwealth of Virginia be, and they are hereby, REVOKED;
- (2) All appointments issued under said licenses be, and they are hereby, VOID;
- (3) Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) 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 cause a copy of this Order to be sent to every insurance company for which 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-2003-00170
OCTOBER 6, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

NATIONAL WARRANTY INSURANCE RISK RETENTION GROUP,
Defendant

ORDER TO TAKE NOTICE

Pursuant to § 38.2-220 of the Code of Virginia, the Commission may 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

Section 38.2-5103 8 b of the Code of Virginia prohibits the solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

National Warranty Insurance Risk Retention Group, a risk retention group incorporated and domiciled in the Cayman Islands and conducting its business operations from offices located in Lincoln, Nebraska ("Defendant"), registered as a risk retention group in the Commonwealth of Virginia on October 27, 1988.

On August 1, 2003, by an Order entered by the Grand Court of the Cayman Islands, Defendant was found to be unable to pay its debts and was ordered to wind down its operations and be liquidated pursuant to the Companies Law of the Cayman Islands. The Order also appointed two Joint Official Liquidators for Defendant, such persons having been appointed as Joint Provisional Liquidators in June 2003.

The Bureau of Insurance has recommended that, given the foregoing, Defendant be enjoined permanently from writing any new or renewal business or otherwise operating in this Commonwealth.

IT IS THEREFORE ORDERED that Defendant TAKE NOTICE that the Commission shall enter an order subsequent to October 15, 2003, permanently enjoining Defendant from writing any new or renewal business or otherwise operating as a risk retention group in the Commonwealth of Virginia unless on or before October 15, 2003, 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 injunction.

**CASE NO. INS-2003-00170
NOVEMBER 4, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

NATIONAL WARRANTY INSURANCE RISK RETENTION GROUP,
Defendant

PERMANENT INJUNCTION

In an order entered herein October 6, 2003, National Warranty Insurance Risk Retention Group ("Defendant") was ordered to take notice that the Commission would enter an order subsequent to October 15, 2003, permanently enjoining Defendant from writing any new or renewal business or otherwise operating a risk retention group in the Commonwealth of Virginia unless on or before October 15, 2003, Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed injunction.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed injunction.

THEREFORE, IT IS ORDERED THAT Defendant be, and Defendant is hereby, PERMANENTLY ENJOINED from writing any new or renewal business or otherwise operating as a risk retention group in the Commonwealth of Virginia.

**CASE NO. INS-2003-00171
AUGUST 18, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

PARTNERS NATIONAL HEALTH PLANS OF NORTH CAROLINA, INC.,
Defendant

CONSENT ORDER

By letter filed herein with the State Corporation Commission ("Commission"), PARTNERS National Health Plans of North Carolina, Inc., a health maintenance organization domiciled in the State of North Carolina and licensed by the Commission to transact the business of a health maintenance organization in the Commonwealth of Virginia ("Defendant"), consented to the issuance of an order in which Defendant agrees, effective as of the date hereof, and continuing until further order of the Commission, not to issue any new business in the Commonwealth of Virginia;

THEREFORE, IT IS ORDERED THAT:

- (1) Defendant shall not issue any new business in the Commonwealth of Virginia until further order of the Commission; and
- (2) Defendant shall continue to maintain all the financial requirements of a licensed health maintenance organization and to make all required reporting filings with the Commission's Bureau of Insurance until further order of the Commission.

**CASE NO. INS-2003-00173
NOVEMBER 20, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

UNITED AMERICAN INSURANCE COMPANY,
Defendant

SETTLEMENT ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, in certain instances, violated § 38.2-610 of the Code of Virginia by failing to give to applicants for insurance written notice of an adverse underwriting decision in the form approved 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant has made an offer of settlement to the Commission wherein Defendant has tendered to the Commonwealth of Virginia the sum of fifteen thousand dollars (\$15,000) and waived its right to a hearing.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of 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-2003-00174
OCTOBER 21, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
LEXINGTON RETIREMENT COMMUNITY, INC.
Defendant

SETTLEMENT ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendant, duly registered by the Commission to transact the business of a continuing care provider in the Commonwealth of Virginia, in a certain instance, violated § 38.2-4904 of the Code of Virginia, as well as the Cease and Desist order entered by the Commission on August 16, 2000, in Case No. INS-2000-00150, by failing to file timely with the Commission its annual disclosure statement.

The Commission is authorized by §§ 38.2-218, 38.2-4915, and 38.2-4916 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violation.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein 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 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of § 38.2-4904 of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00182
OCTOBER 6, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
SHONEYS OF RICHMOND, INC.,
CD RESTAURANTS, INC.,
and
TIDEWATER RESTAURANTS, INC.,
Defendants

SETTLEMENT ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendants, duly licensed by the State Corporation Commission ("Commission") to transact the business of a multiple employer welfare arrangement in the Commonwealth of Virginia, in certain instances, violated 14 VAC 5-410-40 D by failing to file timely with the Commission their 2003 annual proof of coverage and notice of any changes in information.

The Commission is authorized by §§ 38.2-218 and 38.2-219 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that Defendants have committed the aforesaid alleged violations.

Defendants have been advised of their right to a hearing in this matter, whereupon Defendants have made an offer of settlement to the Commission wherein Defendants have waived their 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 Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

THE COMMISSION, having considered the record herein, the offer of settlement of Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that Defendants' offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendants in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendants cease and desist from any conduct which constitutes a violation of 14 VAC 5-410-40 D; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00185
SEPTEMBER 8, 2003**

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

IMPAIRMENT ORDER

National Health Insurance Company, a foreign corporation domiciled in the State of Texas and licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia ("Defendant"), is required to maintain minimum capital of \$1,000,000 and minimum surplus of \$3,000,000.

Section § 38.2-1036 of the Code of Virginia provides, *inter alia*, 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 Financial Statement of Defendant, dated June 30, 2003, and filed with the Commission's Bureau of Insurance, indicates capital of \$16,177,963, and surplus of negative \$2,140,943.

THEREFORE, IT IS ORDERED THAT, on or before December 4, 2003, 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 Defendant's president or other authorized officer.

IT IS FURTHER ORDERED THAT Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia while the impairment of Defendant's surplus exists and until further order of the Commission.

**CASE NO. INS-2003-00192
OCTOBER 14, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
QUALITY SETTLEMENTS, INC.,
Defendant

SETTLEMENT ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendant, duly licensed by the 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, 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, and by acting as an agent of 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein 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 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 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of § 6.1-2.26 or § 38.2-1822 of the Code of Virginia, or 14 VAC 5-395-30; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00194
SEPTEMBER 30, 2003**

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

v.

PRO MED CASUALTY INSURANCE COMPANY, LTD.,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that Defendant, an alien insurer not authorized to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-1024 and 38.2-1027 of the Code of Virginia.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1039 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and issue temporary or permanent injunctions upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein Defendant has:

- (1) Agreed to cease and desist from soliciting or issuing any new or renewal contracts of insurance in Virginia until such time as it obtains an insurance license or receives the prior approval of the Commission to issue surplus lines insurance pursuant to Chapter 48 of Title 38.2;
- (2) Agreed to provide ongoing medical malpractice coverage under policies issued to all Virginia insureds until the earlier of either: (i) the specific date that each insured's coverage ends; or (ii) the specific date that any replacement coverage secured by the insureds becomes effective;
- (3) Agreed to pay all covered claims by any Virginia insureds during any applicable period of coverage and to fully defend all covered claims and pay all claims, losses, and costs related thereto pursuant to the applicable terms and conditions of each insured's policy;
- (4) Agreed to refund to Virginia insureds all unearned premiums on a pro rata basis within thirty (30) days of the applicable date of cancellation;
- (5) Agreed to provide all insureds with a copy of this Order together with a notice of the effective date of termination of their coverage within twenty (20) days of the date of this Order;
- (6) Tendered to the Commonwealth of Virginia the sum of ten thousand dollars (\$10,000)
- (7) Waived its right to a hearing; and
- (8) Agreed to file an affidavit with the Bureau of Insurance on or before August 1, 2004, confirming that Defendant has complied with the terms of this Order.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant shall fully comply with the aforesaid terms of the settlement; and

(3) The Commission shall retain jurisdiction in this matter pending receipt of the affidavit confirming that Defendant has complied with the terms of this Order.

**CASE NO. INS-2003-00201
NOVEMBER 14, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
NEAR NORTH INSURANCE BROKERAGE OF VIRGINIA, INC.,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance as a surplus lines broker in the Commonwealth of Virginia, in a certain instance, violated § 38.2-4806 D of the Code of Virginia by failing to file timely with the Commission the quarterly report summarizing the business transacted by Defendant for the second quarter of 2003.

The Commission is authorized by §§ 38.2-218, 38.2-1831, and 38.2-1857.7 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and to suspend or revoke Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violation.

Defendant has been notified of its right to a hearing before the Commission in this matter by certified letters dated September 10, 2003, and October 8, 2003, respectively, and mailed to Defendant's address shown in the records of the Bureau of Insurance.

Defendant, having been advised in the aforesaid 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 Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent and a surplus lines broker.

THE COMMISSION is of the opinion and finds that Defendant has violated § 38.2-4806 D of the Code of Virginia by failing to file timely with the Commission the quarterly report summarizing the business transacted by Defendant for the second quarter of 2003.

IT IS THEREFORE ORDERED THAT:

- (1) The licenses of Defendant to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia be, and they are hereby, REVOKED;
- (2) All appointments issued under said licenses be, and they are hereby, VOID;
- (3) Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or a surplus lines broker;
- (4) Defendant shall not apply to the Commission to be licensed as an insurance agent or a surplus lines broker in the Commonwealth of Virginia prior to five (5) 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 Defendant holds an appointment to act as an insurance agent or a surplus lines broker in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00203
SEPTEMBER 25, 2003**

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

ORDER TO TAKE NOTICE

Sections 38.2-1038 and 38.2-1040 of the Code of Virginia provide that the Commission may suspend or revoke the license of any insurance company to transact the business of insurance in the Commonwealth of Virginia for a variety of reasons as set forth therein.

MIIX Insurance Company, a foreign corporation domiciled in the state of New Jersey ("Defendant"), was licensed by the Commission on September 3, 2003, to transact the business of insurance in the Commonwealth of Virginia in order to facilitate an expected merger with Lawrenceville Property and Casualty ("Lawrenceville"), a Virginia-domiciled insurance company.

Prior to being licensed in this Commonwealth, Defendant agreed to the subsequent suspension of its license in order to facilitate the merger with Lawrenceville.

By affidavit of Patricia A. Costante, Chairman and Chief Executive Officer of MIIX Insurance Company, dated September 4, 2003, and filed with the Clerk of the Commission on September 17, 2003, Ms. Costante consented to the suspension of Defendant's license to transact the business of insurance in Virginia.

The Bureau of Insurance has recommended that, based on the foregoing, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be suspended.

THEREFORE, IT IS ORDERED that Defendant TAKE NOTICE that the Commission shall enter an order subsequent to October 3, 2003, suspending the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before October 3, 2003, Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for hearing before the Commission with respect to the proposed suspension of Defendant's license.

**CASE NO. INS-2003-00203
OCTOBER 17, 2003**

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

ORDER SUSPENDING LICENSE

MIIX Insurance Company, a foreign corporation domiciled in the state of New Jersey ("Defendant"), is licensed to transact the business of insurance in the Commonwealth of Virginia pursuant to the provisions of Title 38.2 of the Code of Virginia.

Defendant is the parent company of Lawrenceville Property and Casualty Company ("Lawrenceville"), a Virginia-domiciled insurance company, which, under a Consent Order entered herein February 22, 2002, in Case No. INS-2002-00037, is prohibited from soliciting or issuing any new or renewal insurance policies or contracts in any jurisdiction.

Defendant was licensed to transact the business of insurance in this Commonwealth on September 3, 2003, in order to facilitate its survival in a proposed merger between Defendant and Lawrenceville and further protect the interests of Virginia claimants of Lawrenceville. In the merger Defendant, considered a continuation of Lawrenceville, shall assume all liabilities of Lawrenceville pursuant to the proposed merger of Lawrenceville with and into Defendant.

Defendant has consented to the suspension of its license to transact the business of insurance in the Commonwealth pursuant to § 38.2-1040 of the Code of Virginia, as evidenced by the Affidavit of Patricia A. Costante, Chairman and Chief Executive Officer of Defendant, dated September 4, 2003, and filed in the Office of the Clerk of the Commission on September 17, 2003.

In an order entered herein September 25, 2003, Defendant was ordered to take notice that the Commission would enter an order subsequent to October 3, 2003, suspending the license of Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before October 3, 2003, Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed suspension of Defendant's license.

As of the date of this Order, Defendant has not filed a request to be heard before the Commission with respect to the proposed suspension of Defendant's license.

IT IS THEREFORE ORDERED THAT:

- (1) Pursuant to Defendant's consent and § 38.2-1040 of the Code of Virginia, the license of Defendant to transact the business of insurance in the Commonwealth of Virginia be, and it is hereby, **SUSPENDED**;
- (2) Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia until further order of the Commission or engage in any advertising or solicitation in the Commonwealth of Virginia; and
- (3) The Bureau of Insurance shall cause notice of the suspension of Defendant's license to be published in a manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2003-00208
OCTOBER 6, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
ALPHA TITLE & SETTLEMENT COMPANY,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance, it appears that 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 provide the Commission with a copy of 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that 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 to suspend or revoke Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violation.

Defendant has been notified of its right to a hearing before the Commission in this matter by certified letters dated August 1, 2003, and August 25, 2003, respectively, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

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 Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of 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 Defendant has violated § 6.1-2.21 of the Code of Virginia by failing to provide the Commission with a copy of Defendant's analysis or audit report of its escrow account.

IT IS THEREFORE ORDERED THAT:

- (1) The licenses of Defendant to transact the business of insurance as an agent in the Commonwealth of Virginia be, and they are hereby, REVOKED;
- (2) All appointments issued under said licenses be, and they are hereby, VOID;
- (3) Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) 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 cause a copy of this Order to be sent to every insurance company for which 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-2003-00210
OCTOBER 6, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
SOUTHSIDE SETTLEMENTS LLC,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance, it appears that 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 provide the Commission with a copy of Defendant's analysis or audit report of its escrow account.

ANNUAL REPORT OF THE STATE CORPORATION 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that 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 to suspend or revoke Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violation.

Defendant has been notified of its right to a hearing before the Commission in this matter by certified letters dated July 1, 2003, August 18, 2003, and September 3, 2003, respectively, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

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 Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of 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 Defendant has violated § 6.1-2.21 of the Code of Virginia by failing to provide the Commission with a copy of Defendant's analysis or audit report of its escrow account.

IT IS THEREFORE ORDERED THAT:

(1) The licenses of Defendant to transact the business of insurance as an agent in the Commonwealth of Virginia be, and they are hereby, REVOKED;

(2) All appointments issued under said licenses be, and they are hereby, VOID;

(3) Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

(4) 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 cause a copy of this Order to be sent to every insurance company for which 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-2003-00234
OCTOBER 16, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
MICHAEL SEGAL,
Defendant

CONSENT ORDER

By letter dated October 1, 2003, and filed with the Clerk of the State Corporation Commission ("Commission) on October 10, 2003, Michael Segal ("Defendant"), an individual licensed by the Commission to transact the business of insurance as an insurance agent in the Commonwealth of Virginia, consented to the issuance of an order in which Defendant has agreed, effective as of the date hereof, and continuing until further order of the Commission, to the suspension of his insurance agent licenses for his alleged violations of §§ 38.2-1826 and 38.2-1831 of the Code of Virginia.

THEREFORE IT IS ORDERED THAT:

(1) The licenses of Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia be, and they are hereby, SUSPENDED, until further Order of the Commission;

(2) All appointments issued under said licenses be, and they are hereby, SUSPENDED; and

(3) The Bureau of Insurance shall cause a copy of this Order to be sent to every insurance company for which Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia.

**CASE NO. INS-2003-00241
DECEMBER 3, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
CHESAPEAKE APPRAISAL & SETTLEMENT SERVICES, INC.,
Defendant

SETTLEMENT ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendant, duly licensed by the 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein 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 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Defendant cease and desist from any conduct which constitutes a violation of § 6.1-2.26 of the Code of Virginia or 14 VAC 5-395-30; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00243
DECEMBER 3, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
NOEL S. ROSE,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia as an insurance agent, in a certain instance, violated § 38.2-1826 of the Code of Virginia by failing to report within thirty days to the Commission the final disposition of a matter any administrative action taken against him in another jurisdiction or by another governmental agency in the Commonwealth.

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

Defendant has been notified of his right to a hearing before the Commission in this matter by certified letters dated September 15, 2003, and October 27, 2003, respectively, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

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 Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of 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 Defendant has violated § 38.2-1826 of the Code of Virginia by failing to report within thirty days to the Commission the final disposition of a matter any administrative action taken against him in another jurisdiction or by another governmental agency in the Commonwealth.

IT IS THEREFORE ORDERED THAT:

- (1) The licenses of Defendant to transact the business of insurance as an agent in the Commonwealth of Virginia be, and they are hereby, REVOKED;
- (2) All appointments issued under said licenses be, and they are hereby, VOID;
- (3) Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) 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 cause a copy of this Order to be sent to every insurance company for which 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-2003-00249
DECEMBER 15, 2003**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

CATERPILLAR INSURANCE SERVICES CORPORATION,

Defendant

SETTLEMENT ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-1812 and 38.2-1822 of the Code of Virginia by accepting commissions from an insurer for services as an agent or surplus lines broker prior to becoming licensed and appointed, and by acting as an agent of an insurer without first obtaining a license in the manner and form prescribed by the 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 Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been advised of its right to a hearing in this matter, whereupon Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein 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 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 Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that Defendant's offer should be accepted.

IT IS THEREFORE ORDERED THAT:

- (1) The offer of 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-2003-00256
DECEMBER 11, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CENTURY INDEMNITY COMPANY,
Defendant

IMPAIRMENT ORDER

Century Indemnity Company, a foreign corporation domiciled in Pennsylvania and licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia ("Defendant"), is required to maintain minimum capital of \$1,000,000 and minimum surplus of \$3,000,000.

Section 38.2-1036 of the Code of Virginia provides, inter alia, 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 Financial Statement of Defendant, dated September 30, 2003, and filed with the Commission's Bureau of Insurance, indicates capital of \$4,250,000 and surplus of \$21,240,736.

By Affidavit of Gregory D. Walker, Supervisor of the Financial Analysis Section of the Financial Regulation Division of the Bureau of Insurance, dated December 3, 2003, and filed in the Office of the Clerk of the Commission on December 3, 2003, Mr. Walker states that under §§ 38.2-1301 and 38.2-1314 of the Code of Virginia and the Statement of Statutory Accounting Principle No. 65 of the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, Volume 1, an insurer is not permitted to discount loss and loss expense reserves on a nontabular basis, as Defendant had done and which was reflected on Page 9 of Defendant's Quarterly Statement in the amount of \$701,643,000. Defendant's reported surplus, therefore, must be adjusted by the amount of \$701,643,000, resulting in an adjusted surplus of negative \$680,402,264.

THEREFORE, IT IS ORDERED THAT, on or before March 4, 2004, 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 Defendant's president or other authorized officer.

IT IS FURTHER ORDERED THAT Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia while the impairment of Defendant's surplus exists and until further order of the Commission.

**CASE NO. INS-2003-00261
DECEMBER 19, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
NORMA M. KLEINKE,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance, it appears that Defendant, duly licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-512 and 38.2-1813 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 or commission, by failing to pay funds in the ordinary course of business to the insured or his assignee, insurer, insurance premium finance company or agent entitled to the payment, by failing to hold all premiums, return premiums, or other funds received by Defendant in a fiduciary capacity, by failing to maintain an accurate record and itemization of funds deposited into a separate fiduciary account, and by commingling business or personal funds with funds required to be maintained in a separate fiduciary account.

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 to suspend or revoke Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that Defendant has committed the aforesaid alleged violations.

Defendant has been notified of her right to a hearing before the Commission in this matter by certified letters dated October 29, 2003, and November 20, 2003, respectively, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

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 Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of 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 Defendant has violated §§ 38.2-512 and 38.2-1813 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 or commission, by failing to pay funds in the ordinary course of business to the insured or his assignee, insurer, insurance premium finance company or agent entitled to the payment, by failing to

hold all premiums, return premiums, or other funds received by Defendant in a fiduciary capacity, by failing to maintain an accurate record and itemization of funds deposited into a separate fiduciary account, and by commingling business or personal funds with funds required to be maintained in a separate fiduciary account.

IT IS THEREFORE ORDERED THAT:

(1) The licenses of Defendant to transact the business of insurance as an agent in the Commonwealth of Virginia be, and they are hereby, REVOKED;

(2) All appointments issued under said licenses be, and they are hereby, VOID;

(3) Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

(4) 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 cause a copy of this Order to be sent to every insurance company for which 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..

DIVISION OF PUBLIC SERVICE TAXATION

CASE NOS. PST-2000-00002 and PST-2000-00003 JULY 24, 2003

APPLICATION OF
ADELPHIA BUSINESS SOLUTIONS OF VIRGINIA, LLC

For review and correction of the assessment of the value of property subject to local taxation - Tax Year 2000

APPLICATION OF
ADELPHIA BUSINESS SOLUTIONS OF VIRGINIA, LLC

For review and correction of the assessment of the value of property subject to local taxation-Tax Year 2000

FINAL ORDER

Before the State Corporation Commission ("Commission") is the application of Adelpia Business Solutions of Virginia, LLC ("Adelpia"), for review and correction of the assessment of the value of property owned, used, or operated by its predecessor in interest, Hyperion Telecommunications of Virginia, Inc., for tax year 2000, which was docketed as Case No. PST-2000-00002. Also before us is Adelpia's application for review and correction of the assessment of the value of property owned, used, or operated by its predecessor in interest, MediaOne of Virginia, for tax year 2000, which was docketed as Case No. PST-2000-00003.

By Orders entered in both cases on March 12, 2002, and April 12, 2002, the Commission docketed the applications, as supplemented, and directed Adelpia to give notice to counties and cities whose revenues might be affected by its applications. The City of Charlottesville and Henrico County filed timely notices of participation as respondents in Case No. PST-2000-00002 and Case No. PST-2000-00003, and the City of Norfolk filed a timely notice of participation in Case No. PST-2000-00002. The City of Richmond moved for leave to file out of time its notices of participation in both cases.

On July 7, 2003, Adelpia filed in both cases a Stipulation and Recommendation joined by all parties and the Commission Staff. The parties and Staff represent that the Stipulation and Recommendation addressed all outstanding issues in this proceeding. Upon consideration of Adelpia's applications, as supplemented, and the Stipulation and Recommendation, and the record in both cases, the Commission will grant Adelpia's applications as discussed below.

On May 28, 2002, Adelpia filed in both proceedings affidavits of service of copies of its application and the Commission's orders. The Commission finds that proper notice of the application was given.

In the Stipulation and Recommendation, at 7, the parties and the Staff waive any objection to the City of Richmond's participation as a respondent. Accordingly, the Commission will grant Richmond's motions and accept its notices of participation as a respondent to both applications.

As the parties and Staff related in the Stipulation and Recommendation at 1-5, Adelpia, its predecessors in interest, and various affiliates concluded a series of transactions and reorganizations in 1999 and 2000. The parties accepted the results of the Staff investigation, which showed that some property subject to the Commission's assessment of value had been reported for assessment of value twice. In addition, the Staff determined that some property located in Henrico County had been reported as located in the City of Richmond. The parties and the Staff also reached agreement on the corrected values for property addressed in both applications. Stipulation and Recommendation at 6,7. The Commission will accept the recommendation, and we will correct our assessments of the value of Adelpia's property.

Accordingly, IT IS ORDERED THAT

(1) The application of Adelpia for review and correction of the assessment of the value of property owned, used, or operated by its predecessor in interest, Hyperion Telecommunications of Virginia, Inc., for tax year 2000 and docketed as Case No. PST-2000-00002 is granted.

(2) The application of Adelpia for review and correction of the assessment of the value of property owned, used, or operated by its predecessor in interest, MediaOne of Virginia, for tax year 2000 and docketed as Case No. PST-2000-00002 is granted.

(3) The City of Richmond's Motion to Accept Notice of Participation as Respondent filed June 24, 2002, is granted.

(4) That the following corrections to the Commission's assessments of property for tax year 2000 be, and are hereby made; which corrections are as follows:

Adelpia Business Solutions of Virginia, L.L.C.
f/k/a Hyperion Communications of Virginia, LLC

CHARLOTTESVILLE CITY

(Page 101 - Printed Assessment)

- Under column headed "Value of central office equipment," strike out 11,597,747 and insert, in lieu thereof, 12,698,533.

- Under column headed "Value of automobiles and trucks," strike out 0 and insert, in lieu thereof, 130,173.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- Under column headed "Total value of all property," strike out 14,209,358 and insert, in lieu thereof, 15,440,317.

FREDERICKSBURG CITY

(Page 101 - Printed Assessment)

- Under column headed "Value of central office equipment," strike out 2,264,144 and insert, in lieu thereof, 3,737,020.
- Under column headed "Total value of all property," strike out 6,092,686 and insert, in lieu thereof, 7,565,562.

NORFOLK CITY

(Page 101 - Printed Assessment)

- Under column headed "Value of central office equipment," strike out 5,489,875 and insert, in lieu thereof, 4,989,877.
- Under column headed "Total value of all property," strike out 10,269,201 and insert, in lieu thereof, 9,769,203.

RICHMOND CITY

(Page 101 - Printed Assessment)

- Under column headed "Value of land and buildings," strike out 332,289 and insert, in lieu thereof, 0.
- Under column headed "Value of central office equipment," strike out 25,609,409 and insert, in lieu thereof, 1,757,650.
- Under column headed "Value of general equipment," strike out 532,293 and insert, in lieu thereof, 0.
- Under column headed "Value of material and supplies/Plant Under Construction," strike out 2,328,250 and insert, in lieu thereof, 721,758.
- Under column headed "Total value of all property," strike out 28,802,241 and insert, in lieu thereof, 2,479,408.

(Page 101 Printed Assessment)

Insert

HENRICO COUNTY

ALL DISTRICTS (EXC. SANITARY DISTRICTS 2 & 3)

- Under column headed "Value of land and buildings," insert 360,587.
- Under column headed "Value of central office equipment," insert 26,056,885.
- Under column headed "Value of general equipment," insert 577,622.
- Under column headed "Value of material and supplies/Plant Under Construction," insert 1,743,298.
- Under column headed "Total value of all property," insert 28,738,392.

Hyperion Telecommunications of Va., Inc.

CHARLOTTESVILLE CITY

(Page 101 - Printed Assessment)

- Under column headed "Value of land and buildings," strike out 169,226 and insert, in lieu thereof, 0.
- Under column headed "Value of central office equipment," strike out 10,411,939 and insert, in lieu thereof, 0.
- Under column headed "Value of automobiles and trucks," strike out 128,047 and insert, in lieu thereof, 0.
- Under column headed "Value of general equipment," strike out 256,563 and insert, in lieu thereof, 0.
- Under column headed "Value of material and supplies/Plant Under Construction," strike out 1,808,509 and insert, in lieu thereof, 0.
- Under column headed "Total value of all property," strike out 12,774,284 and insert, in lieu thereof, 0.

MediaOne of Virginia

HENRICO COUNTY

ALL DISTRICTS (EXC. SANITARY DISTRICTS 2 & 3)

(Page 129 - Printed Assessment)

- Under column headed "Value of land and buildings," strike out 312,006 and insert, in lieu thereof, 0.
- Under column headed "Value of central office equipment," strike out 25,350,546 and insert, in lieu thereof, 0.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- Under column headed "Value of automobiles and trucks," strike out 28,293 and insert, in lieu thereof, 0.
- Under column headed "Value of general equipment," strike out 453,545 and insert, in lieu thereof, 0.
- Under column headed "Value of material and supplies/Plant Under Construction," strike out 252,024 and insert, in lieu thereof, 0.
- Under column headed "Total value of all property," strike out 26,396,414 and insert, in lieu thereof, 0.

(5) The Commission's Public Service Taxation Division shall promptly mail attested copies of this Order to the commissioner of the revenue or the director of finance of the Cities of Charlottesville, Fredericksburg, Norfolk, and Richmond, and Henrico County.

(6) Case No. PST-2000-00002 and Case No. PST-2000-00003 be dismissed from the Commission's docket and that these cases be placed in closed status in the Commission's records.

CASE NO. PST-2002-00044
APRIL 29, 2003

APPLICATION OF
KMC TELECOM OF VIRGINIA, INC.

Application for review and correction of assessment of the value of property subject to local taxation-Tax Year 2002

DISMISSAL ORDER

Before the State Corporation Commission ("Commission") in this proceeding is the Report of Deborah V. Ellenberg, Chief Hearing Examiner of April 17, 2003. As stated by Hearing Examiner Ellenberg, KMC Telecom of Virginia, Inc., had moved to dismiss its application, and she recommended that the Commission grant the motion.

The Commission will adopt the recommendation in the Report.

Accordingly, IT IS ORDERED that Case No. PST-2002-00044 be dismissed from the Commission's docket and that the case be closed in the records maintained by the Clerk of the Commission.

CASE NO. PST-2003-00002
APRIL 10, 2003

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

v.
COMMUNITY ELECTRIC COOPERATIVE,
Defendant

For failure to collect and remit electric utility consumption taxes

DISMISSAL ORDER

Before the State Corporation Commission ("Commission") is the Commission Staff Motion for Leave to Withdraw Motion for Issuance of a Rule to Show Cause. As noted in the motion for leave to withdraw, the Commission Staff ("Staff") had alleged in its original motion filed on February 11, 2003, that Community Electric Cooperative ("Community" or "Cooperative") had failed to collect utility consumption taxes levied pursuant to § 58.1-2900 of the Code of Virginia. The Staff now seeks leave to withdraw its motion on the grounds that the matter has been resolved. The Commission will grant the Staff's motion, and we will dismiss this case.

Accordingly, IT IS ORDERED that

- (1) Case No. PST-2003-00002 be docketed and that all associated papers be filed therein.
- (2) The Commission Staff Motion for Leave to Withdraw Motion for Issuance of a Rule to Show Cause filed April 8, 2003, be granted.
- (3) Case No. PST-2003-00002 be dismissed from the Commission's docket and that the case be closed in the record maintained by the Clerk of the Commission.

**CASE NO. PST-2003-00031
NOVEMBER 20, 2003**

PETITION OF
NEXTEL COMMUNICATIONS OF THE MID-ATLANTIC, INC.

For abatement or exoneration of penalty

DISMISSAL ORDER

Before the State Corporation Commission ("Commission") is the petition of Nextel Communications of the Mid-Atlantic, Inc. ("Nextel" or "Company"), for waiver, exoneration, or abatement of a penalty of \$39,507 imposed by statute for late payment of taxes. By Order for Notice of August 29, 2003, the Commission directed the Company to serve notice of its petition on the Attorney General, the Comptroller, and the Tax Commissioner. Proof of service was filed on October 3, 2003. No state official or interested person filed a notice of intent to participate or otherwise commented on the petition.

Upon consideration of the petition, the Commission will deny the request to exercise our authority conferred by § 12.1-15 of the Code of Virginia to abate the statutory penalty.

Accordingly, IT IS ORDERED THAT:

- (1) The petition is denied.
- (2) This case is dismissed from the Commission's docket and placed in closed status in the records maintained by the Clerk of the Commission.

**CASE NO. PST-2003-00032
NOVEMBER 14, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

CAROLINE WATER COMPANY, INC., D/B/A LADYSMITH WATER COMPANY
Defendant

For Failure to File an Annual Report for Tax Year 2003

DISMISSAL ORDER

Before the State Corporation Commission ("Commission") is the Report of Howard P. Anderson, Jr., Hearing Examiner, of November 3, 2003. Examiner Anderson recommended that the Commission dismiss its rule to show cause for failure to file an annual report issued against Caroline Water Company, Inc. d/b/a Ladysmith Water Company (the "Company") on July 30, 2003. As noted in the Report, the Commission Staff had moved to dismiss the rule because the Company had filed the necessary report. Upon consideration of the report and the record in this proceeding, the Commission will adopt the Hearing Examiner's recommendation.

Accordingly, IT IS ORDERED that this rule to show cause is dismissed and that Case No. PST-2003-00032 is dismissed from the Commission's docket and closed in the records maintained by the Clerk of the Commission.

**CASE NO. PST-2003-00033
SEPTEMBER 23, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

SHANNON FOREST WATER CORPORATION,
Defendant

For failure to file an annual report for Tax Year 2003

DISMISSAL ORDER

Before the State Corporation Commission ("Commission") is the Hearing Examiner's Report of September 3, 2003, filed by Hearing Examiner Howard P. Anderson, Jr. Examiner Anderson found that Shannon Forest Water Corporation ("Company") had not filed its annual report of all real and tangible personal property and gross receipts for Tax Year 2003 as required by § 58.1-2628 B of the Code of Virginia. The Examiner recommended that a penalty of \$750.00 be imposed.

By letter dated September 8, 2003, counsel to the Company informed the Commission Staff that Shannon Forest Water Corporation had filed its petition for bankruptcy on that date. The correspondence was forwarded to the Clerk of the Commission. Upon consideration of the petition for bankruptcy and the protection afforded under federal law, the Commission will not impose a penalty.

Accordingly, IT IS ORDERED that this Rule to Show Cause is dismissed and that Case No. PST-2003-00033 is dismissed from the Commission's docket and closed in the records maintained by the Clerk of the Commission.

**CASE NO. PST-2003-00034
SEPTEMBER 23, 2003**

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

v.
WILLIAMSBURG COURT WATER COMPANY,
Defendant

For failure to file an annual report for Tax Year 2003

DISMISSAL ORDER

Before the State Corporation Commission ("Commission") is the Hearing Examiner's Report of September 3, 2003, filed by Hearing Examiner Howard P. Anderson, Jr. Examiner Anderson granted the Staff's motion to dismiss, and the Commission concurs. The record shows that service of process was not obtained as provided by § 12.1-19.1 C and E of the Code of Virginia.

Accordingly, IT IS ORDERED that this Rule to Show Cause is dismissed and that Case No. PST-2003-00034 is dismissed from the Commission's docket and closed in the records maintained by the Clerk of the Commission.

**CASE NO. PST-2003-00035
SEPTEMBER 23, 2003**

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

v.
DALEVILLE WATER COMPANY,
Defendant

For failure to file an annual report for Tax Year 2003

DISMISSAL ORDER

Before the State Corporation Commission ("Commission") is the Hearing Examiner's Report of September 3, 2003, filed by Hearing Examiner Howard P. Anderson, Jr. Examiner Anderson granted the Staff's motion to dismiss, and the Commission concurs. The record shows that service of process was not obtained as provided by § 12.1-19.1 C and E of the Code of Virginia.

Accordingly, IT IS ORDERED that this Rule to Show Cause is dismissed and that Case No. PST-2003-00035 is dismissed from the Commission's docket and closed in the records maintained by the Clerk of the Commission.

DIVISION OF PUBLIC UTILITY ACCOUNTING**CASE NO. PUA-1998-00038
SEPTEMBER 3, 2003**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For approval of affiliate transactions with Virginia Power Energy Marketing, Inc.

DISMISSAL ORDER

By Order dated January 28, 1999, the State Corporation Commission ("Commission") granted Virginia Electric and Power Company ("Virginia Power") approval of a Transfer Agreement with Virginia Power Energy Marketing, Inc. ("VPEM"). In the Commission's Order, ordering paragraph (4), it is stated that "The Applicant shall file monthly financial statements of Virginia Power Energy Marketing, Inc., with the Commission's Director of Public Utility Accounting." Ordering paragraph (9) states that "The Applicant shall file with the Commission a final list of contracts and Energy Assets transferred to VPEM pursuant to the approval granted herein within thirty days of completion of such list."

Virginia Power has filed the information required in ordering paragraph (9) and has filed the required monthly reports pursuant to ordering paragraph (4) in a timely manner.

NOW THE COMMISSION, having considered the matter and having been advised by its Staff, is of the opinion that such reports are no longer needed on a monthly basis. Rather, we believe that annual financial statements should be included with the Company's Annual Report of Affiliate Transactions.

Accordingly, IT IS ORDERED THAT:

- (1) Virginia Electric and Power Company shall cease filing monthly financial statements for Virginia Power Energy Marketing, Inc.
- (2) Virginia Electric and Power Company shall begin submitting annual financial statements for Virginia Power Energy Marketing, Inc., beginning with calendar year 2003. Such statements shall be included in the Company's Annual Report of Affiliate Transactions to be submitted on or before May 1, 2004.
- (3) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUA-1998-00039
AUGUST 1, 2003**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For approval of affiliate transactions with Virginia Power Services, Inc.

DISMISSAL ORDER

By Commission Order dated January 28, 1999, Virginia Electric and Power Company ("Virginia Power" or the "Company") was granted approval of certain amendments to its existing Affiliate Services Agreement with Virginia Power Services, Inc., approved in Case No. PUA-1997-00007. Ordering paragraph (4) of the Commission's Order required Virginia Power to continue submitting monthly financial statements of Virginia Power Services, Inc., and Virginia Power Nuclear Services Company to the Commission's Director of Public Utility Accounting.

The Company has submitted such required reports in a timely manner.

NOW THE COMMISSION, having considered the matter and having been advised by our Staff, is of the opinion that such reports are no longer needed on a monthly basis. Rather, we believe that annual financial statements should be included with the Company's Annual Report of Affiliate Transactions.

Accordingly, IT IS ORDERED THAT:

- (1) Virginia Electric and Power Company shall cease submitting monthly financial statements for Virginia Power Services, Inc., and Virginia Power Nuclear Services Company to the Director of Public Utility Accounting.
- (2) Virginia Electric and Power Company shall begin submitting annual financial statements for Virginia Power Services, Inc., and Virginia Power Nuclear Services Company beginning with calendar year 2003. Such statements shall be included in the Company's Annual Report of Affiliate Transactions to be submitted on or before May 1, 2004.
- (3) There appearing nothing further to be done, this matter is hereby dismissed.

CASE NO. PUA-2001-00016
AUGUST 1, 2003

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For authority to extend time to file annual report of affiliated transactions for year 2000

DISMISSAL ORDER

On April 26, 2001, Virginia Electric and Power Company ("Virginia Power") was granted authority to extend the time to file its report of affiliated transactions for the year 2000 from May 1, 2001, to June 1, 2001. The matter was continued until further order of the Commission. Virginia Power filed its report on June 1, 2001.

Accordingly, IT IS ORDERED THAT there appearing nothing further to be done in this matter, it hereby is dismissed.

CASE NO. PUA-2001-00076
JULY 11, 2003

APPLICATION OF
VIRGINIA GAS PIPELINE COMPANY
and
SALTVILLE GAS STORAGE COMPANY, L.L.C.

For approval of a transaction between affiliates

DISMISSAL ORDER

On March 12, 2002, Virginia Gas Pipeline Company ("VGPC") and Saltville Gas Storage Company, L.L.C. (the "LLC"), were granted approval to enter into an Operating Agreement between VGPC and the LLC, subject to the LLC obtaining its certificate of public convenience and necessity ("CPCN") in Case No. PUE-2001-00585. The above-captioned matter was continued for 30 days beyond the date of the Commission's Final Order in Case No. PUE-2001-00585. The Final Order granting the CPCN to the LLC in Case No. PUE-2001-00585 was entered on January 22, 2003.

Accordingly, IT IS ORDERED THAT there appearing nothing further to be done in this matter, it hereby is dismissed.

CASE NO. PUA-2002-00016
JANUARY 10, 2003

JOINT PETITION OF
CORECOMM VIRGINIA, INC.
and
ATX TELECOMMUNICATIONS SERVICES OF VIRGINIA, LLC

For approval of transfers of control

ORDER GRANTING APPROVAL

On August 30, 2002, CoreComm Virginia, Inc. ("CoreComm VA"), and ATX Telecommunications of Virginia, LLC ("ATX") (collectively, the "Petitioners"), completed their joint petition originally filed with the State Corporation Commission ("Commission") on March 18, 2002. In that petition, CoreComm VA and ATX request approval of transfers of control, pursuant to Chapter 5 of Title 56 of the Code of Virginia, for corporate restructuring at the parent level, which became effective December 28, 2001. On October 18, 2002, Petitioners filed an amendment to the joint petition to reflect the final transaction in the corporate restructuring, which became effective July 1, 2002.

By Order dated October 29, 2002, the Commission extended the time for review of issues in this case through December 28, 2002. By Order dated December 23, 2002, the Commission extended the time for review of issues in this case through January 17, 2003.

CoreComm VA is a Virginia corporation that holds certificates of public convenience and necessity to provide local (Certificate No. T-456) and long distance (Certificate No. TT-75A) telecommunications services in Virginia pursuant to a Commission Order dated August 10, 1999, in Case No. PUC-1999-00027. ATX is a Virginia corporation that holds a certificate of public convenience and necessity (Certificate No. T-388a) to provide local exchange telecommunications in Virginia pursuant to Commission Order dated December 15, 2000, in Case No. PUC-2000-00228. CoreComm Limited ("CoreComm Ltd.") is the parent of CoreComm VA and ATX.

CoreComm VA maintains a legacy customer base of commercial customers but does not currently market services in Virginia. ATX provides integrated access of broadband connectivity to commercial accounts in Virginia, offering a full range of telecommunications services including long distance, local, toll-free, Internet access, and voice and data private lines.

CoreComm Ltd. provides integrated local and toll-related telephone, Internet and high-speed data services to business and residential customers located principally in Pennsylvania, Ohio, New Jersey, Michigan, Wisconsin, Maryland, Illinois, New York, Virginia, Delaware, Massachusetts, Washington, D.C., and Indiana.

The Petitioners seek approval of transactions involving transfers of control resulting from a corporate debt restructuring of CoreComm Ltd. Those transactions took place on December 28, 2001, and July 1, 2002. The restructuring was a debt recapitalization that involved the conversion of debt and preferred stock of CoreComm Ltd. into common stock of CoreComm Holdco. As a result of the restructuring, CoreComm Ltd. became a wholly owned subsidiary of CoreComm Holdco. CoreComm Ltd. also conveyed control of its operating subsidiaries, including CoreComm VA and ATX, to CoreComm Holdco.

Both CoreComm Ltd. and CoreComm Holdco are Delaware corporations with headquarters in Pennsylvania. Effective July 15, 2002, CoreComm Holdco changed its name to ATX Communications, Inc.

The Petitioners represent that the transfers of control do not affect the ability of Core Comm VA or ATX to continue to provide telecommunications services in Virginia. CoreComm VA and ATX will continue to provide services in Virginia under the same names, tariffs, and operating authority.

THE COMMISSION, upon consideration of the joint petition and representations of the Petitioners and having been advised by its Staff, is of the opinion and finds that the transactions, as described herein, involving transfers of control 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 of Virginia, approval is hereby granted for the transfer of control of CoreComm VA and ATX, as described herein.
- 2) There appearing nothing further to be done in this matter, it is hereby dismissed.

DIVISION OF COMMUNICATIONS**CASE NO. PUC-1998-00067
SEPTEMBER 25, 2003**

APPLICATION OF
VERIZON VIRGINIA INC.
and
CAT COMMUNICATIONS INTERNATIONAL, INC. d/b/a C.C.I.

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

DISMISSAL ORDER

On May 5, 1998, Verizon Virginia Inc. ("Verizon Virginia") and CAT Communications International, Inc. d/b/a C.C.I. ("CAT"), filed an interconnection agreement ("agreement"), entered under §§ 251 and 252 of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §§ 251 and 252, for State Corporation Commission ("Commission") approval pursuant to § 252(e) of the Act, 47 U.S.C. § 252(e). This agreement was approved by Order Approving Agreement dated June 26, 1998, in Case No. PUC-1998-00067.

On April 28, 2003, Verizon Virginia filed a joint application for approval of an interconnection agreement between Verizon Virginia and CAT. This agreement was assigned Case No. PUC-2003-00079 and approved on June 24, 2003. Counsel for Verizon Virginia indicated in a letter filed with the Commission on July 17, 2003, in Case No. PUC-2003-00079, that the agreement approved June 24, 2003, superseded the earlier agreement between the parties.

NOW THE COMMISSION finds that the agreement approved in Case No. PUC-1998-00067 has been replaced by the agreement approved in Case No. PUC-2003-00079. Therefore, we find that Case No. PUC-1998-00067 should be dismissed.

Accordingly, IT IS ORDERED THAT the agreement approved in Case No. PUC-2003-00079 shall supersede the agreement approved in Case No. PUC-1998-00067. The captioned matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUC-1998-00105
APRIL 22, 2003**

APPLICATION OF
UNITED TELEPHONE-SOUTHEAST, INC.
and
CENTRAL TELEPHONE COMPANY OF VIRGINIA
and
NA COMMUNICATIONS, INC.

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

DISMISSAL ORDER

On December 16, 2002, United Telephone-Southeast, Inc., and Central Telephone Company of Virginia (collectively "Sprint") and NA Communications, Inc., filed an interconnection agreement ("Agreement") entered under §§ 251 and 252 of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §§ 251 and 252, for State Corporation Commission ("Commission") approval pursuant to § 252(e) of the Act, 47 U.S.C. § 252(e). This Agreement was approved by Order Approving Agreement dated February 14, 2003, in Case No. PUC-2002-00232.

On July 13, 1998, Sprint filed a joint application for approval of an interconnection agreement between itself and NA Communications, Inc. This agreement was assigned Case No. PUC-1998-00105 and approved on September 15, 1998. An Amendment to Case No. 1998-00105 was filed on September 13, 2000, with the Commission and approved on November 2, 2000. Counsel for Sprint indicated in the letter accompanying the Agreement filed with the Commission in Case No. PUC-2002-00232 on December 16, 2002, that the Agreement superseded this earlier agreement between the parties.

NOW THE COMMISSION finds that the agreement approved in Case No. PUC-1998-00105 has been replaced by the Agreement approved in Case No. PUC-2002-00232. Therefore, we find that Case No. PUC-1998-00105 should be dismissed.

Accordingly, IT IS ORDERED THAT the Agreement approved in Case No. PUC-2002-00232 shall supersede the agreement and amendment approved in Case No. PUC-1998-00105, and the captioned matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUC-1998-00185
MAY 27, 2003**

APPLICATION OF
UNITED TELEPHONE-SOUTHEAST, INC. AND
CENTRAL TELEPHONE COMPANY OF VIRGINIA
and
US LEC OF VIRGINIA, LLC

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

DISMISSAL ORDER

On April 1, 2003, United Telephone-Southeast, Inc., and Central Telephone Company of Virginia ("Sprint") and US LEC of Virginia, LLC ("US LEC") filed an interconnection agreement ("Agreement"), entered under §§ 251 and 252 of the Telecommunications Act of 1996 ("the Act"), 47 U.S.C. §§ 251 and 252, for State Corporation Commission ("Commission") approval pursuant to § 252(e) of the Act, 47 U.S.C. § 252(e). The Commission entered an Order Approving Agreement on May 8, 2003, in Case No. PUC-2003-00050.

On December 4, 1998, United Telephone-Southeast, Inc. and Central Telephone Company of Virginia ("United/Centel") and US LEC filed a joint application for approval of an interconnection agreement between United/Centel and US LEC. This agreement was assigned Case No. PUC-1998-00185 and approved on March 8, 1999. As verified by letter from counsel for the Applicant dated March 31, 2003, we find that the Agreement approved in Case No. PUC-1998-00185 has been replaced by the Agreement approved in Case No. PUC-2003-00050. Therefore, Case No. PUC-1998-00185 should be dismissed.

Accordingly, IT IS ORDERED THAT the agreement approved in Case No. PUC-2003-00050 shall supersede the agreement approved in Case No. PUC-1998-00185, and the captioned matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUC-1999-00041
SEPTEMBER 25, 2003**

APPLICATION OF
VERIZON VIRGINIA INC.
and
NOW COMMUNICATIONS, INC.

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

DISMISSAL ORDER

On March 10, 1999, Verizon Virginia Inc. ("Verizon Virginia") and NOW Communications, Inc., filed an interconnection agreement ("agreement"), entered under §§ 251 and 252 of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §§ 251 and 252, for State Corporation Commission ("Commission") approval pursuant to § 252(e) of the Act, 47 U.S.C. § 252(e). This agreement was approved by Order Approving Agreement dated June 7, 1999, in Case No. PUC-1999-00041.

On April 29, 2003, Verizon Virginia Inc. ("Verizon Virginia") filed a joint application for approval of an interconnection agreement between Verizon Virginia and NOW Communications of Virginia, Inc. This agreement was assigned Case No. PUC-2003-00080 and approved on June 24, 2003. Counsel for Verizon Virginia indicated in a letter filed with the Commission on July 16, 2003, that the agreement superseded the earlier agreement between the parties.

NOW THE COMMISSION finds that the agreement approved in Case No. PUC-1999-00041 has been replaced by the agreement approved in Case No. PUC-2003-00080. Therefore, we find that Case No. PUC-1999-00041 should be dismissed.

Accordingly, IT IS ORDERED THAT the agreement approved in Case No. PUC-2003-00080 shall supersede the agreement approved in Case No. PUC-1999-00041. The captioned matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUC-1999-00157
MARCH 12, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
ROBERT E. LEE JONES, JR.

v.

MCI WORLDCOM NETWORK SERVICES OF VIRGINIA, INC.,
and
MCI WORLDCOM COMMUNICATIONS OF VIRGINIA, INC.

ORDER OF DISMISSAL

On February 28, 2003, the Supreme Court of Virginia issued an Order upon the appeal of the above-captioned case and the Order entered upon by the State Corporation Commission ("Commission") on August 22, 2001. The Supreme Court of Virginia held that the Commission did not have jurisdiction over the controversy on appeal and reversed the Order of the Commission and dismissed the complaint.

The Commission has received certification by the Clerk of the Supreme Court of Virginia and now dismisses the above-docketed case.¹

Accordingly, **IT IS ORDERED THAT** this case is hereby dismissed for lack of jurisdiction pursuant to the Order of the Supreme Court of Virginia, as noted above, issued February 28, 2003. The papers filed herein in this proceeding shall be placed in the file for ended causes.

¹ See Supreme Court Record Nos. 021262 and 021247, and Record No. 020859. The Commission's Order under appeal was partially suspended upon posting of Appeal Bond (See Order Granting Partial Suspension Upon Posting of Appeal Bond, issued February 15, 2002). The Appeal Bond is also cancelled.

**CASE NO. PUC-2000-00027
MARCH 7, 2003**

APPLICATION OF
VERIZON SOUTH INC.

For approval of its Tariff Filing to Introduce Collocation Service

**ORDER ACCEPTING REVISION FILED
FEBRUARY 11, 2003, TO COLLOCATION
SERVICE TARIFF ON INTERIM BASIS
AND REQUESTING ADDITIONAL COMMENTS**

The Collocation Service Tariff filed by Verizon South Inc. ("Verizon South" or "Company") was approved by the State Corporation Commission ("Commission") on an interim basis on February 29, 2000.¹ On February 11, 2003, Verizon South filed a further revision to its Collocation Service Tariff ("February 11, 2003, tariff revision"). The effective date of the February 11, 2003, tariff revision is March 13, 2003.

According to the Company's February 11, 2003, tariff revision, Verizon South's Collocation Service Tariff is being amended to:

clarify terms and conditions for various aspects of Collocation. Specifically, the following areas are being amended: termination of collocation arrangements, implementation of collocation charges, casualty, equipment specifications, testing, application procedures, and non-compliant installations.²

The Commission finds that the February 11, 2003, tariff revision should be accepted on an interim basis effective March 13, 2003. Furthermore, the Commission recognizes that considerable time has passed since docketing this case and that a number of revisions to the Company's Collocation Service Tariff have been implemented on an interim basis. Therefore, the Commission also requests that Verizon South and other interested parties file comments advising how the Commission should proceed in this case to refresh the record. We are particularly interested in the parties' position on whether we should consider requiring Verizon South to initiate settlement negotiations with interested parties to resolve (or at a minimum, identify) the current issues in this proceeding.³

Accordingly, **IT IS ORDERED THAT:**

(1) Verizon South's February 11, 2003, tariff revision is hereby approved on an interim basis, effective March 13, 2003, subject to refunds of collocation charges and/or modifications in terms and conditions.

¹ Additional revisions were approved on an interim basis on July 12, 2000; December 19, 2000; October 10, 2001; February 27, 2002; and on October 25, 2002.

² See cover letter at p. 2, February 11, 2003, tariff revision.

³ The Commission notes that settlement was ultimately reached on Verizon Virginia Inc.'s Collocation Tariff in Case No. PUC-1999-00101 (See Order Approving Settlement Agreement Filed on February 1, 2002, issued June 28, 2002).

(2) Verizon South shall serve upon all parties having previously filed comments, as well as the Attorney General, copies of its February 11, 2003, tariff revision within ten (10) days from the date of this Order. Verizon South shall promptly furnish a copy of its February 11, 2003, tariff revision to any person requesting a copy. Requests may be directed to Lydia R. Pulley, Vice President, Secretary, and General Counsel, Verizon South Inc., 600 East Main Street, Suite 1100, Richmond, Virginia 23219-2441.

(3) Any interested party is granted leave to file comments on Verizon South's February 11, 2003, tariff revision on or before April 4, 2003, serving all parties having previously commented in this case.

(4) Verizon South and any interested party may file comments on other procedural matters raised herein on or before April 4, 2003, serving all parties having previously commented in this case.

(5) This matter is continued generally.

**CASE NO. PUC-2000-00068
OCTOBER 7, 2003**

APPLICATION OF
UNITED TELEPHONE – SOUTHEAST, INC.
AND CENTRAL TELEPHONE COMPANY OF VIRGINIA
and
GCR TELECOMMUNICATIONS, INC.

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

DISMISSAL ORDER

On March 21, 2000, United Telephone–Southeast, Inc. ("United") and GCR Telecommunications, Inc. ("GCR"), filed an interconnection agreement ("agreement"), entered under §§ 251 and 252 of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §§ 251 and 252, for State Corporation Commission ("Commission") approval pursuant to § 252(e) of the Act, 47 U.S.C. § 252(e). This agreement was approved by Order Approving Agreement dated June 19, 2000, in Case No. PUC-2000-00068. An Amendment No. 1 was filed July 14, 2000, that added United's sister Company, Central Telephone Company of Virginia ("Central"), to the agreement approved August 14, 2000.¹ Amendment No. 1 was approved by Order Approving Amendment dated August 14, 2000, in Case No. PUC-2000-00068.

On June 26, 2003, United Telephone-Southeast, Inc. and Central Telephone Company of Virginia (jointly "Sprint") filed a joint application for approval of an interconnection agreement between Sprint and GCR. This agreement was assigned Case No. PUC-2003-00107 and approved on September 25, 2003. Counsel for Sprint indicated in the letter accompanying the agreement filed with the Commission on June 26, 2003, in Case No. PUC-2003-00107, that the agreement superseded this earlier agreement between the parties.

NOW THE COMMISSION finds that the agreement approved in Case No. PUC-2000-00068 has been replaced by the agreement approved in Case No. PUC-2003-00107. Therefore, we find that Case No. PUC-2000-00068 should be dismissed.

Accordingly, IT IS ORDERED THAT the agreement approved in Case No. PUC-2003-00107 shall supersede the agreement approved in Case No. PUC-2000-00068. The captioned matter is hereby dismissed from the Commission's docket of active cases.

¹ Central's pricing terms were included in Amendment No. 1.

**CASE NO. PUC-2000-00204
OCTOBER 16, 2003**

JOINT APPLICATION OF
VERIZON VIRGINIA INC.
and
VERIZON SOUTH INC.

To expand local calling between various exchanges

ORDER CLOSING CASE

Verizon Virginia Inc. ("Verizon Virginia") and Verizon South Inc. ("Verizon South") (hereinafter collectively referred to as "Joint Applicants") have completed implementation¹ of all required routes to expand local calling between various exchanges of the Joint Applicants in compliance with the State Corporation Commission's ("Commission's") Order approving the merger of Joint Applicants ("Merger Order").²

¹ The final phase was implemented pursuant to tariff revisions effective August 1, 2003.

² Case No. PUC-1999-00100, Joint Petition of Bell Atlantic Corporation and GTE Corporation, Order Approving Petition, issued November 29, 1999.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOW THE COMMISSION finds that Joint Applicants have fulfilled the requirements of the Merger Order for expanding the local calling areas to include contiguous exchanges both within and between the respective service territories of Verizon Virginia and Verizon South.

Accordingly, IT IS ORDERED THAT:

- (1) This case is hereby closed.

**CASE NO. PUC-2000-00210
APRIL 22, 2003**

APPLICATION OF
CENTRAL TELEPHONE COMPANY OF VIRGINIA AND UNITED TELEPHONE-SOUTHEAST, INC.
and
SPRINT SPECTRUM, L.P., SPRINTCOM, INC., COX COMMUNICATIONS PCS, L.P.,
APC PCS, L.L.C., AND PHILLIECO, L.P.

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

DISMISSAL ORDER

On December 4, 2002, United Telephone-Southeast, Inc. and Central Telephone Company of Virginia ("Sprint"), and Sprint Spectrum L.P., as agent for Wirelessco, L.P., SprintCom, Inc., Cox Communications PCS, L.P., APC PCS, L.L.C., and Phillieco, L.P., collectively d/b/a Sprint PCS ("Sprint PCS"), filed an interconnection agreement ("Agreement"), entered under §§ 251 and 252 of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §§ 251 and 252, for State Corporation Commission ("Commission") approval pursuant to § 252(e) of the Act, 47 U.S.C. § 252(e). The Agreement was approved by Order Approving Agreement dated February 12, 2003, in Case No. PUC-2002-00225.

On July 26, 2000, Central Telephone Company of Virginia (formerly, "Centel") and United Telephone-Southeast, Inc., (formerly, "United") filed a joint application for approval of an interconnection agreement between Centel, United, and Sprint PCS. This agreement was assigned Case No. PUC-2000-00210 and approved on October 3, 2000. Counsel for Sprint indicated in the letter accompanying the Agreement filed with the Commission in Case No. PUC-2002-00225 on December 4, 2003, that the Agreement superseded this earlier agreement between the parties.

NOW THE COMMISSION finds that the agreement approved in Case No. PUC-2000-00210 has been replaced by the Agreement approved in Case No. PUC-2002-00225. Therefore, we find Case No. PUC-2000-00210 should be dismissed.

Accordingly, IT IS ORDERED THAT the Agreement approved in Case No. PUC-2002-00225 shall supersede the agreement approved in Case No. PUC-2000-00210. The captioned matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUC-2000-00211
SEPTEMBER 25, 2003**

APPLICATION OF
VERIZON SOUTH INC.
and
CAT COMMUNICATIONS INTERNATIONAL, INC.

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

DISMISSAL ORDER

On July 26, 2000, Verizon South Inc. ("Verizon South") and CAT Communications International, Inc. ("CAT"), filed an interconnection agreement ("agreement"), entered under §§ 251 and 252 of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §§ 251 and 252, for State Corporation Commission ("Commission") approval pursuant to § 252(e) of the Act, 47 U.S.C. § 252(e). This agreement was approved by Order Approving Agreement dated October 24, 2000, in Case No. PUC-2000-00211.

On April 28, 2003, Verizon South filed a joint application for approval of an interconnection agreement between Verizon South and CAT. This agreement was assigned Case No. PUC-2003-00078 and approved on June 24, 2003. Counsel for Verizon South indicated in a letter filed with the Commission on August 26, 2003, in Case No. PUC-2003-00078, that the agreement approved June 24, 2003, superseded the earlier agreement between the parties.

NOW THE COMMISSION finds that the agreement approved in Case No. PUC-2000-00211 has been replaced by the agreement approved in Case No. PUC-2003-00078. Therefore, we find that Case No. PUC-2000-00211 should be dismissed.

Accordingly, IT IS ORDERED THAT the agreement approved in Case No. PUC-2003-00078 shall supersede the agreement approved in Case No. PUC-2000-00211. The captioned matter is hereby dismissed from the Commission's docket of active cases.

CASE NO. PUC-2000-00237
MARCH 17, 2003

APPLICATION OF
MCI WORLDCOM COMMUNICATIONS OF VIRGINIA, INC.

To accept tariff filing

ORDER OF DISMISSAL

On August 22, 2001, by Final Order in Case No. PUC-1999-00157, the State Corporation Commission ("Commission") found that the Maximum Security Collect service provided by MCI WorldCom Communications of Virginia, Inc. ("MCI WorldCom" or the "Company") was not exempt from our jurisdiction and that the rates charged for this service since January 1, 1999, were not in conformance with the Company's filed tariff. The Commission's Final Order in Case No. PUC-1999-00157 further directed the Company to file an accounting of its charges to customers receiving the Maximum Security Collect service for the period of January 1, 1999, through August 31, 2000, and to file new rates and charges for its Maximum Security Collect service, with support cost data based upon the ratemaking provisions of Chapter 10 of Title 56 of the Code of Virginia. Accordingly, this docketed case was opened to receive the above-described filings by the Company.¹

The Company subsequently appealed the Commission's Final Order of August 22, 2001, in Case No. PUC-1999-00157 for lack of jurisdiction by this Commission over the Maximum Security Collect service. On February 28, 2003, the Supreme Court of Virginia issued an Order holding that the Commission did not have jurisdiction and reversed the Final Order and dismissed the complaint.²

The Commission, having dismissed Case No. PUC-1999-00157 by separate Order, now dismisses this case.

Accordingly, IT IS ORDERED THAT this case is hereby dismissed and the papers of this case placed in the file for ended causes.

¹ The Company's filings in this case were suspended by the Commission's Order Granting Partial Suspension of Order issued February 19, 2002.

² See Supreme Court Record Nos. 021262 and 021247 and Record No. 020859.

CASE NO. PUC-2000-00326
JUNE 24, 2003

APPLICATION OF
UNITED TELEPHONE-SOUTHEAST, INC.
and
VIRGINIA GLOBAL COMMUNICATIONS SYSTEMS, INC.

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

DISMISSAL ORDER

On April 10, 2003, United Telephone-Southeast, Inc. and Central Telephone Company of Virginia (collectively, "Sprint"), and Virginia Global Communications Systems, Inc. ("Virginia Global"), filed a Master Network Interconnection and Resale Agreement ("Agreement"), entered under §§ 251 and 252 of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §§ 251 and 252, for State Corporation Commission ("Commission") approval pursuant to § 252(e) of the Act, 47 U.S.C. § 252(e). This Agreement was approved by Order Approving Agreement dated May 29, 2003, in Case No. PUC-2003-00066.

On December 7, 2000, United Telephone-Southeast, Inc., filed an application for approval of an interconnection agreement between itself and Virginia Global. This agreement was assigned Case No. PUC-2000-00326 and approved on January 10, 2001. Counsel for Sprint indicated in the letter accompanying the Agreement filed with the Commission in Case No. PUC-2003-00066 on April 10, 2003, that the Agreement superseded this earlier agreement between the parties.

NOW THE COMMISSION finds that the agreement approved in Case No. PUC-2000-00326 has been replaced by the Agreement approved in Case No. PUC-2003-00066. Therefore, we find that Case No. PUC-2000-00326 should be dismissed.

Accordingly, IT IS ORDERED THAT the Agreement approved in Case No. PUC-2003-00066 shall supersede the agreement approved in Case No. PUC-2000—00326, and the captioned matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUC-2001-00007
FEBRUARY 12, 2003**

APPLICATION OF
CENTRAL TELEPHONE COMPANY OF VIRGINIA
AND UNITED TELEPHONE-SOUTHEAST, INC.
and
CAT COMMUNICATIONS INTERNATIONAL, INC.

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

DISMISSAL ORDER

On December 10, 2002, Central Telephone Company of Virginia and United Telephone-Southeast, Inc. ("Sprint"), and Cat Communications International, Inc. ("CCI"), filed an interconnection agreement ("Agreement"), entered under §§ 251 and 252 of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §§ 251 and 252, for State Corporation Commission ("Commission") approval pursuant to § 252(e) of the Act, 47 U.S.C. § 252(e). The Commission entered an Order Approving Agreement on January 16, 2003, in Case No. PUC-2002-00229.

On January 8, 2001, Sprint filed a joint application for approval of an interconnection agreement between Sprint and CCI. This agreement was assigned Case No. PUC-2001-00007 and approved on March 13, 2001. As verified by letter from counsel for the Applicant dated December 10, 2002, we find that the Agreement approved in Case No. PUC-2001-00007 has been replaced by the Agreement approved in Case No. PUC-2002-00229. Therefore, Case No. PUC-2001-00007 should be dismissed.

Accordingly, IT IS ORDERED THAT the agreement approved in Case No. PUC-2002-00229 shall supersede the agreement approved in Case No. PUC-2001-00007, and the captioned matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUC-2001-00091
NOVEMBER 25, 2003**

APPLICATION OF
VERIZON SOUTH INC.
and
OPENBAND OF VIRGINIA, INC.

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

DISMISSAL ORDER

On March 20, 2001, Verizon South Inc. ("Verizon South") and OpenBand of Virginia, Inc. ("OpenBand"), filed an interconnection agreement ("agreement"), entered under §§ 251 and 252 of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §§ 251 and 252, for State Corporation Commission ("Commission") approval pursuant to § 252(e) of the Act, 47 U.S.C. § 252(e). This agreement was approved by Order Approving Agreement dated May 7, 2001, in Case No. PUC-2001-00091.

On August 11, 2003, Verizon South filed a joint application for approval of an interconnection agreement between Verizon South and OpenBand. This agreement was assigned Case No. PUC-2003-00128 and approved on October 7, 2003. Counsel for Verizon South indicated in the letter accompanying the agreement filed with the Commission on August 11, 2003, in Case No. PUC-2003-00128, that the agreement superseded this earlier agreement between the parties.

NOW THE COMMISSION finds that the agreement approved in Case No. PUC-2001-00091 has been replaced by the agreement approved in Case No. PUC-2003-00128. Therefore, we find that Case No. PUC-2001-00091 should be dismissed.

Accordingly, IT IS ORDERED THAT the agreement approved in Case No. PUC-2003-00128 shall supersede the agreement approved in Case No. PUC-2001-00091. The captioned matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUC-2001-00112
FEBRUARY 12, 2003**

APPLICATION OF
TELIGENT SERVICES, INC.

For approval to discontinue local exchange telecommunications services in the Richmond Standard Metropolitan Statistical Area

DISMISSAL ORDER

On May 2, 2001, Teligent Services, Inc. ("Teligent" or the "Company"), filed an application with the State Corporation Commission ("Commission") seeking permission to discontinue provision of local exchange telecommunications services in the Richmond Standard Metropolitan Statistical Area ("SMSA"), effective May 31, 2001.

The Commission issued an Order on May 15, 2001, suspending the proposed effective date for discontinuance to allow for further notice to Teligent's customers and an opportunity for comments or requests for hearing to be filed. On May 22, 2001, Teligent filed a Motion for Emergency Relief and Petition for Reconsideration advising the Commission of its inability to provide local exchange telecommunications services beyond May 31, 2001. Also, on May 22, 2001, the Commission issued an Order Granting Motion for Emergency Relief and Petition for Reconsideration in this proceeding approving the May 31, 2001, discontinuance date and directing the Company to contact its affected customers and report to the Division of Communications on the status of each of its remaining Richmond customers by May 30, 2001.

Teligent discontinued local exchange telecommunications services on May 31, 2001, and reported to the Division of Communications as directed.

NOW THE COMMISSION finds that there is nothing further to be done in this matter.

Accordingly, IT IS ORDERED THAT this case be, and hereby is, DISMISSED from the docket of active cases.

**CASE NO. PUC-2001-00116
NOVEMBER 25, 2003**

APPLICATION OF
VERIZON VIRGINIA INC.
and
OPENBAND OF VIRGINIA, INC.

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

DISMISSAL ORDER

On May 7, 2001, Verizon Virginia Inc. ("Verizon Virginia") and OpenBand of Virginia, Inc. ("OpenBand Inc."), filed an interconnection agreement ("agreement"), entered under §§ 251 and 252 of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §§ 251 and 252, for State Corporation Commission ("Commission") approval pursuant to § 252(e) of the Act, 47 U.S.C. § 252(e). This agreement was approved by Order Approving Agreement dated June 26, 2001, in Case No. PUC-2001-00116.

On August 11, 2003, Verizon Virginia filed a joint application for approval of an interconnection agreement between Verizon Virginia and OpenBand of Virginia, LLC.¹ This agreement was assigned Case No. PUC-2003-00124 and approved on October 7, 2003. Counsel for Verizon Virginia indicated in the letter accompanying the agreement filed with the Commission on August 11, 2003, in Case No. PUC-2003-00124, that the agreement superseded this earlier agreement between the parties.

NOW THE COMMISSION finds that the agreement approved in Case No. PUC-2001-00116 has been replaced by the agreement approved in Case No. PUC-2003-00124. Therefore, we find that Case No. PUC-2001-00116 should be dismissed.

Accordingly, IT IS ORDERED THAT the agreement approved in Case No. PUC-2003-00124 shall supersede the agreement approved in Case No. PUC-2001-00116. The captioned matter is hereby dismissed from the Commission's docket of active cases.

¹ OpenBand of Virginia, LLC was issued a certificate on November 7, 2001, in Case No. PUE-2001-00161. The certificates issued to OpenBand of Virginia, Inc. were canceled on November 7, 2001, in Case No. PUE-2001-00159.

**CASE NO. PUC-2001-00162
DECEMBER 15, 2003**

APPLICATION OF
CENTRAL TELEPHONE COMPANY OF VIRGINIA and UNITED TELEPHONE-SOUTHEAST, INC.
and
AMERICAN FIBER NETWORK OF VIRGINIA, INC.

For approval of an interconnection agreement under § 252 (e) of the Telecommunications Act of 1996

DISMISSAL ORDER

On July 31, 2001, Central Telephone Company of Virginia and United Telephone – Southeast, Inc. (collectively "Sprint"), and American Fiber Network of Virginia, Inc. ("American Fiber"), filed an interconnection agreement ("Agreement"), entered under §§ 251 and 252 of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §§ 251 and 252, for State Corporation Commission ("Commission") approval pursuant to § 252 (e) of the Act, 47 U.S.C. § 252 (e). On August 27, 2001, the Commission entered an Order Approving Agreement.

On October 29, 2003, Sprint filed a joint application for approval of a new interconnection agreement between Sprint and American Fiber. This agreement was assigned Case No. PUC-2003-00162 and was approved by the Commission on December 2, 2003. Counsel for Sprint indicated that the new agreement approved on December 2, 2003, replaced the earlier Agreement between the parties.

NOW THE COMMISSION finds that the agreement approved in Case No. PUC 2003-00162 shall replace the agreement approved in Case No. PUC-2001-00162. The captioned matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUC-2001-00170
DECEMBER 3, 2003**

APPLICATION OF
UNITED TELEPHONE – SOUTHEAST, INC. AND CENTRAL TELEPHONE COMPANY OF VIRGINIA
and
BUSINESS TELECOM OF VIRGINIA, INC.

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

DISMISSAL ORDER

On August 7, 2001, United Telephone – Southeast, Inc. and Central Telephone Company of Virginia (jointly "Sprint") and Business Telecom of Virginia, Inc. ("BTI"), filed an interconnection agreement ("agreement"), entered under §§ 251 and 252 of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §§ 251 and 252, for State Corporation Commission ("Commission") approval pursuant to § 252(e) of the Act, 47 U.S.C. § 252(e). This agreement was approved by Order Approving Agreement dated September 5, 2001, in Case No. PUC-2001-00170.

On August 11, 2003, Sprint filed a joint application for approval of an interconnection agreement between Sprint and BTI. This agreement was assigned Case No. PUC-2003-00123 and approved on November 7, 2003. Counsel for Sprint indicated in the letter accompanying the agreement filed with the Commission on August 11, 2003, in Case No. PUC-2003-00123, that the agreement superseded this earlier agreement between the parties.

NOW THE COMMISSION finds that the agreement approved in Case No. PUC-2001-00170 has been replaced by the agreement approved in Case No. PUC-2003-00123. Therefore, we find that Case No. PUC-2001-00170 should be dismissed.

Accordingly, IT IS ORDERED THAT the agreement approved in Case No. PUC-2003-00123 shall supersede the agreement approved in Case No. PUC-2001-00170. The captioned matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUC-2001-00206
JANUARY 16, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

Ex Parte: Establishment of Carrier Performance Standards for Verizon Virginia Inc.

**ORDER APPROVING REVISIONS TO
VA GUIDELINES FILED DECEMBER 9, 2002**

On December 9, 2002, Verizon Virginia Inc. ("Verizon Virginia") filed with the State Corporation Commission ("Commission") its proposed revisions and comments to the Virginia Carrier-to-Carrier Guidelines Performance Standards and Reports ("VA Guidelines"), which reflect the New York consensus and non-consensus metric changes adopted by the New York Public Service Commission on October 25, 2002, (hereafter "December 9, 2002, Proposed VA Guidelines").¹

On December 12, 2002, the Commission issued a Procedural Order on Proposed Revisions to VA Guidelines filed December 9, 2002, requesting comments and/or requests for hearing. No party filed comments.

The Commission finds that Verizon Virginia's December 9, 2002, Proposed VA Guidelines and proposed implementation schedule should be approved.

Accordingly, IT IS ORDERED THAT:

- (1) The December 9, 2002, Proposed VA Guidelines are approved.
- (2) Verizon Virginia's proposed implementation schedule is hereby approved.
- (3) This case is now continued.

¹ On January 4, 2002, the Commission issued an Order Establishing Carrier Performance Standards with Implementation Schedule and Ongoing Procedure to Change Metrics ("January 4, 2002, Order"). A copy of Verizon Virginia's December 9, 2002, Proposed VA Guidelines is available at: <http://www.state.va.us/sec/division/PUC/cc.momfiles/collab225.pdf>

**CASE NO. PUC-2001-00223
AUGUST 1, 2003**

APPLICATION OF
VERIZON VIRGINIA INC.
and
DSL.NET COMMUNICATIONS VA, INC.

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

DISMISSAL ORDER

On October 31, 2001, Verizon Virginia Inc. ("Verizon Virginia") and DSL.net Communications VA, Inc. d/b/a DSL.net ("DSL.net"),¹ filed an interconnection agreement ("Agreement"), entered under §§ 251 and 252 of the Telecommunications Act of 1996 ("the Act"), 47 U.S.C. §§ 251 and 252, for State Corporation Commission ("Commission") approval pursuant to § 252(e) of the Act, 47 U.S.C. § 252(e). This Agreement was approved by Order Approving Agreement dated January 8, 2002, in Case No. PUC-2001-00223.

On April 30, 2003, Verizon Virginia and DSL.net filed a joint application for approval of an interconnection agreement between Verizon Virginia and DSL.net. This Agreement was assigned Case No. PUC-2003-00084 and approved on May 27, 2003. In a letter dated July 15, 2003, a representative of Verizon Virginia stated that Verizon Virginia inadvertently omitted in its April 30, 2003, filing a statement that the Agreement filed in Case No. PUC-2003-00084 superseded this earlier agreement between the parties.

NOW THE COMMISSION finds that the agreement approved in Case No. PUC-2001-00223 has been replaced by the Agreement approved in Case No. PUC-2003-00084. Therefore, we find that Case No. PUC-2001-00223 should be dismissed.

Accordingly, IT IS ORDERED THAT the agreement approved in Case No. PUC-2003-00084 shall supersede the agreement approved in Case No. PUC-2001-00223. The captioned matter is hereby dismissed from the Commission's docket of active cases.

¹ The certificated name in Virginia is DLS.net Communications VA, Inc.

**CASE NO. PUC-2001-00226
MAY 14, 2003**

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

Ex Parte: Establishment of a Performance Assurance Plan for Verizon Virginia Inc.

**ORDER MODIFYING AND APPROVING REVISIONS TO THE PERFORMANCE
ASSURANCE PLAN OF VERIZON VIRGINIA INC. FILED MARCH 7, 2003**

On October 30, 2001, the State Corporation Commission ("Commission") initiated a proceeding docketed in Case No. PUC-2001-00206 to establish performance standards for Verizon Virginia Inc. ("Verizon Virginia") and further determined that it would consider all proposals for a remedy or performance assurance plan for Verizon Virginia in a separately docketed case, PUC-2001-00226, which was established by Preliminary Order in this case on November 9, 2001.

On July 18, 2002, the Commission approved and adopted Verizon Virginia's performance assurance plan effective October 1, 2002 (hereinafter "VA PAP").

On February 13, 2002, Verizon Virginia filed a notice letter and proposed revisions of the VA PAP with the Commission. In accordance with the VA PAP, the proposed revisions are based on changes to the New York Performance Assurance Plan ("NY PAP").

On March 4, 2003, the Commission issued a Procedural Order on Proposed Revisions to the Performance Assurance Plan of Verizon Virginia Inc. Filed February 13, 2003. This Order requested comments by March 31, 2003, and reply comments by April 18, 2003. Subsequent to the issuance of the above-mentioned Order, Verizon Virginia filed on March 7, 2003, corrections to its proposed revisions to the VA PAP filed on February 13, 2003, and requested that such corrected copy be deemed to supersede its February 13, 2003, filing. On March 12, 2003, the Commission issued an Order of Amendment granting Verizon Virginia's request that the corrected proposed revisions filed on March 7, 2003, be deemed to supersede the proposed revisions filed on February 13, 2003, and amending the comment and reply comment dates to April 7, 2003, and April 23, 2003, respectively.

On April 7, 2003, the Staff of the Commission and Verizon Virginia filed comments on the proposed revisions to the VA PAP. In its comments, the Staff had two immediate concerns with the applicability of certain provisions of the NY PAP to the VA PAP. The first concern was with the proposed revisions to the distribution of bill credits among the Mode of Entry ("MOE") measures in the VA PAP. The proposed revisions increased the MOE categories to five by splitting the UNE category into two – UNE-Loop and UNE-Platform. The Staff did not object to the new category designations but raised concerns about the distribution of bill credits to each of the five categories and, particularly, the distribution to the UNE-Loop and UNE-Platform categories. Verizon Virginia's proposed revisions are based on the NY PAP and the distribution used in the NY PAP, which the Staff believes is based on the structure of the competitive environment in New York. The Staff believes that the distribution of MOE bill credits in the VA PAP should be based on Virginia's marketplace and not New York's. The Staff proposes that the split of total UNE dollars to the two separate categories (*i.e.*, UNE-Platform and UNE-Loop) be no more than 60/40, with 60% going to the UNE-Platform category and 40% going to the UNE-Loop category. This is not the specific breakdown of the Virginia marketplace at present; however, it takes into consideration the rapid growth and importance of UNE-Platform use in Virginia.

The Staff's second concern was with the proposed new language in Appendix D of the VA PAP that specifies if a competitive local exchange carrier ("CLEC") has concerns with the sample size criteria or a small sample shows the metric as being "out of parity" after a permutation test is run, the Carrier Working Group would be the proper forum to address the CLECs' concerns. Staff notes, however, that there is no such Carrier Working Group in Virginia. Therefore, Staff suggested in its comments that either the Performance Standards/Remedies Plans Subcommittee of the Collaborative Committee ("Subcommittee") or the Commission Staff would be two alternatives to the referenced Carrier Working Group for Virginia.

Verizon Virginia's comments filed on April 7, 2003, urged the Commission to adopt the VA PAP filed by it on March 7, 2003. Verizon Virginia also states that its proposed implementation schedule should be adopted.

On April 23, 2003, Verizon Virginia and Cavalier Telephone, LLC ("Cavalier") filed comments on the proposed revisions to the VA PAP. Both of these parties commented on the Staff's suggestions in its comments of April 7, 2003.

In its reply comments, Verizon Virginia agreed with the Staff that the distribution of dollars for the UNE-Loop and UNE-Platform MOEs should be more reflective of the Virginia marketplace and that a 60/40 split was better than what it proposed in its filing. As an alternative, Verizon Virginia stated that a 50/50 split may be acceptable as this would provide that neither MOE category would be preferred over the other in the VA PAP. Verizon Virginia also states that the Commission may want to consider reallocating the dollars-at-risk for UNE-Loop and UNE-Platform under the Critical Measures section of the proposed VA PAP. Verizon Virginia believes that the allocation under the Critical Measures section should follow the same split as is determined for the MOE section of the VA PAP.

As for the Staff's concern over the language in Appendix D of the proposed VA PAP revisions, Verizon Virginia does not object to either the Subcommittee or the Commission being called upon, thus replacing the Carrier Working Group language in the proposed VA PAP revisions.

Cavalier's comments also focused on the Staff's suggestion on how to redistribute the MOE dollars-at-risk between the two new UNE categories. Cavalier strongly believes that the dollars-at-risk should be reflective of the actual marketplace in Virginia. Based on the latest data found by Cavalier, which was the data from Verizon Virginia's Section 271 filing showing a split of 98.6% to UNE-Loop and 1.4% UNE-Platform, Cavalier urges that the allocation should be made thus. Cavalier admits that this data is outdated and if more current information is available, then this actual data should be used to determine the dollars-at-risk for the two UNE categories in the MOE section of the VA PAP. Cavalier believes that even the Staff's recommendation distorts the actual picture of Virginia's current marketplace. Cavalier also believes that based on the Federal Communications Commission's ("FCC") pending triennial review, the UNE-Platform market entry strategy apparently is being phased out; therefore, the UNE-Loop MOE should be favored in the VA PAP.

On April 25, 2003, AT&T Communications of Virginia, LLC ("AT&T") filed a Motion for Leave to File and Response of AT&T requesting that it be allowed to file a response to Verizon Virginia's and Cavalier's comments filed on April 23, 2003. AT&T asserts that because Verizon Virginia and Cavalier filed comments that introduced two new proposals from the one put forth by the Staff in its April 7, 2003, comments, AT&T should be allowed the opportunity to respond to these new proposals. AT&T also states that its late-filed response would not delay the proceeding as it was only being filed two days after the comments in question. There being no objection, we now grant AT&T's motion.

In its late-filed response, AT&T states that the level of growth in the UNE-Platform mode of entry is substantial and that the allocation of dollars in the MOE section of the VA PAP should reflect this, and the Staff's 60/40 split is "reasonable and forward-looking." AT&T does not believe that the 50/50 split proposed by Verizon Virginia is reflective of the importance of UNE-Platform to local exchange competition and that this split may be outdated in the year that this proposed VA PAP revision may be in effect. AT&T dismisses Cavalier's suggested split as being outdated.

AT&T does not believe that the Critical Measures section should be adjusted at this time for two reasons: (1) no other party has been able to comment on this suggestion; and (2) a 50/50 split would ignore the rapid growth of UNE-Platform. If the Commission does decide to reallocate the dollars, then AT&T maintains it should do so using a 60/40 split of UNE-Platform versus UNE-Loop.

AT&T dismisses Cavalier's suggestion that UNE-Platform may not be viable much longer due to the FCC's pending Triennial Review Order. AT&T points out that Cavalier is relying upon the dissenting opinion of the Chairman of the FCC and that in any event, the impact of the anticipated Triennial Review Order upon the proliferation of UNE-Platform is likely to be delayed.

Finally, AT&T believes that the language in Appendix D of the proposed VA PAP should be changed to refer matters to the Subcommittee. AT&T believes that the issues that may arise from this section of the VA PAP are "not conducive to resolution in the first instance by the Commission."

NOW THE COMMISSION, upon consideration of the proposed revisions to the VA PAP, the comments, reply comments, and response, finds that the proposed revisions to the VA PAP filed on March 7, 2003, should be adopted with certain modifications as set forth below.

The Commission agrees with the commenters that the distribution of dollars-at-risk in the VA PAP should be reflective of the Virginia marketplace and not New York's. As such, the division of bill credits for the two UNE categories, UNE-Platform and UNE-Loop, in the MOE section of the VA PAP should be set at a 60/40 split. While the current Virginia marketplace has more UNE-Loops than UNE-Platform, the substantial acceleration of UNE-Platform in Virginia warrants a somewhat greater allocation of dollars-at-risk than to UNE-Loop, for which the rate of growth has slowed significantly. The 60/40 split is also more forward-looking as AT&T points out and recognizes the increasing importance of UNE-Platform in Virginia as required by the VA PAP.¹

The Commission declines to consider reallocation of the dollars-at-risk under the Critical Measures Section at this time.

As for the language in Appendix D of the proposed VA PAP, the Commission finds that the language should be modified to read the "Performance Standards/Remedies Plans Subcommittee of the Collaborative Committee" in place of all references to the Carrier Working Group. However, if a timely resolution cannot be reached in the Subcommittee, the parties may seek resolution from the Commission.

¹ See Section II B.1 (Distribution of Bill Credits).

Accordingly, IT IS ORDERED THAT:

- (1) AT&T's Motion for Leave to File Response is granted.
- (2) Verizon Virginia's corrected proposed revisions to the VA PAP, filed on March 7, 2003, are approved, effective July 1, 2003, consistent with the modifications found above.
- (3) Verizon Virginia is hereby ordered to file a revised VA PAP incorporating the Commission's findings approved herein on or before June 6, 2003.
- (4) This case shall be continued.

**CASE NO. PUC-2001-00226
JUNE 19, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

Ex Parte: Establishment of a Performance Assurance Plan for Verizon Virginia Inc.

**ORDER ON VERIZON VIRGINIA INC.'S PETITION FOR
WAIVER OF CERTAIN SERVICE QUALITY RESULTS
MEASURED UNDER THE PERFORMANCE ASSURANCE PLAN**

On March 17, 2003, Verizon Virginia Inc. ("Verizon Virginia" or "Company") filed with the State Corporation Commission ("Commission") a Petition for Waiver of Certain Service Quality Results Measured Under the Performance Assurance Plan for January 2003 ("Petition"). The service performance results it sought to waive for January 2003 would otherwise be included in Verizon Virginia's calculation of monthly bill credits due to Competitive Local Exchange Carriers ("CLECs") pursuant to Verizon Virginia's Performance Assurance Plan ("VA PAP").

On March 24, 2003, the Commission issued an Order for Notice and Comment allowing interested parties the opportunity to file comments regarding Verizon Virginia's Petition and allowing Verizon Virginia to file reply comments.

On April 9, 2003, AT&T Communications of Virginia, LLC ("AT&T"), and WorldCom, Inc. ("WorldCom"), filed comments in opposition to Verizon Virginia's Petition. On April 18, 2003, Verizon Virginia filed its reply comments. In the reply, Verizon Virginia reiterates its position that it has met the PAP criteria for a waiver, and it should be granted in this instance. Also on April 18, 2003, Verizon Virginia filed a Request for Stay. The Commission granted the Stay request on April 25, 2003, and requested additional information from Verizon Virginia.

The additional information requested mirrored information requested by the New York Public Service Commission. This concerned Verizon Virginia's "patch management" practices and what it had done in response to the bulletins labeled as critical by Microsoft that were related to vulnerabilities in Verizon Virginia's servers.

On May 2, 2003, Verizon Virginia filed Verizon New York Inc.'s May 2, 2003, Revised Supplemental Comments ("supplemental revised comments") in the instant case to satisfy this Commission's request.

On May 9, 2003, and May 12, 2003, respectively, WorldCom and AT&T together with Cavalier Telephone, LLC, filed responses to Verizon Virginia's supplemental revised comments.

On May 16, 2003, Verizon Virginia filed its response to the comments filed on May 12, 2003, and May 9, 2003.

On June 6, 2003, Verizon Virginia filed a Withdrawal of its Application ("Withdrawal Application"). The Withdrawal Application states its request to withdraw the March 17, 2003, petition filed pursuant to Section II.J of the VA PAP.

NOW THE COMMISSION, upon consideration of the Petition, comments, reply comments, supplemental revised comments and responses thereto, and the Withdrawal Application finds that the waiver request filed by Verizon Virginia should be withdrawn.

Accordingly, IT IS ORDERED THAT:

- (1) The Petition filed by Verizon Virginia on March 17, 2003, is hereby withdrawn.
- (2) The Stay granted by the Commission on April 25, 2003, is hereby dissolved.
- (3) Verizon Virginia is ordered to provide to the Staff and all competitive local exchange carriers a final VA PAP report for January 2003 that includes the effects of the Slammer Worm attack within ninety (90) days of the date of this Order.
- (4) Verizon Virginia should process the bill credits due, along with the appropriate interest as directed below, within thirty (30) days of the submission of the final January 2003 VA PAP report ordered above.
- (5) Interest upon the bill credits shall be computed from the date payment was originally due until the date the bill credits are made, at an average prime rate for each calendar quarter. The applicable 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 G.13), for the three months of the preceding calendar quarter.

- (6) The interest required to be paid shall be compounded quarterly.
- (7) This case shall be continued.

**CASE NO. PUC-2002-00051
AUGUST 1, 2003**

PETITION OF
PULASKI EXCHANGE CUSTOMERS

For Extended Local Service from Verizon Virginia Inc.'s Pulaski Exchange to its Blacksburg and Christiansburg Exchanges

FINAL ORDER

On March 22, 2002, telephone customers in Verizon Virginia Inc.'s ("Verizon Virginia") Pulaski Exchange petitioned the State Corporation Commission ("Commission") for Extended Local Service ("ELS") to Verizon Virginia's Blacksburg Exchange. Also, on September 16, 2002, telephone customers in Verizon Virginia's Pulaski Exchange petitioned the Commission for ELS to the Christiansburg Exchange.

On October 8, 2002, the Commission issued an Order directing Verizon Virginia to prepare a cost study to estimate the approximate change in the monthly rate for service that would result from the requested extension of local service. Verizon Virginia was also directed to poll its customers in the Pulaski Exchange regarding their willingness to pay higher rates for local calling to the Blacksburg and Christiansburg exchanges. Pending a successful ballot in the Pulaski Exchange, Verizon Virginia was directed to conduct a cost study to determine the impact on rates for its Blacksburg and Christiansburg exchanges for ELS to the Pulaski Exchange.

Verizon Virginia submitted the results of its Pulaski Exchange cost study to the Commission Staff on October 8, 2002, and submitted the results of its poll on December 31, 2002. The majority of those responding supported the proposal.

On April 4, 2003, Verizon Virginia submitted the cost studies used to determine the monthly rates for extended local calling from the Blacksburg and Christiansburg exchanges to the Pulaski Exchange. Because the resulting rate increase for one-party residential customers did not exceed five percent of the existing monthly one-party residential flat rate for the Blacksburg and Christiansburg exchanges, a poll of these customers was not required pursuant to § 56-484.2 of the Code of Virginia.

By Order dated May 1, 2003, the Commission directed Verizon Virginia to provide notice of the proposed increase in monthly rates in newspapers of general circulation in the Blacksburg and Christiansburg exchanges. Affected telephone customers were given until June 27, 2003, to file comments or request a hearing on the proposal. Eight comments were filed by Blacksburg and Christiansburg customers opposing the ELS proposal, and 23 customers requested a hearing. Verizon Virginia provided proof of newspaper publication on June 5, 2003.

On July 11, 2003, the Commission Staff filed its report recommending approval of the extension of local service. In its report, the Staff noted that the number of requests for hearing did not meet the threshold for convening a hearing as described in the Commission's May 1, 2003, Order.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed extension of local service from Verizon Virginia's Pulaski Exchange to its Blacksburg and Christiansburg exchanges with reciprocal calling from the Blacksburg and Christiansburg exchanges to the Pulaski Exchange shall be implemented.
- (2) Verizon Virginia shall file the tariff revisions necessary for the proposed extension of local service.
- (3) Since there is nothing further to come before the Commission, this case is dismissed and removed from the Commission's docket of active cases.

**CASE NO. PUC-2002-00074
MARCH 12, 2003**

PETITION OF
UNITED TELEPHONE – SOUTHEAST, INC.

For Extended Local Service from United Telephone-Southeast, Inc.'s Saltville Exchange to its Glade Spring, Meadowview, and Abingdon Exchanges

FINAL ORDER

In December 2001, telephone customers in United Telephone-Southeast, Inc.'s ("United") Saltville Exchange petitioned the State Corporation Commission ("Commission") for Extended Local Service ("ELS") to United's Glade Spring, Meadowview, and Abingdon Exchanges. On March 12, 2002, the Commission received from United a cost study for the Saltville Exchange that was used to estimate the change in monthly rates that would result from the requested extension of local service.

On July 16, 2002, the Commission issued an Order directing United to poll its Saltville Exchange customers to determine whether a majority of those customers were willing to pay an increase in rates for local calling to the Glade Spring, Meadowview, and Abingdon Exchanges. United submitted the results of its poll to the Staff on September 25, 2002. The majority of those responding supported the proposal.

On November 5, 2002, United submitted the cost studies used to determine the monthly rates for extended local calling from the Abingdon, Meadowview, and Glade Spring Exchanges to the Saltville Exchange. Because the resulting rate increase for one-party residential customers did not exceed five percent of the existing monthly one-party residential flat rate for the Abingdon Exchange, a poll of these customers was not required pursuant to § 56-484.2 of the Code of Virginia. A wires cost study also indicated that a poll was required in the Glade Spring and Meadowview Exchanges.

Pursuant to the provisions of § 56-484.2 of the Code of Virginia, by Order dated January 6, 2003, the Commission directed United to poll its Glade Spring and Meadowview Exchange customers to determine whether a majority of those customers would be willing to pay an increase in rates for local calling to its Saltville Exchange. The Order further directed United to file the results of its poll with the Commission on or before March 13, 2003.

On January 30, 2003, United filed the results of both polls. United noted that 2,383 ballots were mailed to its Meadowview Exchange customers and 677 (28.41 percent) were returned. The results further reflect that of the ballots returned, 307 (45.35 percent) voted "yes," and 370 (54.65 percent) voted "no." In its filing concerning the Glade Spring Exchange, United noted that 1,584 ballots were mailed to its Glade Spring Exchange customers and 489 (30.87 percent) were returned. The results further reflect that, of the ballots returned, 203 (41.51 percent) voted "yes," and 286 (58.49 percent) voted "no."

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that because a majority of Meadowview Exchange and Glade Spring Exchange customers voted against extension of local service to the Saltville Exchange, the petition should be denied.

Accordingly, IT IS ORDERED THAT:

- (1) The petition is hereby denied.
- (2) There being nothing further to be done in this matter, this matter is hereby dismissed.

**CASE NO. PUC-2002-00087
MAY 14, 2003**

APPLICATION OF
CRG INTERNATIONAL OF VIRGINIA, INC. d/b/a NETWORK ONE

For discontinuance of local exchange telecommunications services and cancellation of certificate of public convenience and necessity

ORDER

On May 9, 2003, the Staff of the State Corporation Commission ("Commission") filed a motion requesting that the Commission cancel the certificate of public convenience and necessity to provide local exchange telecommunications services held by CRG International of Virginia, Inc. d/b/a Network One ("Network One" or the "Company"). Certificate No. T-401 was granted by the Commission by Order dated February 17, 1998, in Case No. PUC-1997-00023.

By Order dated August 12, 2002, the Commission granted Network One permission to discontinue local exchange telecommunications services. The Commission further required the Company to advise the Division of Communications within 120 days regarding the cancellation of its certificate. To date, Network One has not provided any response to the Commission. The Staff advises that attempts to contact Network One for information have failed and that former representatives of the Company have indicated that the Company has filed for bankruptcy and discontinued operations.

NOW UPON CONSIDERATION of the matter, the Commission finds that Staff's motion should be granted, and Network One's certificate should be cancelled.

Accordingly, IT IS ORDERED THAT:

- (1) Staff's motion is hereby granted.
- (2) Certificate No. T-401 is hereby cancelled.
- (3) This matter is hereby dismissed.

**CASE NO. PUC-2002-00089
JANUARY 31, 2003**

PETITION OF
CAVALIER TELEPHONE, LLC
v.
VERIZON VIRGINIA INC.

For enforcement of interconnection agreement

FINAL ORDER

On April 19, 2002, Cavalier Telephone, LLC ("Cavalier"), filed a Petition for Enforcement of Interconnection Agreement with the State Corporation Commission ("Commission"). Cavalier requested that the Commission enforce certain terms of an interconnection agreement it has entered into with Verizon Virginia Inc. ("Verizon Virginia"). Verizon Virginia filed a responsive pleading to the petition on May 10, 2002, and also moved the Commission to dismiss the matter.

On May 22, 2002, the Commission issued an Order permitting Cavalier to reply to Verizon Virginia's pleading by May 31, 2002, and continued the matter generally. Cavalier filed its reply to Verizon Virginia's response on May 24, 2002. Verizon Virginia filed a reply to Cavalier's response on June 3, 2002.

On November 7, 2002, the Commission issued an Order requesting that the parties file additional comments addressing specific questions raised in the Order. Both Cavalier and Verizon Virginia filed comments on these questions on December 2, 2002, and reply comments on December 16, 2002.

NOW THE COMMISSION, having considered the pleadings, declines to rule on the issues raised in Cavalier's petition. The principle dispute between the parties involves the interpretation of the Second Amendment to the Interconnection Agreement ("Agreement"). In general, the Commission believes that purely contractual disputes may be more appropriately addressed by courts of general jurisdiction.¹

In this instance, we sought additional information from Cavalier and Verizon Virginia in our November 7, 2002, Order, primarily to determine whether the quality of service provided to end user customers would be impacted if Cavalier and Verizon Virginia converted the existing two-way trunks to one-way trunks. However, in both Cavalier's and Verizon Virginia's December 2, 2002, comments, the parties note that by letter dated November 22, 2002, Cavalier provided Verizon Virginia 60 days' written notice that it wished to terminate the Second Amendment to the Agreement. Because the Second Amendment – which is the subject of this petition – was terminated on or about January 21, 2003, the service quality concerns may no longer be appropriately addressed in this case.² It appears that since the Second Amendment has been terminated, the remaining issue between the parties relates only to payments claimed to be due under the contract. Because this dispute is primarily one of contractual interpretation, and considering the limitations on the Commission's authority to award money damages, we believe these issues are more appropriately resolved by the courts of general jurisdiction.

Accordingly, IT IS ORDERED THAT:

- (1) The petition filed by Cavalier herein is hereby dismissed without prejudice.
- (2) There being nothing further to come before the Commission, this matter is dismissed from the docket, and the record developed herein shall be placed in the file for ended causes.

¹ However, the Federal Communications Commission ("FCC") may be an appropriate forum, for example, when disputes over interconnection agreements between telecommunications carriers also involve the interpretation of a FCC rule or regulation.

² If, however, cancellation of the Second Amendment results in the elimination of two-way trunking arrangements between the parties, which in turn causes increased network blockage, the Commission may always initiate an investigation in a separate proceeding, if necessary.

**CASE NO. PUC-2002-00094
FEBRUARY 20, 2003**

APPLICATION OF
CLM TELCOM LLC

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On December 2, 2002, CLM Telcom LLC ("CLM" or the "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.

By Order dated December 10, 2002, 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 January 16, 2003, the Company filed proof of publication and proof of service as required by the December 10, 2002, Order.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

On February 5, 2003, the Staff filed its Report finding that CLM's application was in compliance with the Rules Governing the Offering of Competitive Local Exchange Telephone Service and the Rules Governing the Certification of Interexchange Carriers. Based upon its review of CLM'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: should CLM collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and of any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or 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, the Commission further finds that the Company may price its interexchange telecommunications services competitively.

Accordingly, IT IS ORDERED THAT:

(1) CLM Telcom LLC is hereby granted a certificate of public convenience and necessity, No. TT-188A, 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) CLM Telcom LLC is hereby granted a certificate of public convenience and necessity, No. T-604, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Offering of Competitive Local Exchange Telephone Service, § 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) Should CLM collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and of any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or 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-2002-00102
JUNE 24, 2003**

PETITION OF
AMERICAN FIBER NETWORK OF VIRGINIA, INC.

For an extension of time to submit audited financial statements

ORDER GRANTING REQUEST

On June 23, 2000, the State Corporation Commission ("Commission") issued its Final Order granting American Fiber Network of Virginia, Inc. ("AFN" or the "Company"), a certificate of public convenience and necessity to provide local exchange telecommunications services subject to the condition that the Company "provide to the Division of Economics and Finance audited financial statements of its parent, American Fiber Network, Inc., no later than one (1) year from the effective date of AFN's initial tariff."

On May 24, 2002, the Commission issued an Order granting AFN an extension of time until May 6, 2003, for it to submit audited financial statements to the Staff.

On June 13, 2003, AFN filed a letter with the Clerk of the Commission requesting a waiver of the requirement to file audited financial statements. In its letter, AFN states that accounting difficulties have caused it to miss the May 6, 2003, deadline. AFN requests authority to file a \$50,000 performance bond in lieu of submitting audited financial statements.

NOW THE COMMISSION, having considered the request and all applicable statutes and rules, finds that it should be granted.

Accordingly, IT IS ORDERED THAT:

(1) AFN's request for waiver of the requirement to file audited financial statements is granted.

(2) On or before July 25, 2003, AFN shall submit to the Commission's Division of Economics and Finance a continuous performance or surety bond in the amount of \$50,000. A bond shall be maintained until the Commission or its Staff determines that it is no longer necessary.

(3) AFN shall notify the Division of Economics and Finance by letter thirty (30) days prior to each instance of cancellation or lapse of the bond prescribed in ordering paragraph (2) above and shall provide a replacement bond.

(4) This matter shall be continued generally, pending further order of the Commission.

**CASE NO. PUC-2002-00115
APRIL 9, 2003**

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

Ex Parte: In the matter of regulations governing competitive local exchange carriers, localities as competitive local exchange carriers, and local inter-carrier matters

ORDER ADOPTING RULES

On October 15, 2002, the State Corporation Commission ("Commission") issued an Order for Notice and Comment and/or Requests for Hearing on Proposed Rules ("Notice Order") in the above referenced proceeding.

In the Notice Order, the Commission stated that it was seeking to revise the existing Rules Governing the Offering of Competitive Local Exchange Telephone Service, 20 VAC 5-400-180, to reflect evolving changes in the certification process and the regulation of competitive local exchange carriers ("CLECs"), legislation to permit certification of localities to provide local exchange telecommunications services, and compliance with the requirements of the Virginia Code Commission. The Commission proposed to repeal the existing rules and divide a majority of the provisions into two new chapters. The first new chapter, 20 VAC 5-417-10, *et seq.*, would be titled Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers ("Proposed Local Exchange Rules"). The second chapter, 20 VAC 5- 429-10, *et seq.*, would be titled Rules Governing Compensation, Numbering, Interconnection, and Other Local Inter-Carrier Matters ("Proposed Inter-Carrier Rules"). The purpose of establishing the two sets of rules was to separate the certification and regulation of CLECs from the interconnection requirements among carriers.

The proposed rules were attached to the Notice Order, and the Commission directed that public notice be given and that interested persons be afforded an opportunity to file written comments or to request a hearing.

In response to the Notice Order, the Commission received comments from the following: Allegiance Telecom of Virginia, Inc.; Alliance for Rural Telecommunications Infrastructure ("Alliance"); AT&T Communications of Virginia, LLC ("AT&T"); the City Of Bristol; Cox Virginia Telecom, Inc. ("Cox"); LeClair Ryan, P.C.; Professional Telecommunication Consultants, Inc. ("Professional Telecommunication Consultants"); United Telephone-Southeast, Inc., Central Telephone Company of Virginia, and Sprint Communications of Virginia, Inc. (collectively, "Sprint"); Virginia Cable Television Association ("VCTA"); Verizon Virginia Inc. and Verizon South Inc. (collectively, "Verizon"); and WorldCom Inc. ("WorldCom"). One party, Sprint, requested a hearing.

With regard to the Proposed Local Exchange Rules, the comments focused on a variety of issues. Among the comments received, VCTA and Verizon called for the clarification of existing definitions or for the addition of new definitions. Alliance, AT&T, Cox, Professional Telecommunications Consultants, and VCTA expressed concerns regarding bond and escrow account requirements. Verizon proposed adopting a requirement that prevents CLECs from entering into exclusive arrangements with premises owners. Sprint offered extensive comments on the provisions applying to Municipal Local Exchange Carriers ("MLECs"). Cox, VCTA, and Verizon also offered comments on MLEC requirements. WorldCom and Sprint proposed that the Commission eliminate the price ceiling requirements for CLECs. Other comments indicated a preference for existing language in certain situations, pointed out the potential administrative burdens created by some proposed rules, or made points of clarification.

Relatively fewer comments were received on the Proposed Inter-Carrier Rules. The comments received focused on, among other things, clarification of definitions and number portability charges.

NOW UPON CONSIDERATION of the comments filed herein, the Commission is of the opinion and finds that we should revise the Proposed Local Exchange Rules and the Proposed Inter-Carrier Rules. We find that a public hearing is not required. The final rules will provide an updated framework for the certification and regulation of CLECs. The Commission believes that without further delay we should adopt final rules to reflect necessary changes since the existing rules were adopted to provide for MLEC certification and to comply with the requirements of the Virginia Code Commission. We will, therefore, revise the proposed regulations and adopt them as final rules to be appended to this Order as Attachment 1 and Attachment 2.

We will direct that this Order and the final regulations be published in the Virginia Register of Regulations.

The revised Proposed Local Exchange Rules reflect a number of changes suggested by the persons providing comments, as well as some clarifications, corrections, or simplifications that were identified as necessary during the review process. We note, however, that we do not adopt major policy changes from those policies noticed in the Proposed Local Exchange Rules and Proposed Inter-Carrier Rules. In addition, we return to the current language of the existing rules in several instances, *i.e.*, with regard to Commission approval of alternative pricing structures, where we agree that the proposed rule was not an improvement over the existing requirement.

Among other revisions, to ensure that additional administrative burdens are not inadvertently placed on applicants for CLEC certification, we require applicants to provide true and correct, rather than certified, copies of their organizational documents, and we provide that an entity responsible for financing an applicant may submit financial records as evidence of an applicant's financial ability. We clarify that a new entrant shall submit initial tariffs prior to offering local exchange telecommunications services and shall not provide said services until the tariffs have been accepted and are effective.

With regard to MLECs, we find it appropriate to revise the Proposed Local Exchange Rules to focus on the requirements found in § 56-265.4:4 of the Code of Virginia ("Code"), the statute pursuant to which the rules are promulgated. We delete proposed provisions related to other sections of the Code that may stand alone and that need not be included in the final rules. However, we recognize that HB 2397, passed by the 2003 General Assembly, would provide the Commission with additional jurisdiction. In response to comments received, we provide that an MLEC shall file data with the Division of Communications to demonstrate that, in the aggregate, revenues associated with intrastate telecommunications services cover incremental and any required imputed or allocated costs, and such filings shall be made 60 days after the end of the MLEC's calendar or fiscal year during which services began to be provided. We also provide that an MLEC shall maintain incremental cost studies.

The Commission did not incorporate all of the comments received into the final rules. Among other things, we find certain comments or suggestions to be beyond the scope of this rulemaking. We did not adopt some proposed definitions as they were unnecessary or beyond the scope of the rules to be promulgated pursuant to § 56-265.4:4 of the Code.

With regard to the proposed bond and escrow requirements, we find that such requirements are appropriate in today's market. We believe that such requirements should afford customers with some recourse should a CLEC have operational difficulties or unexpectedly cease to provide service. We note that should an applicant believe that it should not be required to provide a bond or escrow account, the applicant may request a waiver of the rules. Indeed, an applicant always has the option to request a waiver of any provision of the rules. Therefore, such an option renders certain comments and suggestions unnecessary.

Finally, questions were raised about cost studies, the determination of incremental costs, cross-subsidization, and the appropriate treatment of MLECs. The Commission finds that the final rules adopted herein implement the necessary pricing and safeguard requirements for MLECs and are reasonable and equitable. However, we recognize that the issues are complex and that the parties have very disparate positions. We believe that certain concerns raised do not necessitate further rule requirements but can be more appropriately addressed in separate proceedings as the rules contemplate. Indeed, there is an active proceeding regarding Bristol's pricing of local exchange telecommunications services¹ that should assist the Commission in determining the effectiveness of its rules. Moreover, if we find this approach not to be the best practice, the Commission may initiate a further rulemaking to amend the final rules adopted herein.

The revised Proposed Inter-Carrier Rules contain very minor changes, primarily to reflect definition changes necessary to be consistent with draft revised Proposed Local Exchange Rules. A definition of "porting" has been added to reflect a clarification concern raised by one party.

Accordingly, IT IS ORDERED THAT:

- (1) We hereby adopt as final the regulations appended hereto as Attachment 1 and Attachment 2.
- (2) A copy of this Order and the rules adopted herein shall be forwarded promptly to the Registrar of Regulations for publication in the Virginia Register of Regulations.
- (3) There being nothing further to come before the Commission, this case shall be dismissed and the papers filed herein placed in the file for ended causes.

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

¹ Petition of United Telephone-Southeast, Inc., For declaratory judgment interpreting various sections of the Code of Virginia, for injunction prohibiting the City of Bristol from providing telecommunications services in violation of state law, and for other relief, Case No. PUC-2002-00231.

**CASE NO. PUC-2002-00117
SEPTEMBER 4, 2003**

APPLICATION OF
VERIZON SOUTH INC.
and
NEW CENTURY TELECOM, INC.

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

DISMISSAL ORDER

On June 5, 2002, Verizon South Inc. ("Verizon South") and New Century Telecom, Inc. ("New Century"), filed an interconnection agreement ("Agreement"), entered under §§ 251 and 252 of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §§ 251 and 252, for State Corporation Commission ("Commission") approval pursuant to § 252(e) of the Act, 47 U.S.C. § 252(e). This Agreement was approved by Order Approving Agreement dated August 2, 2002, in Case No. PUC-2002-00117.

On May 2, 2003, Verizon South filed a joint application for approval of an interconnection agreement between Verizon South and New Century. This Agreement was assigned Case No. PUC-2003-00089 and approved on June 19, 2003. A company representative for Verizon South indicated in a letter filed with the Commission on July 17, 2003, that the Agreement superseded this earlier Agreement between the parties.

NOW THE COMMISSION finds that the Agreement approved in Case No. PUC-2002-00117 has been replaced by the Agreement approved in Case No. PUC-2003-00089. Therefore, we find that Case No. PUC-2002-00117 should be dismissed.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Accordingly, IT IS ORDERED THAT the Agreement approved in Case No. PUC-2003-00089 shall supersede the Agreement approved in Case No. PUC-2002-00117. The captioned matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUC-2002-00132
SEPTEMBER 25, 2003**

APPLICATION OF
UNITED TELEPHONE-SOUTHEAST, INC. AND
CENTRAL TELEPHONE COMPANY OF VIRGINIA
and
TCG VIRGINIA, INC.

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

DISMISSAL ORDER

On July 9, 2002, United Telephone-Southeast, Inc., and Central Telephone Company of Virginia (collectively "Sprint") and TCG Virginia, Inc. ("TCG"), filed an interconnection agreement ("agreement"), entered under §§ 251 and 252 of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §§ 251 and 252, for State Corporation Commission ("Commission") approval pursuant to § 252(e) of the Act, 47 U.S.C. § 252(e). This agreement was approved by Order Approving Agreement dated August 2, 2002, in Case No. PUC-2002-00132.

On August 7, 2003, Sprint filed a joint application for approval of an interconnection agreement between Sprint and TCG. This agreement was assigned Case No. PUC-2003-00121 and approved on September 9, 2003. Counsel for Sprint indicated in the letter accompanying the agreement filed with the Commission on August 7, 2003, in Case No. PUC-2003-00121, that the agreement superseded this earlier agreement between the parties.

NOW THE COMMISSION finds that the agreement approved in Case No. PUC-2002-00132 has been replaced by the agreement approved in Case No. PUC-2003-00121. Therefore, we find that Case No. PUC-2002-00132 should be dismissed.

Accordingly, IT IS ORDERED THAT the agreement approved in Case No. PUC-2003-00121 shall supersede the agreement approved in Case No. PUC-2002-00132. The captioned matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUC-2002-00135
NOVEMBER 25, 2003**

APPLICATION OF
UNITED TELEPHONE-SOUTHEAST, INC. and
CENTRAL TELEPHONE COMPANY OF VIRGINIA
and
AT&T COMMUNICATIONS OF VIRGINIA, INC.

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

DISMISSAL ORDER

On July 9, 2002, United Telephone – Southeast, Inc. and Central Telephone Company of Virginia (collectively, "Sprint") and AT&T Communications of Virginia, Inc. ("AT&T Inc."), filed an interconnection agreement ("agreement"), entered under §§ 251 and 252 of the Telecommunications Act of 1996 ("the Act"), 47 U.S.C. §§ 251 and 252, for State Corporation Commission ("Commission") approval pursuant to § 252(e) of the Act, 47 U.S.C. § 252(e). This agreement was approved by Order Approving Agreement dated August 6, 2002, in Case No. PUC-2002-00135.

On August 8, 2003, Sprint filed a joint application for approval of an interconnection agreement between Sprint and AT&T Communications of Virginia, LLC ("AT&T LLC").¹ This agreement was assigned Case No. PUC-2003-00122 and approved on October 22, 2003. Counsel for Sprint indicated in the letter accompanying the agreement filed with the Commission on August 8, 2003, in Case No. PUC-2003-00122, that the agreement superseded this earlier agreement between the parties.

NOW THE COMMISSION finds that the agreement approved in Case No. PUC-2002-00135 has been replaced by the agreement approved in Case No. PUC-2003-00122. Therefore, we find that Case No. PUC-2002-00135 should be dismissed.

Accordingly, IT IS ORDERED THAT the agreement approved in Case No. PUC-2003-00122 shall supersede the agreement approved in Case No. PUC-2002-00135. The captioned matter is hereby dismissed from the Commission's docket of active cases.

¹ The original application and agreement were filed under the name AT&T Communications of Virginia, Inc. AT&T LLC was granted certificates in Virginia on March 27, 2002. AT&T Inc. requested that its certificates be canceled July 26, 2002. An Amendment filed October 8, 2003, corrected the company name to AT&T Communications of Virginia, LLC.

**CASE NO. PUC-2002-00141
MAY 14, 2003**

APPLICATION OF
TELECONEX OF VIRGINIA, INC.

For a certificate of public convenience and necessity to provide local exchange telecommunications services

FINAL ORDER

On September 17, 2002, TeleConex of Virginia, Inc. ("TeleConex" or the "Company"), completed an application for a certificate of public convenience and necessity with the State Corporation Commission ("Commission") to provide local exchange telecommunications services throughout the Commonwealth of Virginia. The Company proposes to offer prepaid month-by-month local exchange telecommunications services and non-prepaid local exchange telecommunications services to subscribers.

In order to provide the prepaid service, TeleConex requests waivers of Rule C 5 and certain provisions of Rule C 1 of the Rules Governing the Offering of Competitive Local Exchange Telephone Service, 20 VAC 5-400-180 ("Local Rules"),¹ requiring a new entrant, either directly or through arrangements with others, to provide access to directory assistance, access to operator services, equal access to interLATA long distance carriers, and access to intraLATA service to all local exchange customers. The Company further requests a waiver of Rule D 3 c of the Local Rules, limiting the proposed rate for service provided by the new entrant not to exceed the highest of the comparable tariffed services provided by the incumbent local exchange telephone company or companies in the same local serving areas.

TeleConex also requests a waiver of the requirements to provide audited financial statements required by 20 VAC 5-400-180 B 5 a and E 1 d of the Local Rules. At the suggestion of Staff, the Company agreed to provide a \$50,000 continuous bond in lieu of audited financial statements.

By Order dated October 11, 2002, 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. By Orders dated December 17, 2002, and February 14, 2003, the Commission extended the date for the filing of the Staff Report because TeleConex encountered delays in obtaining a bond. On November 7, 2002, the Company filed proof of publication and proof of service as required by the October 11, 2002, Order.

On April 15, 2003, TeleConex provided the requested bond to the Division of Economics and Finance.

On April 17, 2003, the Staff filed its Report finding that TeleConex's application was in compliance with the Rules Governing the Offering of Competitive Local Exchange Telephone Service. Based upon its review of the application, the Staff did not object to TeleConex's request for waivers from specific requirements of the Local Rules for its monthly prepaid local exchange service. The Staff determined that it would be appropriate to grant the Company a certificate to provide local exchange telecommunications services subject to the following conditions: (1) should TeleConex offer any non-prepaid services and collect customer deposits, it should, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement should be maintained until such time as the Staff or Commission determines it is no longer necessary; (2) TeleConex should notify the Division of Economics and Finance 30 days prior to the cancellation or lapse of its Bond and shall provide a replacement Bond. This requirement should be maintained until such time as the Staff or the Commission determines it is no longer necessary; (3) regarding TeleConex's prepaid month-by-month local exchange service offering, the Company should not be allowed to collect customer deposits under any circumstances; (4) regarding TeleConex's prepaid month-by-month local exchange service offering, the Company should provide full disclosure to consumers about the services and features TeleConex will and will not furnish to subscribers of its alternative prepaid month-by-month local exchange service. Sales brochures and other marketing and advertising materials should prominently disclose that customers will have no access to directory assistance, operator services, long distance, collect, and third-party calls, or any other pay-for-usage services; (5) any waivers granted to TeleConex in this case for its prepaid month-by-month local exchange service described in the Company's filing should be limited solely to that service offering; (6) any waivers granted to TeleConex for its prepaid month-by-month local exchange service should be subject to revocation, alteration, or the imposition of additional conditions, such as pricing restrictions, in the event the Commission subsequently determines the service is operating improperly or is not in the public interest; (7) any subsequent increase in the rate for TeleConex's prepaid month-by-month local exchange service should be subject to thirty (30) days' notice to the Commission, and notice to customers should be provided through billing inserts or publication for two (2) consecutive weeks as display advertising in newspapers having general circulation in the areas served by the Company; (8) regarding TeleConex's prepaid month-by-month local exchange service offering, the Company should have the ability to bill its prepaid customers for per-use or per-minute features and services in limited situations where the Company does not have the ability to block the customers' access to those features and services. The Company should be required to provide full disclosure to consumers that per-minute or per-use charges may apply for certain services or features in these limited circumstances; (9) regarding TeleConex's prepaid month-by-month local exchange service offering, the Company should be required to clearly and specifically include any features and services, including rates, in the Company's tariff, for the limited situations where the Company does not have the ability to block customers' access to features and services that have associated per-use or per-minute charges and for which the Company intends to bill the customer; and (10) regarding TeleConex's prepaid month-by-month local exchange service offering, the Company should not be granted a waiver from the price ceiling requirement (§ D 3 c of the Local Rules) in the limited circumstances where the Company is unable to block a customer's access to certain features and services that have associated per-use or per-minute charges.

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.

¹ The Local Rules found in 20 VAC 5-400-180 were recently repealed and replaced by 20 VAC 5-417-10 *et seq.*, the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, and 20 VAC 5-429-10 *et seq.*, Rules Governing Compensation, Numbering, Interconnection, and Other Local Inter-Carrier Matters, by Commission Order issued April 9, 2003, in Case No. PUC-2002-00114 *In the Matter of Regulations Governing Competitive Local Exchange Carriers, Localities as Competitive Local Exchange Carriers, and Local Inter-Carrier Matters*. While this application was processed under 20 VAC 5-400-180, TeleConex should familiarize itself with the revised rules under which it will be regulated on a going forward basis.

Accordingly, IT IS ORDERED THAT:

- (1) TeleConex of Virginia, Inc., is hereby granted a certificate of public convenience and necessity, No. T-612, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Offering of Competitive Local Exchange Telephone Service, § 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 from which the Company has not been granted waiver.
- (3) Should TeleConex offer any non-prepaid services and collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or Commission determines it is no longer necessary.
- (4) TeleConex is hereby granted waiver of §§ B 5 a and E 1 d of the Local Rules requiring audited financial statements. In the alternative, TeleConex shall maintain a Bond in the amount of \$50,000 with the Division of Economics and Finance.
- (5) The Company shall notify the Division of Economics and Finance thirty (30) days prior to the cancellation or lapse of its Bond and shall provide a replacement Bond. This requirement should be maintained until such time as the Staff or the Commission determines it is no longer necessary.
- (6) For its prepaid month-by-month local exchange service offering, TeleConex shall not collect customer deposits under any circumstances.
- (7) TeleConex shall provide full disclosure to consumers about the services and features TeleConex will and will not furnish to subscribers of its alternative prepaid month-by-month local exchange service. Sales brochures and other marketing and advertising materials shall prominently disclose that customers will have no access to directory assistance, operator services, long distance, collect, and third-party calls, or any other pay-for-usage services.
- (8) TeleConex's requested waivers of Local Rules §§ C 1 d, C 1 e, C 1 f, C 5, and D 3 are hereby granted for provision of its prepaid month-by-month local exchange service offering only.
- (9) The Company is not granted a waiver from the price ceiling requirement (§ D 3 c of the Local Rules) in the limited circumstances where the Company is unable to block a customer's access to certain features and services that have associated per-use or per-minute charges.
- (10) Each of the waivers granted is subject to revocation, alteration, or the imposition of additional conditions, such as pricing restrictions, in the event the Commission determines the service is operating improperly or is not in the public interest.
- (11) Any subsequent increase in the rate for TeleConex's prepaid month-by-month local exchange service shall be subject to 30 days' notice to the Commission and notice to customers provided through billing inserts or publication for two consecutive weeks as display advertising in newspapers having general circulation in the areas served by the Company.
- (12) The Company may bill its prepaid customers for per-use or per-minute features and services in limited situations where the Company does not have the ability to block the customer's access to those features and services. The Company shall provide full disclosure to customers that per-minute or per-use charges may apply for certain services or features in these limited circumstances.
- (13) For its prepaid month-by-month local exchange service offering, the Company shall clearly and specifically include any features and services, including rates, in the Company's tariff, for the limited situations where the Company does not have the ability to block customers' access to features and services that have associated per-use or per-minute charges and the Company intends to bill the customer.
- (14) 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-2002-00144
SEPTEMBER 4, 2003**

APPLICATION OF
VERIZON VIRGINIA INC.
and
NEW CENTURY TELECOM, INC. D/B/A CLM TELCOM, LLC

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

DISMISSAL ORDER

On July 19, 2002, Verizon Virginia Inc. ("Verizon Virginia") and New Century Telecom, Inc. d/b/a CLM Telcom, LLC ("CLM"), filed an interconnection agreement ("Agreement"), entered under §§ 251 and 252 of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §§ 251 and 252, for State Corporation Commission ("Commission") approval pursuant to § 252(e) of the Act, 47 U.S.C. § 252(e). This Agreement was approved by Order Approving Agreement dated August 21, 2002, in Case No. PUC-2002-00144.

On May 2, 2003, Verizon Virginia filed a joint application for approval of an interconnection agreement between Verizon Virginia and CLM. This Agreement was assigned Case No. PUC-2003-00088 and approved on June 19, 2003. Counsel for Verizon Virginia indicated in a letter filed with the Commission on July 17, 2003, in Case No. PUC-2003-00088, that the Agreement superseded this earlier Agreement between the parties.

NOW THE COMMISSION finds that the Agreement approved in Case No. PUC-2002-00144 has been replaced by the Agreement approved in Case No. PUC-2003-00088. Therefore, we find that Case No. PUC-2002-00144 should be dismissed.

Accordingly, IT IS ORDERED THAT the Agreement approved in Case No. PUC-2003-00088 shall supersede the Agreement approved in Case No. PUC-2002-00144. The captioned matter is hereby dismissed from the Commission's docket of active cases.

CASE NO. PUC-2002-00149
MARCH 12, 2003

APPLICATION OF
METETHER COMMUNICATIONS OF VIRGINIA, INC.

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On October 10, 2002, MetEther Communications of Virginia, Inc. ("MetEther" or the "Company"),¹ 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 dated October 22, 2002, 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. By Order dated December 19, 2002, the Commission extended the date for publication of notice. On February 10, 2003, the Company filed proof of publication and proof of service as required by the December 19, 2002, Order.

On February 19, 2003, the Staff filed its Report finding that MetEther's application was in compliance with the Rules Governing the Offering of Competitive Local Exchange Telephone Service ("Local Rules") and the Rules Governing the Certification of Interexchange Carriers. Based upon its review of MetEther'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 conditions: (1) should MetEther collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or Commission determines it is no longer necessary; (2) the Company shall provide audited financial statements of its parent, MetEther Communications, Inc., to the Division of Economics and Finance no later than one (1) year from the effective date of MetEther's initial Virginia tariff; and (3) at such time as voice services are initiated by MetEther, it shall comply with all requirements of § C (Conditions for certification) of the Local Rules.

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, the Commission further finds that the Company may price its interexchange telecommunications services competitively.

Accordingly, IT IS ORDERED THAT:

(1) MetEther Communications of Virginia, Inc., is hereby granted a certificate of public convenience and necessity, No. TT-190A, 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) MetEther Communications of Virginia, Inc., is hereby granted a certificate of public convenience and necessity, No. T-607, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Offering of Competitive Local Exchange Telephone Service, § 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) Should MetEther collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or Commission determines it is no longer necessary.

(6) The Company shall provide audited financial statements of its parent, MetEther Communications, Inc., to the Division of Economics and Finance no later than one (1) year from the effective date of MetEther's initial tariff in Virginia.

¹ This application was originally filed as MetEther Communications of Virginia, LLC. An amendment was filed on October 17, 2002, correcting the Applicant's name and corporate structure.

(7) At such time as voice services are initiated by MetEther, it shall comply with all requirements of § C (Conditions for certification) of the Local Rules.

(8) 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-2002-00153
MARCH 4, 2003**

PETITION OF
UNITED TELEPHONE – SOUTHEAST, INC.

For Extended Local Service between United's Sylvatus and Max Meadows Exchanges

FINAL ORDER

In July 2002, telephone customers in United Telephone-Southeast, Inc.'s ("United"), Sylvatus Exchange petitioned the State Corporation Commission ("Commission") for Extended Local Service ("ELS") to United's Max Meadows Exchange. In August 2002, telephone customers in United's Max Meadows Exchange petitioned the Commission for ELS to its Sylvatus Exchange. On October 31, 2002, the Commission received from United a cost study for these two routes that was used to estimate the change in monthly rates that would result from the requested extension of local service.

Pursuant to the provisions of § 56-484.2 of the Code of Virginia, by Order dated December 3, 2002, the Commission directed United to poll its Sylvatus Exchange customers to determine whether a majority of those customers would be willing to pay an increase in rates for local calling to its Max Meadows Exchange. Also, in that same Order, the Commission directed United to poll its Max Meadows Exchange customers to determine whether a majority of those customers would be willing to pay an increase in rates for local calling to its Sylvatus Exchange. The Order further directed United to file the results of its polls with the Commission no later than February 20, 2003.

On January 28, 2003, United filed the results of both polls. United noted that 1,694 ballots were mailed on December 18, 2002, to its Max Meadows Exchange customers and 319 (18.83 percent) were returned. The results further reflect that, of the ballots returned, 135 (42.32 percent) voted "yes," and 184 (57.68 percent) voted "no." In its filing concerning the Sylvatus Exchange, United noted that 864 ballots were mailed on December 18, 2002, and 258 (29.86 percent) were returned. The results further reflect that of the ballots returned, 166 (64.34 percent) voted "yes," and 92 (35.66 percent) voted "no."

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that because a majority of Max Meadows Exchange customers voted against extension of local service to the Sylvatus Exchange, the petition should be denied.

Accordingly, IT IS ORDERED THAT:

- (1) The petition is hereby denied.
- (2) There being nothing further to be done in this matter, this matter is hereby dismissed.

**CASE NO. PUC-2002-00178
JANUARY 21, 2003**

APPLICATION OF
MIKROTEC COMMUNICATIONS OF VIRGINIA, LLC

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On September 23, 2002, Mikrotec Communications of Virginia, LLC ("Mikrotec" or the "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.

By Order dated October 17, 2002, 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 December 16, 2002, the Company filed proof of publication and proof of service as required by the October 17, 2002, Order.

On January 8, 2003, the Staff filed its Report finding that Mikrotec's application was in compliance with the Commission's Rules Governing the Offering of Competitive Local Exchange Telephone Service ("Local Rules") and the Rules Governing the Certification of Interexchange Carriers ("IXC Rules").¹ Based upon its review of Mikrotec'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: should Mikrotec collect customer deposits, it shall, prior to

¹ 20 VAC 5-400-60.

collecting such deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with Mikrotec and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or 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) Mikrotec Communications of Virginia, LLC, is hereby granted a certificate of public convenience and necessity, No. TT-186A, 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) Mikrotec Communications of Virginia, LLC, is hereby granted a certificate of public convenience and necessity, No. T-601, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Offering of Competitive Local Exchange Telephone Service, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(3) The Company shall provide tariffs to the Division of Communications that conform with all applicable Commission rules and regulations.

(4) Should Mikrotec Communications of Virginia, LLC, collect customer deposits, it shall, prior to collecting such deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with Mikrotec and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or 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-2002-00180
JUNE 20, 2003**

PETITION OF
POTTS CREEK EXCHANGE CUSTOMERS

For Extended Local Service from NTELOS Telephone Inc.'s Potts Creek Exchange to Verizon Virginia Inc.'s Crows-Hematite Exchange

FINAL ORDER

On September 3, 2002, telephone customers in NTELOS Telephone Inc.'s ("NTELOS") Potts Creek Exchange petitioned the State Corporation Commission ("Commission") for Extended Local Service ("ELS") to Verizon Virginia Inc.'s ("Verizon Virginia") Crows-Hematite Exchange.

Pursuant to the provisions of § 56-484.2 of the Code of Virginia, by Order dated October 4, 2002, the Commission directed NTELOS to prepare a cost study to estimate the approximate change in the monthly rates that would result from the requested extension of local service from the NTELOS Potts Creek Exchange to Verizon Virginia's Crows-Hematite Exchange. The Order also directed NTELOS, after preparing the cost study, to poll its customers in the Potts Creek Exchange regarding their willingness to pay higher rates for local calling to the Crows-Hematite Exchange.

On December 18, 2002, NTELOS submitted a letter stating that it had determined that its costs for extending local calling from its Potts Creek Exchange to Verizon Virginia's Crows-Hematite Exchange are negligible and would like to offer its Potts Creek Exchange customers local calling to Verizon Virginia's Crows-Hematite Exchange without increasing their monthly local rates.

On April 11, 2003, Verizon Virginia submitted its cost study identifying the additional monthly charges that would apply if the local calling area is extended.¹ Along with the cost study, Verizon Virginia included a letter stating that the Crows-Hematite Exchange is scheduled for an automatic rate group reclassification in December 2003. The rate regrouping would result in a rate increase in addition to the ELS increase. Verizon Virginia proposes in its letter to implement ELS from its Crows-Hematite Exchange to the NTELOS Potts Creek Exchange coincident with implementing the scheduled automatic rate class regrouping. However, Verizon Virginia proposes to waive the rate increase identified in its cost study for ELS. Therefore, there will be no additional cost to customers in NTELOS' Potts Creek Exchange or Verizon Virginia's Crows-Hematite Exchange to implement ELS.

NOW THE COMMISSION, having considered the matter and applicable law, is of the opinion and finds that ELS should be implemented from NTELOS' Potts Creek Exchange to Verizon Virginia's Crows-Hematite Exchange, and vice versa. Since this route crosses a Local Access and Transport Area boundary, we note that Verizon Virginia must seek a waiver from the FCC to implement this service.

Accordingly, IT IS ORDERED THAT:

(1) The proposed extension of local service from NTELOS' Potts Creek Exchange to Verizon Virginia's Crows-Hematite Exchange shall be implemented at no additional cost to Potts Creek Exchange customers.

¹ The cost study prepared by Verizon Virginia for local calling from its Crows-Hematite Exchange to NTELOS' Potts Creek Exchange estimated that the ELS adders would be as follows: flat rate residential service, \$0.16; flat rate business service, \$0.52; and trunk service, \$0.79.

(2) The proposed extension of local service from Verizon Virginia's Crows-Hematite Exchange to the NTELOS Potts Creek Exchange shall be implemented in conjunction with its rate group reclassification of the Crows-Hematite Exchange with the cost study adder rates waived. If the FCC has not granted Verizon Virginia's waiver request at the time of the rate group reclassification, then ELS from Verizon Virginia's Crows-Hematite Exchange to NTELOS' Potts Creek Exchange shall be implemented as soon as the waiver is granted.

(3) NTELOS and Verizon Virginia shall file the tariff revisions necessary for the proposed extensions of local service.

(4) Since there is nothing further to come before the Commission, this case is dismissed and removed from the Commission's docket of active cases.

**CASE NO. PUC-2002-00185
MARCH 17, 2003**

PETITION OF
FRIES EXCHANGE CUSTOMERS

For Extended Local Service from United Telephone – Southeast, Inc.'s Fries Exchange to its Austinville and Wytheville Exchanges

FINAL ORDER

On September 9, 2002, telephone customers in United Telephone – Southeast, Inc.'s ("United" or "Company") Fries Exchange petitioned the State Corporation Commission ("Commission") for Extended Local Service ("ELS") to the Austinville and Wytheville Exchanges of United.

Pursuant to the provisions of § 56-484.2 of the Code of Virginia, by Order dated October 8, 2002 ("Order"), the Commission directed United to prepare a cost study to estimate the approximate change in monthly rates that would result from the requested extension of local service from the Fries Exchange to the Austinville and Wytheville Exchanges and to file the cost study with the Commission's Division of Communications on or before November 26, 2002. The Order further directed United to poll its Fries Exchange customers to determine whether a majority of those customers would be willing to pay an increase in rates for local calling to the Austinville and Wytheville Exchanges and to file the results of its poll with the Commission on or before February 18, 2003.

Pursuant to the Order, on November 26, 2002, the Company filed with the Commission's Division of Communications a cost study for the Fries Exchange that was used to estimate the approximate change in monthly rates that would result from the requested extension of local service.

On February 18, 2003, United filed the results of its poll. In its filing, United notes that 1,939 ballots were mailed on January 14, 2003, to its Fries Exchange customers and 695 (35.8 percent) were returned. The results in the filing further reflect that of the 695 returned ballots, 177 (25.5 percent) voted "yes," and 518 (74.5 percent) voted "no."

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that because a majority of Fries Exchange customers voted against extension of local service to the Austinville and Wytheville Exchanges, the petition should be denied.

Accordingly, IT IS ORDERED THAT:

- (1) The petition is hereby denied.
- (2) There being nothing further to be done in this matter, this matter is hereby dismissed.

**CASE NO. PUC-2002-00188
DECEMBER 10, 2003**

APPLICATION OF
VERIZON VIRGINIA INC.
and
MICHAEL PITTS d/b/a ECONOMIC COMPUTER SYSTEMS, INC.

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

DISMISSAL ORDER

On September 17, 2002, Verizon Virginia Inc. ("Verizon Virginia") and Michael Pitts d/b/a Economic Computer Systems, Inc. ("Economic"), filed an interconnection agreement ("agreement"), entered under §§ 251 and 252 of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §§ 251 and 252, for State Corporation Commission ("Commission") approval pursuant to § 252(e) of the Act, 47 U.S.C. § 252(e). This agreement was approved by Order Approving Agreement dated October 8, 2002, in Case No. PUC-2002-00188.

On August 25, 2003, Verizon Virginia filed a joint application for approval of an interconnection agreement between Verizon Virginia and Economic Computer Systems, Inc. ("ECS"). This agreement was assigned Case No. PUC-2003-00137 and approved on October 7, 2003. Counsel for Verizon Virginia indicated in the letter accompanying the agreement filed with the Commission on August 25, 2003, in Case No. PUC-2003-00137, that the agreement superseded this earlier agreement between the parties.

NOW THE COMMISSION finds that the agreement approved in Case No. PUC-2002-00188 has been replaced by the agreement approved in Case No. PUC-2003-00137. Therefore, we find that Case No. PUC-2002-00188 should be dismissed.

Accordingly, IT IS ORDERED THAT the agreement approved in Case No. PUC-2003-00137 shall supersede the agreement approved in Case No. PUC-2002-00188. The captioned matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUC-2002-00193
JANUARY 2, 2003**

PETITION OF
GLOBAL CROSSING LTD. (Debtor-in-Possession)
and
GC ACQUISITION LIMITED

For approval of the transfer of control of Global Crossing Ltd. (Debtor-in-Possession)'s Virginia operating subsidiaries to GC Acquisition Limited

ORDER GRANTING APPROVAL

On October 21, 2002, Global Crossing Ltd. (Debtor-in-Possession) ("GCL") and GC Acquisition Limited ("New GX") (collectively, the "Petitioners") completed a petition filed with the State Corporation Commission ("Commission"), pursuant to Chapter 5 of Title 56 of the Code of Virginia, requesting approval to transfer control of GCL's Virginia-Licensed Subsidiaries from GCL to New GX.¹

GCL is a global telecommunications company organized under the laws of Bermuda. GCL owns and operates, through its subsidiaries, a global Internet Protocol-based fiber optic network that covers approximately 75,800 miles and over 200 major cities (the "Global Crossing Network"). The Global Crossing Network is used by GCL's operating subsidiaries to provide integrated telecommunications services, including a full range of managed data, voice, and Internet services, to large corporations, government agencies, and telecommunications carriers. In the United States, GCL's operating subsidiaries provide intrastate, interstate, and international telecommunications services. GCL's subsidiaries are authorized by the Federal Communications Commission and the public utility commissions of all 50 states and the District of Columbia to provide telecommunications services.

New GX is a newly formed company organized for the purpose of carrying out the proposed transaction. GCL is the sole shareholder of New GX.

Budget Call Long Distance, Inc. (Debtor-in-Possession) ("Budget Call"), is an indirect wholly owned subsidiary of GCL. Budget Call is a Delaware corporation with its principal office located in Pittsford, New York. Budget Call provides intrastate long distance telecommunications services in Virginia on a resale basis. Budget Call does not hold a certificate of public convenience and necessity ("CPCN") in Virginia.

Global Crossing North American Networks, Inc. (Debtor-in-Possession) ("GCNAN"), is an indirect wholly owned subsidiary of GCL. GCNAN is a Delaware corporation with its principal office located in Pittsford, New York. GCNAN is authorized to provide long distance in Virginia on a resale basis, but at the present time it does not have Virginia customers. GCNAN does not hold a CPCN to provide telecommunications services in Virginia.

Global Crossing Telecommunications, Inc. (Debtor-in-Possession) ("GCTI"), is also an indirect wholly owned subsidiary of GCL. GCTI is a Wisconsin corporation with its principal office located in Pittsford, New York. GCTI is authorized to provide long distance telecommunications services in Virginia on a resale basis. GCTI does not hold a CPCN to provide such services in Virginia.

Global Crossing Telemanagement of VA, LLC (Debtor-in-Possession) ("GCTVA"), is an indirect wholly owned subsidiary of GCL.² GCTVA is a Virginia limited liability company with its principal office located in Pittsford, New York. GCTVA holds a CPCN to provide competitive local exchange telecommunications services in Virginia. That CPCN was granted in Case No. PUC-1997-00157 (PUC970157) on January 5, 1998.³

Hutchison Telecommunications Limited ("Hutchison Telecom") is a Hong Kong company that holds worldwide telecommunications interests through a variety of operating subsidiaries. These interests include mobile telephone and paging operators in various countries in Asia, Africa, Europe, and South America as well as a fixed line and international direct dialing operator in Hong Kong. Hutchison Telecom is owned by Hutchison Whampoa Limited ("HWL"), a diversified Hong Kong holding company.

Singapore Technologies Telemedia Pte Ltd. ("ST Telemedia") is a Singapore telecommunications and information technologies company. ST Telemedia, through subsidiaries, provides fixed and mobile telecommunications, data, and Internet services, telephone equipment distribution, managed hosting, teleport, broadband cable and video, and e-business software development services in Singapore. ST Telemedia is a wholly owned subsidiary of Singapore Technologies Pte Ltd, which is a wholly owned subsidiary of Temasek Holdings [Private] Limited. ST Telemedia, along with its parent companies, is organized under the laws of Singapore. ST Telemedia does not operate directly in the United States, nor does ST Telemedia or its subsidiaries provide intrastate telecommunications services in Virginia.

¹ The GCL "Virginia-Licensed Subsidiaries" include Budget Call Long Distance, Inc. (Debtor-in-Possession), Global Crossing North American Networks, Inc. (Debtor-in-Possession), Global Crossing Telecommunications, Inc. (Debtor-in-Possession), and Global Crossing Telemanagement of VA, LLC (Debtor-in-Possession).

² While the petition identifies the certificated local exchange carrier in Virginia as Global Crossing Telemanagement VA, LLC, the Certificated name in Virginia is Global Crossing Telemanagement of VA, LLC. For the purposes of this case we will use the certificated name.

³ Global Crossing Telemanagement of VA, LLC, was formerly known as Frontier Telemanagement LLC. The name was changed in 2000.

The Petitioners seek approval of a transfer of control of GCL's Virginia-Licensed Subsidiaries from GCL to New GX. On January 28, 2002, GCL and certain of its subsidiaries, including the Virginia-Licensed Subsidiaries, filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code with the Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"). On August 9, 2002, the Bankruptcy Court authorized GCL to enter into a Purchase Agreement to effectuate the proposed transaction. The Supreme Court of Bermuda has also authorized GCL to enter into the proposed transaction.

Under this proposed transaction, GCL will indirectly transfer substantially all of its assets and operations, including its ownership interests in the Virginia-Licensed Subsidiaries, to New GX. Once the transaction has been completed, GCL will relinquish all of its equity and voting power in New GX, and New GX will become the new ultimate parent of the Virginia-Licensed Subsidiaries.

Under the terms of the proposed transaction, Hutchison Telecom and ST Telemedia each will invest \$125 million in cash in New GX in exchange for 30.75% of New GX's equity and voting power in the form of common and preferred stock. Creditors of GCL and its debtor subsidiaries will obtain 38.5% of New GX's equity and voting power in the form of common stock. New GX also intends to issue \$200 million in senior secured notes and \$300 million in cash to those creditors. These notes are to be secured by the assets of various GCL subsidiaries, including the Virginia-Licensed Subsidiaries.

THE COMMISSION, upon consideration of the joint petition and representations of the Petitioners and having been advised by its Staff, is of the opinion and finds that the transfer of control of GCTVA from GCL to New GX, as described herein, will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved. We note that Chapter 5 approval is required only for GCTVA since it is the only entity authorized to provide telecommunications services in Virginia pursuant to a CPCN.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to §§ 56-88.1 and 56-90 of the Code of Virginia, approval is hereby granted for the transfer of control of GCTVA from GCL to New GX as described herein.
- 2) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUC-2002-00201
JANUARY 22, 2003**

APPLICATION OF
COMMUNICATION TECHNOLOGIES CARRIER SERVICES, INC.

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On October 10, 2002, Communication Technologies Carrier Services, Inc. ("COMTek-CS" 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 dated October 29, 2002, 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 December 16, 2002, the Company filed proof of publication and proof of service as required by the October 29, 2002, Order.

On January 8, 2003, the Staff filed its Report finding that COMTek-CS' application was in compliance with the Rules Governing the Offering of Competitive Local Exchange Telephone Service and the Rules Governing the Certification of Interexchange Carriers. Based upon its review of the Company'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 conditions: (1) should COMTek-CS collect customer deposits, it shall, prior to collecting such deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement and any subsequent change. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or Commission determines it is no longer necessary; and (2) at such time as voice services are initiated by the Company, COMTek-CS shall comply with all requirements of § C (Conditions for certification) of the Local Rules.

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, the Commission further finds that the Company may price its interexchange telecommunications services competitively.

Accordingly, IT IS ORDERED THAT:

(1) Communication Technologies Carrier Services, Inc., is hereby granted a certificate of public convenience and necessity, No. TT-187A, 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) Communication Technologies Carrier Services, Inc., is hereby granted a certificate of public convenience and necessity, No. T-602, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Offering of Competitive Local Exchange Telephone Service, § 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) Should COMTek-CS collect customer deposits, it shall, prior to collecting such deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement and any subsequent change. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or Commission determines it is no longer necessary.

(6) At such time as voice services are initiated by the Company, COMTek-CS shall comply with all requirements of § C (Conditions for certification) of the Local Rules.

(7) There being nothing further to come before the Commission, this case shall be dismissed and the papers filed herein placed in the file for ended causes.

**CASE NO. PUC-2002-00202
FEBRUARY 3, 2003**

JOINT PETITION OF
EUREKA BROADBAND CORPORATION d/b/a EUREKAGGN
and
ELINK TELECOMMUNICATIONS OF VIRGINIA, INC.

For approval of the merger of Newco, a wholly owned subsidiary of Eureka Broadband Corporation d/b/a EurekaGGN with and into eLink Telecommunications of Virginia, Inc., establishing eLink Telecommunications of Virginia as a wholly owned subsidiary of Eureka Broadband Corporation

ORDER GRANTING APPROVAL

On October 10, 2002, Eureka Broadband Corporation d/b/a EurekaGGN ("EurekaGGN") and eLink Telecommunications of Virginia, Inc. ("eLink") (collectively, the "Petitioners"), filed a joint petition with the State Corporation Commission ("Commission") requesting approval, under the Utility Transfers Act, of the merger of Newco, a wholly owned subsidiary of EurekaGGN, with and into eLink, thereby establishing eLink as a wholly owned subsidiary of EurekaGGN.

EurekaGGN is a Delaware corporation authorized to transact business in the Commonwealth of Virginia. EurekaGGN holds authorizations to provide local exchange and interexchange telecommunications services in several states. EurekaGGN does not hold a certificate of public convenience and necessity ("CPCN") in Virginia. Newco is a wholly owned subsidiary of EurekaGGN and was created solely for the purpose of carrying out the merger.

eLink, a wholly owned subsidiary of eLink Communications, Inc. ("eLink Communications"), a Delaware corporation, is a Virginia corporation authorized to transact business in Virginia. In Virginia, eLink holds CPCN Nos. T-575 and TT-167A to provide local exchange and interexchange telecommunications services granted in Case No. PUC-2001-00151 (PUC010151) on January 15, 2002. However, eLink does not yet offer any local exchange or intrastate interexchange telecommunications services in Virginia. eLink also currently does not have tariffs on file with the Division of Communications.

The Petitioners request approval of a transaction under the Utility Transfers Act involving the merger of Newco with and into eLink Communications, thereby establishing eLink Communications as a wholly owned subsidiary of EurekaGGN.

Pursuant to an Agreement and Plan of Merger ("Agreement") between EurekaGGN, Newco, and eLink Communications, Newco will be merged with and into eLink Communications. As a result of this merger, eLink Communications will become a direct wholly owned subsidiary of EurekaGGN, and eLink will become an indirect subsidiary of EurekaGGN. eLink will remain a direct wholly owned subsidiary of eLink Communications. According to the Agreement, to carry out the proposed merger, all of Newco's issued and outstanding capital stock will be converted into and exchanged for eLink Series C Preferred Stock. As consideration for the merger, all of eLink's issued and outstanding common and preferred stock will be exchanged for EurekaGGN's preferred stock, or cancelled. The Agreement specifies that all issued and outstanding options and warrants to purchase eLink common stock will be cancelled.

Under the transaction, holders of Series C Preferred Stock of eLink Communications received merger consideration as part of the merger transaction with EurekaGGN. Other Preferred Stockholders and Common Stockholders did not receive merger consideration as part of the merger transaction. Series A Preferred, Series B Preferred, and Common Stock, as well as warrants and options to purchase Series A, Series B, and Common Stock of eLink Communications were terminated as a result of the merger. Upon completion of the conversion and exchange, Newco will cease to exist as a corporate entity, resulting in EurekaGGN becoming the ultimate parent of eLink.

THE COMMISSION, upon consideration of the joint petition and representations of the Petitioners and having been advised by its Staff, is of the opinion and finds that the proposed merger of Newco with and into eLink Communications, resulting in the transfer of control of eLink from eLink Communications to EurekaGGN, as described herein, will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to §§ 56-88.1 and 56-90 of the Code of Virginia, approval is hereby granted for the merger of Newco with and into eLink Communications, resulting in the transfer of control of eLink from eLink Communications to EurekaGGN, as described herein.
- 2) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUC-2002-00204
FEBRUARY 20, 2003**

APPLICATION OF
ESSEX ACQUISITION CORPORATION

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On November 19, 2002, Essex Acquisition Corporation ("Essex" or the "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.

By Order dated November 26, 2002, 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 January 21, 2003, the Company filed proof of publication and proof of service as required by the November 26, 2002, Order.

On January 28, 2003, the Staff filed its Report finding that Essex's application was in compliance with the Rules Governing the Offering of Competitive Local Exchange Telephone Service and the Rules Governing the Certification of Interexchange Carriers. Based upon its review of Essex'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: should Essex collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or 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, the Commission further finds that the Company may price its interexchange telecommunications services competitively.

Accordingly, IT IS ORDERED THAT:

- (1) Essex Acquisition Corporation is hereby granted a certificate of public convenience and necessity, No. TT-189A, 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) Essex Acquisition Corporation is hereby granted a certificate of public convenience and necessity, No. T-605, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Offering of Competitive Local Exchange Telephone Service, § 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) Should Essex collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or 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-2002-00205
MARCH 12, 2003**APPLICATION OF
GRANITE TELECOMMUNICATIONS, LLC

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On October 15, 2002, Granite Telecommunications, LLC ("Granite" 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 requested authority to price its interexchange telecommunications services on a competitive basis pursuant to § 56-481.1 of the Code of Virginia ("Code"). Granite also requested a waiver of the requirements to file audited financial statements required by 20 VAC 5-400-180 B 5 and E 1 d, the Rules Governing the Offering of Competitive Local Exchange Telephone Service ("Local Rules").

By Order dated November 8, 2002, 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 November 25, 2002, and December 12, 2002, respectively, the Company filed proof of service and proof of publication as required by the November 8, 2002, Order.

As noted above, Granite requested a waiver of the requirement for audited financial statements. At the suggestion of the Staff, the Company agreed to provide a \$50,000 bond in lieu of audited financial statements. The Staff requested Granite remit the bond to the Division of Economics and Finance on or before January 16, 2003. On January 13, 2002, Granite filed a Motion for Extension of Time to provide the bond in lieu of audited financial statements. The Commission granted the request by Order issued January 23, 2003, and extended the procedural schedule of the case.

On February 24, 2003, the Staff filed its Report finding that Granite's application was in compliance with the Local Rules and 20 VAC 5-411-10, the Rules Governing the Certification of Interexchange Carriers ("Interexchange Rules"). Based upon its review of Granite'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 conditions: (1) should Granite collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or Commission determines it is no longer necessary; and (2) Granite shall notify the Division of Economics and Finance 30 days prior to the cancellation or lapse of its bond and shall provide a replacement bond. This requirement shall be maintained until such time as the Staff or 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 finds that the Company may price its interexchange telecommunications services competitively. The Commission further finds that Granite should be granted a waiver from filing audited financial statements and, in the alternative, maintain the bond provided to the Division of Economics and Finance.

Accordingly, IT IS ORDERED THAT:

- (1) Granite is hereby granted a certificate of public convenience and necessity, No. TT-192A, to provide interexchange telecommunications services subject to the restrictions set forth in the Interexchange Rules, § 56-265.4:4 of the Code, and the provisions of this Order.
- (2) Granite is hereby granted a certificate of public convenience and necessity, No. T-609, to provide local exchange telecommunications services subject to the restrictions set forth in the Local Rules, § 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) Should Granite collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or Commission determines it is no longer necessary.
- (6) Granite is hereby granted a waiver of §§ B 5 a and E 1 d of the Local Rules requiring audited financial statements. In the alternative, Granite shall maintain the License/Permit Bond in the amount of \$50,000 previously provided to the Division of Economics and Finance.
- (7) Granite shall notify the Division of Economics and Finance 30 days prior to the cancellation or lapse of the License/Permit Bond identified in Ordering Paragraph (6) above and shall provide a replacement bond. This requirement shall be maintained until such time as the Staff or the Commission determines it is no longer necessary.
- (8) 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-2002-00207
FEBRUARY 20, 2003**

APPLICATION OF
THE CITY OF MARTINSVILLE

For a certificate of public convenience and necessity to provide local exchange telecommunications services

FINAL ORDER

On October 21, 2002, the City of Martinsville ("Martinsville") filed an application for a certificate of public convenience and necessity with the State Corporation Commission ("Commission") to provide local exchange telecommunications services in the City of Martinsville and the County of Henry.

By Order dated November 14, 2002, the Commission issued an Order for Notice and Comment, which directed Martinsville 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 received a written notice of participation from Central Telephone Company of Virginia ("Sprint").¹ Sprint filed comments on January 3, 2003.

Sprint requests in its comments, based upon ambiguity it perceives in the application as to the territory sought, that any certificate issued in this case be limited to any locality in which Martinsville had electric distribution system facilities as of March 1, 2002, consistent with § 15.2-2160 of the Code of Virginia. Sprint recognizes in its comments that Martinsville satisfies this requirement in the City of Martinsville and the County of Henry. Sprint further requests in its comments that since no initial rates are proposed that Martinsville be ordered to provide Sprint a copy of any proposed initial rates filed with the Commission and that Sprint be allowed to propound discovery with respect to such future initial rate filing by Martinsville. Finally, Sprint's comments advise the Commission that Sprint may request a hearing upon such future initial rate filing by Martinsville.² No requests for a hearing on the application of Martinsville were received.

On December 18, 2002, Martinsville filed proof of publication and proof of service as required by the Order for Notice and Comment. On January 31, 2003, the Staff filed its Report. Martinsville filed its Response to the Staff Report and to Sprint's comments on February 7, 2003. Martinsville indicated in its Response that it had no objection to the recommendations contained in the Staff Report. Martinsville responded to Sprint's comments by denying any ambiguity in its application and affirming that the localities sought to be certificated are the City of Martinsville and the County of Henry. Martinsville further states that the requirement of a hearing on any proposed initial rates need not be determined in this Order.

In its January 31, 2003, Report, the Staff finds that Martinsville's application is in compliance with the Rules Governing the Offering of Competitive Local Exchange Telecommunications Service ("Local Rules").³ Based upon its review of Martinsville's application, the Staff determined that it would be appropriate to grant Martinsville a certificate to provide local exchange telecommunications services, as requested, subject to the following conditions: (1) should Martinsville collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the City of Martinsville, and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change (any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or Commission determines it is no longer necessary); and (2) at such time as voice services are initiated by Martinsville, it shall comply with all requirements of § C (Conditions for certification) of the Commission's Local Rules.

NOW THE COMMISSION, having considered the pleadings and the applicable law, finds that Martinsville should be granted a certificate to provide local exchange telecommunications services. We note that Martinsville, once it plans to offer local exchange telecommunications services, must file tariffs with the Commission's Division of Communications pursuant to the Local Rules. Martinsville is directed to serve a copy of its initial tariffs on the service list for this case. We need not rule on whether a hearing on Martinsville's rates is required at this time as there is no request for a hearing; as Sprint has indicated in its comments, it may make its request once Martinsville files with the Commission proposed initial rates for its local exchange telecommunications services.

The Commission adopts the recommendations of the Staff Report. We fully expect Martinsville, or any other local exchange carrier that currently has or will obtain a certificate, to comply with the Code of Virginia and this Commission's existing Local Rules and any subsequently adopted rules.⁴

The Staff Report indicates that Martinsville agrees to meet all applicable conditions for certification identified in § C of the Local Rules. Martinsville has also agreed to comply with all rules and regulations of the Commission and laws of the Commonwealth of Virginia. Martinsville intends to comply with the applicable and duly promulgated safeguards or requirements mandated by House Bill 1021 enacted by the 2002 Session of the Virginia General Assembly, as set out in Exhibit G to the application.⁵

¹ Additionally, the Virginia Cable Telecommunications Association filed a request to be placed on the official service list in the proceeding.

² Sprint informs the Commission in its comments that the purpose of any hearing request it would make is to ensure Martinsville's compliance with the various rate requirements of § 56-265.4:4(B) applicable to certificated localities.

³ The Local Rules were adopted in Case No. PUC-1995-00018 by Order dated December 13, 1995, and are codified at 20 VAC 5-400-180.

⁴ On October 15, 2002, the Commission issued an Order for Notice and Comment and/or Requests for Hearing Proposed Rules, Case No. PUC-2002-00115. The proposed Rules include new regulatory requirements pursuant to § 56-265.4:4 and § 15.2-2160 of the Code of Virginia.

⁵ See Affidavit of Earl B. Reynolds, Jr. (City Manager of Martinsville), which is also discussed at page 5 of Staff Report.

Accordingly, IT IS ORDERED THAT:

(1) Martinsville is hereby granted a certificate of public convenience and necessity, No. T-606, to provide local exchange telecommunications services in the City of Martinsville and the County of Henry. This certificate is subject to the restrictions set forth in the Rules Governing the Offering of Competitive Local Exchange Telephone Service, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(2) Should Martinsville collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the City of Martinsville and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or Commission determines it is no longer necessary.

(3) At such time as voice services are initiated by Martinsville, it shall comply with all requirements of § C of the Local Rules (Conditions for certification).

(4) Martinsville shall provide tariffs to the Division of Communications that conform to all applicable Commission rules and regulations before it begins offering local exchange telecommunications services. Martinsville shall serve upon the service list for this case a copy of those initial tariffs.

(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-2002-00208
FEBRUARY 6, 2003**

APPLICATION OF
THE TOWN OF FRONT ROYAL

For a certificate of public convenience and necessity to provide local exchange telecommunications services

FINAL ORDER

On October 22, 2002, the Town of Front Royal ("Front Royal"), filed an application for a certificate of public convenience and necessity with the State Corporation Commission ("Commission") to provide local exchange telecommunications services in the Town of Front Royal and the County of Warren.

By Order dated November 8, 2002, the Commission issued an Order for Notice and Comment, which 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 received a written notice of participation from Central Telephone Company of Virginia ("Sprint").¹ Sprint filed comments on December 30, 2002.

Sprint requests in its comments, based upon ambiguity it perceives in the application as to the territory sought, that any certificate issued in this case be limited to any locality in which Front Royal had electric distribution system facilities as of March 1, 2002, consistent with § 15.2-2160 of the Code of Virginia. Sprint further requests in its comments that since no initial rates are proposed that Front Royal be ordered to provide Sprint a copy of any proposed initial rates filed with the Commission and that Sprint be allowed to propound discovery with respect to such future initial rate filing by Front Royal. Finally, Sprint's comments advise the Commission that Sprint may request a hearing upon such future initial rate filing by Front Royal.² No requests for a hearing on the application of Front Royal were received.

On December 18, 2002, Front Royal filed proof of publication and proof of service as required by the Order for Notice and Comment. On January 21, 2003, the Staff filed its Report. Front Royal filed its Response to the Staff Report and to Sprint's comments on January 28, 2003. Front Royal indicated in its Response that it had no objection to the recommendations contained in the Staff Report. Front Royal responded to Sprint's comments by denying any ambiguity in its application and affirming that the localities sought to be certificated are the Town of Front Royal and the County of Warren. Front Royal further states that the requirement of a hearing on any proposed initial rates need not be determined in this Order.

In its January 21, 2003, Report, the Staff finds that Front Royal's application is in compliance with the Rules Governing the Offering of Competitive Local Exchange Telecommunications Service ("Local Rules").³ Based upon its review of Front Royal's application, the Staff determined that it would be appropriate to grant Front Royal a certificate to provide local exchange telecommunications services, as requested, subject to the following conditions: (1) should Front Royal collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Town of Front Royal, and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change (any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or Commission determines it is no longer necessary); and (2) at such time as voice services are initiated by Front Royal, it shall comply with all requirements of § C (Conditions for Certification) of the Commission's Local Rules.

¹ Additionally, the Virginia Cable Telecommunications Association filed a request to be placed on the official service list in the proceeding.

² Sprint informs the Commission in its comments that the purpose of any hearing request it would make is to ensure Front Royal's compliance with the various rate requirements of § 56-265.4:4(B) applicable to certificated localities.

³ The Local Rules were adopted in Case No. PUC-1995-00018 by Order dated December 13, 1995, and are codified at 20 VAC 5-400-180.

NOW THE COMMISSION, having considered the pleadings and the applicable law, finds that Front Royal should be granted a certificate to provide local exchange telecommunications services. We note that Front Royal, once it plans to offer local exchange telecommunications services, must file tariffs with the Commission's Division of Communications pursuant to the Local Rules. Front Royal is directed to serve a copy of its initial tariffs on the service list for this case. We need not rule on whether a hearing on Front Royal's rates is required at this time as there is no request for a hearing; as Sprint has indicated in its comments, it may make its request once Front Royal files with the Commission proposed initial rates for its local exchange telecommunications services.

The Commission adopts the recommendations of the Staff Report. We fully expect Front Royal, or any other local exchange carrier that currently has or will obtain a certificate, to comply with the Code of Virginia and this Commission's existing Local Rules and any subsequently adopted rules.⁴

The Staff Report indicates that Front Royal agrees to meet all conditions for certification identified in § C of the Local Rules. Front Royal has also agreed to comply with all rules and regulations of the Commission and laws of the Commonwealth of Virginia. Front Royal intends to comply with the applicable and duly promulgated safeguards or requirements mandated by House Bill 1021 enacted by the 2002 Session of the Virginia General Assembly, as set out in Exhibit G to the application.⁵

Accordingly, IT IS ORDERED THAT:

(1) Front Royal is hereby granted a certificate of public convenience and necessity, No. T-603, to provide local exchange telecommunications services in the Town of Front Royal and the County of Warren. This certificate is subject to the restrictions set forth in the Rules Governing the Offering of Competitive Local Exchange Telephone Service, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(2) Should Front Royal collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Town of Front Royal and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or Commission determines it is no longer necessary.

(3) At such time as voice services are initiated by Front Royal, it shall comply with all requirements of § C of the Local Rules.

(4) Front Royal shall provide tariffs to the Division of Communications that conform to all applicable Commission rules and regulations before it begins offering local exchange telecommunications services. Front Royal shall serve upon the service list for this case a copy of those tariffs.

(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.

⁴ On October 15, 2002, the Commission issued an Order for Notice and Comment and/or Requests for Hearing Proposed Rules, Case No. PUC-2002-00115. The proposed Rules include new regulatory requirements pursuant to §56-265.4:4 and § 15.2-2160 of the Code of Virginia.

⁵ See Affidavit of Richard A. Anzolut, Jr. (Town Manager of Front Royal), which is also discussed at page 5 of Staff Report.

CASE NO. PUC-2002-00212 OCTOBER 24, 2003

APPLICATION OF
VERIZON SOUTH INC.

For exemption from physical collocation of its Skyline remote office

ORDER

On November 4, 2002, Verizon South Inc. ("Verizon South") filed an application with the State Corporation Commission ("Commission") requesting an exemption from the requirements of § 251(c)(6) of the Telecommunications Act of 1996 to provide physical collocation in its Skyline remote office. On November 14, 2002, the Commission issued an Order permitting interested parties to file comments on Verizon South's exemption request.

On January 16, 2003, the Division of Communications ("Staff") filed its Report recommending that the Commission deny Verizon South's application. On January 27, 2003, Verizon South filed its Reply Comments. On February 7, 2003, the Staff filed a Motion For Leave to File a Reply. The Commission granted Staff's Motion on February 14, 2003, requiring that the Staff file its reply by February 20, 2003, and granting Verizon South the opportunity to respond by February 27, 2003. The Staff filed its reply on February 20, 2003.

On February 25, 2003, Verizon South filed a Motion for Extension of Time to File Response to the Staff's Reply Comments, asking for an additional seven days to file its response. On February 27, 2003, the Commission granted Verizon South's request for extension of time.

On March 6, 2003, Verizon South filed a Withdrawal of Exemption Request in this matter.

Pursuant to the Commission's Order of March 25, 2003, Verizon South reported, by letter dated April 28, 2003, that it anticipated the successful completion of collocation space as requested by NTELOS Network, Inc., within the allotted time.

On August 1, 2003, Verizon South again requested an exemption from collocation for its Skyline remote office.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

On August 11, 2003, the Commission entered a Preliminary Order granting interested parties an opportunity to comment on Verizon South's request and further directed the Commission Staff to investigate the request for exemption and file a Report.

On October 3, 2003, the Staff filed its Report. Based upon its investigation, the Staff recommends that Verizon South's requested exemption for its Skyline remote office should be granted, provided that the exemption should be terminated once space becomes available through the removal of equipment or when a building addition is completed.

No comments were received, and Verizon South did not respond to the Staff's Report.

NOW UPON CONSIDERATION of the Application, § 251(c)(6) of the Act, the Commission's Collocation Rules, and the Staff Report, the Commission is of the opinion and finds that Verizon South's request for exemption from the requirement to provide physical collocation at its Skyline remote office should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) Verizon South's request for exemption from the requirements to provide physical collocation at its Skyline remote office is hereby granted.
- (2) This case shall remain open for any subsequent requests to terminate the exemption that may be necessary in the future.

**CASE NO. PUC-2002-00219
JANUARY 10, 2002**

APPLICATION OF
CABLE & WIRELESS OF VIRGINIA, INC.

To discontinue interexchange telecommunications services in Virginia

ORDER PERMITTING DISCONTINUANCE OF SERVICE

On December 12, 2002, Cable & Wireless of Virginia, Inc. ("C&W," "Company," or "Applicant"),¹ completed a letter application ("application") with the State Corporation Commission ("Commission") requesting Commission approval to discontinue its provision of interexchange telecommunications services to its Virginia customers. C&W has made arrangements to transfer its interexchange customer base to another carrier if the customers do not make an alternate selection. Pursuant to the application, C&W's interexchange customers were given in excess of 30 days' notice and were advised of the option of being transferred to the alternate carrier if no selection was made.

The Company proposes to discontinue its provision of interexchange telecommunications services by January 18, 2003. Customers were provided notice by letter dated November 19, 2002, of the proposed transfer or discontinuance.

NOW THE COMMISSION, being sufficiently advised, will grant the requested discontinuance of interexchange telecommunications services.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUC-2002-00219.
- (2) On or before January 15, 2003, C&W shall report to the Commission's Division of Communications the number of any remaining interexchange telecommunications customers in Virginia.
- (3) C&W is hereby granted authority to discontinue its provision of interexchange telecommunications services to customers in Virginia effective January 18, 2003.
- (4) The interexchange tariffs for C&W on file with the Division of Communications shall be cancelled effective January 24, 2003.
- (5) There being nothing further to come before the Commission in this matter, this case shall be closed, and the papers herein shall be placed in the file for ended causes.

¹ Cable & Wireless of Virginia, Inc., holds a certificate of public convenience and necessity ("CPCN") to provide local exchange telecommunications services, Certificate No. T-380, and a CPCN to provide interexchange telecommunications services, Certificate No. TT-5B. The Company has specifically requested to keep its interexchange CPCN.

**CASE NO. PUC-2002-00220
MARCH 21, 2003**

APPLICATION OF
IDT AMERICA OF VIRGINIA, LLC

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On November 21, 2002, IDT America of Virginia, LLC ("IDT" 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 dated December 16, 2002, 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 January 22, 2003, the Company filed proof of publication and proof of service as required by the December 16, 2002, Order.

On February 14, 2003, the Staff filed its Report finding that IDT's application was in compliance with the Rules Governing the Offering of Competitive Local Exchange Telephone Service and the Rules Governing the Certification of Interexchange Carriers. Based upon its review of IDT'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: should IDT collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement; any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or 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, the Commission further finds that the Company may price its interexchange telecommunications services competitively.

Accordingly, IT IS ORDERED THAT:

- (1) IDT is hereby granted a certificate of public convenience and necessity, No. TT-191A, 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) IDT is hereby granted a certificate of public convenience and necessity, No. T-608, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Offering of Competitive Local Exchange Telephone Service, § 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) Should IDT collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or 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-2002-00223
MARCH 12, 2003**

APPLICATION OF
MOUNTAIN COMMUNICATIONS OF VIRGINIA, LLC

For a certificate of public convenience and necessity to provide local exchange telecommunications services

FINAL ORDER

On November 27, 2002, Mountain Communications of Virginia, LLC ("Mountain" or the "Company"), filed an application for a certificate of public convenience and necessity with the State Corporation Commission ("Commission") to provide local exchange telecommunications services throughout the Commonwealth of Virginia.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

By Order dated December 23, 2002, 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 January 31, 2003, the Company filed proof of publication and proof of service as required by the December 23, 2002, Order.

On February 25, 2003, the Staff filed its Report finding that Mountain's application was in compliance with the Rules Governing the Offering of Competitive Local Exchange Telephone Service. Based upon its review of Mountain'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 conditions: (1) should Mountain collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or Commission determines it is no longer necessary; and (2) the Company shall provide audited financial statements of its parent, Mountain Communications, LLC, to the Division of Economics and Finance no later than one (1) year from the effective date of Mountain's initial tariff.

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) Mountain Communications of Virginia, LLC, is hereby granted a certificate of public convenience and necessity, No. T-611, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Offering of Competitive Local Exchange Telephone Service, § 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) Should Mountain Communications of Virginia, LLC, collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or Commission determines it is no longer necessary.

(4) The Company shall provide audited financial statements of its parent, Mountain Communications, LLC, to the Division of Economics and Finance no later than one (1) year from the effective date of Mountain's initial tariff in Virginia.

(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-2002-00224
MARCH 21, 2003**

APPLICATION OF
AMERICAN LONG LINES OF VIRGINIA, INC.

For a certificate of public convenience and necessity to provide local exchange telecommunications services

FINAL ORDER

On December 3, 2002, American Long Lines of Virginia, Inc. ("American Long Lines" or the "Company"), filed an application for a certificate of public convenience and necessity with the State Corporation Commission ("Commission") to provide local exchange telecommunications services throughout the Commonwealth of Virginia.

By Order dated December 23, 2002, 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 January 31, 2003, the Company filed proof of publication and proof of service as required by the December 23, 2002, Order.

On February 20, 2003, the Staff filed its Report finding that American Long Lines' application was in compliance with the Rules Governing the Offering of Competitive Local Exchange Telephone Service. Based upon its review of American Long Lines' 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: should American Long Lines collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement; any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or 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) American Long Lines is hereby granted a certificate of public convenience and necessity, No. T-610, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Offering of Competitive Local Exchange Telephone Service, § 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) Should American Long Lines collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or 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-2002-00228
FEBRUARY 28, 2003**

JOINT PETITION OF
YIPES ENTERPRISE SERVICES, INC.
and
YIPES TRANSMISSION, INC.

For approval of transfer of control

ORDER GRANTING APPROVAL

On January 10, 2003, Yipes Transmission, Inc. ("Old Yipes"), and Yipes Enterprise Services, Inc. ("New Yipes") (collectively, the "Petitioners"), completed their joint petition originally filed with the State Corporation Commission ("Commission") on December 2, 2002. In that joint petition, Old Yipes and New Yipes request approval of transfer of control of Yipes Transmission Virginia, Inc. ("Yipes Virginia"), from Old Yipes to New Yipes pursuant to Chapter 5 of Title 56 of the Code of Virginia.

Old Yipes is a California corporation with headquarters in San Francisco, California. Old Yipes provides scalable Gigabit Ethernet services to customers in major metropolitan markets across the country, including the Washington D.C. area, and provides area networking and high-speed Internet access services. The Ethernet services provided in Virginia are provided through Yipes Virginia. Effective August 2, 2002, Yipes Virginia changed its name to YTV, Inc.

Yipes Virginia is a wholly owned subsidiary of Old Yipes and currently holds authority to furnish local exchange telecommunications services in Virginia pursuant to Certificate of Public Convenience and Necessity No. T-5 16 granted by the Commission in Case No. PUC-2000-00148 on November 9, 2000. Pursuant to that authority, Yipes Virginia maintains telecommunications facilities in Herndon and Vienna, Virginia, and has other physical assets located in Virginia, which are used to provide telecommunications services in the Commonwealth.

Since April 19, 2002, Old Yipes has been operating under the protection of the Bankruptcy Court for the Northern District of California ("Bankruptcy Court") pursuant to Chapter 11 of the Bankruptcy Code. Subject to necessary regulatory approvals, New Yipes has agreed to acquire Old Yipes, and Old Yipes has agreed to sell all of its assets, including control over Yipes Virginia. The sale will be accomplished by implementation of the Plan of Reorganization ("Plan"), jointly sponsored by the Petitioners and approved by the Bankruptcy Court on November 8, 2002.

When the Plan is implemented, New Yipes will become a wholly owned subsidiary of Yipes Holdings, Inc. ("Yipes Holdings"), a corporation formed under the laws of the State of Delaware. Yipes Holdings will be owned by a number of institutional investors. The ultimate corporate control of New Yipes will be Yipes Holdings. Yipes Virginia will be a wholly owned subsidiary of New Yipes and an indirect subsidiary of Yipes Holdings.

The Petitioners represent that the transfer of control does not affect the ability of Yipes Virginia to continue to provide telecommunications services in Virginia. Yipes Virginia will continue to provide telecommunications services in Virginia under the same tariffs and operating authority as before.

THE COMMISSION, upon consideration of the joint petition and representations of the Petitioners and having been advised by its Staff, is of the opinion and finds that the transactions, as described herein, involving transfer of control of Yipes Virginia 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 of Virginia, approval is hereby granted for the transfer of control of Yipes Virginia, as described herein.
- 2) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUC-2002-00230
APRIL 9, 2003**

PETITION OF
WILLIAMS COMMUNICATIONS OF VIRGINIA, INC.,

For approval of the transfer of ownership of Williams Communications, LLC, from Williams Communications Group, Inc., to WilTel Communications Group, Inc.

ORDER GRANTING APPROVAL

On December 11, 2002, Williams Communications of Virginia, Inc. ("Williams Virginia" or the "Petitioner"), filed a petition with the State Corporation Commission ("Commission") requesting approval, pursuant to § 56-88.1 of the Code of Virginia ("Code"), for the transfer of ownership of Williams Virginia's sole shareholder, Williams Communications, LLC, from Williams Communications Group, Inc., to WilTel Communications Group, Inc.

Williams Virginia is a Virginia public service company. In conjunction with Williams Communications, LLC ("WCL"), Williams Virginia provides wholesale telecommunications services, related incidental retail services, and video transmission services. In Virginia, Williams Virginia holds certificates of public convenience and necessity ("CPCN") Nos. TT-42B and T-473 and provides intrastate interexchange telecommunications services. On January 31, 2003, Williams Virginia changed its name to WilTel Communications of Virginia, Inc.¹

Williams Communications Group, Inc. ("Old WCG"), is a publicly traded Delaware corporation, and no single shareholder has owned more than 5% of its common stock since April 23, 2001. Old WCG is the direct owner of WCL.

WCL, a Delaware limited liability company, is the direct owner of Williams Virginia. WCL is the principal operating subsidiary of the affiliated companies, and it owns substantially all of the organization's network assets and employs substantially all of its employees. WCL provides interstate and international telecommunications services and intrastate telecommunications services in states other than Virginia.

WilTel Communications Group, Inc. ("New WCG"), is a publicly traded Nevada corporation that was formed as a successor to Old WCG.

Leucadia National Corporation ("Leucadia") is a publicly traded, diversified financial services holding company. Leucadia, through its subsidiaries, is engaged in a variety of businesses, including commercial and personal lines of property and casualty insurance, banking and lending, manufacturing, winery operations, real estate activities, and precious metals mining. Leucadia's investment in New WCG will be its first investment in the telecommunications industry.

The Petitioner requests approval of a transaction that is the result of Old WCG's Plan of Reorganization (the "Plan"), including the transfer of indirect ownership of Williams Virginia from Old WCG to New WCG and the acquisition of indirect control of Williams Virginia by Leucadia National Corporation.

On April 22, 2002, Old WCG filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code. The proceeding did not affect the provision of telecommunications services by Williams Virginia or WCL, which were not parties to the proceeding. The United States Bankruptcy Court for the Southern District of New York approved the Plan for Old WCG on September 30, 2002. The Plan took effect on October 15, 2002. The Plan involved the creation of a new holding company, New WCG, and the transfer of ownership of WCL from Old WCG to New WCG. The Plan also involved investment in New WCG by Leucadia.

Under this Plan, Leucadia purchased the claims of the Williams Companies, Inc., against Old WCG and infused additional capital into New WCG. The Plan also resolved certain classes of creditor claims through the distribution of stock of New WCG. Old WCG's bondholders received approximately 54% of New WCG's common stock as a result of the Plan, and no single bondholder received more than 5% of the stock. Leucadia received 44% of New WCG's common stock, which gave Leucadia the right to designate four of New WCG's directors.² Old WCG was also able to discharge approximately \$4.6 billion in debt, which resulted in approximately \$420 million in interest cost savings.

As a result of the transaction, New WCG will replace Old WCG as the ultimate corporate parent of Williams Virginia, and New WCG will own 100% of WCL. WCL will remain the owner of 100% of Williams Virginia's common stock. Ultimately, Leucadia will hold a direct controlling interest in New WCG and an indirect controlling interest in Williams Virginia.

On March 5, 2003, Mr. Mark E. Decot filed comments in this proceeding. Mr. Decot requests that the Commission deny the petition on grounds that approval would not be meaningful since the transfer has already taken place. Mr. Decot states that the petition should have been presented to the Commission for review prior to the time when Old WCG submitted its Plan for approval to the United States Bankruptcy Court. Mr. Decot also states that the Commission should use its authority to determine that Williams Virginia violated § 56-89 of the Code and to find that such action violates the conditions set forth in the Commission's Order dated October 8, 1998, in Case No. PUC-1997-00047. Mr. Decot also requests that the Commission revoke Williams Virginia's CPCN and impose fines.³

THE COMMISSION, upon consideration of the application, representations of the Petitioner, comments filed herein, and having been advised by its Staff, is of the opinion and finds that the transfer of indirect ownership and control of Williams Virginia from Old WCG to New WCG and the

¹ As of this date, Williams Virginia has not requested that its CPCNs be revised to reflect the new corporate name. The Petitioner represents that such request will be forthcoming.

² On October 28, 2002, Leucadia purchased 1.7 million shares of New WCG's common stock, which brought its ownership interest in New WCG to 47.4%.

³ In addition, Mr. Decot raises issues related to the construction of certain telecommunications services. Such issues were addressed by the Commission in Case Nos. PUC-1997-00047 and PUC-2001-00217.

resulting acquisition of indirect control of Williams Virginia by Leucadia, as described herein, will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved.

We note, however, that § 56-88.1 of the Code requires our prior approval for transfer of control. Such approval was not sought or obtained prior to the above-referenced transfer. While we believe that no further action is warranted in this instance, the Petitioner should be more diligent in seeking and obtaining prior approval from this Commission for any future transfers.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to §§ 56-88.1 and 56-90 of the Code of Virginia, approval is hereby granted for the transfer of indirect ownership and control of Williams Virginia from Old WCG to New WCG and the resulting acquisition of indirect control of Williams Virginia by Leucadia, as described herein.
- 2) If Leucadia is to transfer a controlling interest in Williams Virginia in the future, Leucadia and Williams Virginia must obtain prior approval under the Utility Transfers Act.
- 3) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUC-2002-00234
JANUARY 22, 2003**

PETITION, OR IN THE ALTERNATIVE,
APPLICATION OF
VERIZON GLOBAL NETWORKS INC.
and
VERIZON GLOBAL NETWORKS VIRGINIA INC.

For such relief as may be required under the Utility Facilities Act, Va. Code §§ 56-265.1 et seq., for expedited consideration and interim authority

ORDER DETERMINING CERTIFICATES NOT REQUIRED

On December 23, 2002, Verizon Global Networks Inc. ("GNI") and Verizon Global Networks Virginia Inc. ("GNI-VA") (collectively, the "Applicants"), filed the alternatively styled Petition/Application ("Petition"), seeking a determination by the State Corporation Commission ("Commission") that GNI's ownership and operation of certain facilities do not require the certifications under the Utility Facilities Act, Va. Code §§ 56-265.1 et seq. In the alternative, the Petition seeks the granting of any necessary certificates under Va. Code § 56-265.4:4 and Va. Code § 56-265.2 to GNI-VA.

The Petition describes GNI, a Delaware corporation, as "a long distance network company that provides telecommunications services to reseller affiliates of Verizon Communications Inc. ("Verizon")." GNI is a wholly owned subsidiary of Verizon, also a Delaware corporation.¹

GNI provides telecommunications services only to its Verizon affiliates which, in turn, provide long distance, internet access, and other services to the public. The Petition states that GNI does not furnish telephone service or any other service to the public in Virginia or elsewhere on a retail or wholesale basis.

GNI owns backbone facilities across the Verizon network including facilities in Virginia.² GNI also acquires transmission facilities from Verizon Virginia Inc., Dominion Telecom, and WorldCom, which it resells to its Verizon affiliates. The Commission particularly notes GNI's determination that approximately seven percent (7%) of the traffic that traverses the GNI-owned and leased network in Virginia is intrastate traffic. Therefore, only an insignificant portion of that traffic is within our jurisdiction. The Commission also takes judicial notice that none of the Verizon affiliates who resell the telecommunications services purchased from the GNI network are certificated to provide interexchange telecommunications services in Virginia.

The Commission concludes that GNI's ownership and operation of certain facilities in Virginia, as described, do not require certification by the Commission because such telecommunications services are provided predominantly on an interstate basis and not directly to the public.³

Accordingly, the Commission finds that the Applicants do not require certification under the Utility Facilities Act.

IT IS THEREFORE ORDERED THAT:

(1) The Applicant's Petition for a determination that the described ownership and operation of certain facilities by GNI do not require certification under the Utilities Facilities Act, Va. Code §§ 56-265.1 et seq., is hereby granted.

(2) This case is hereby closed.

¹ According to the Petition, GNI-VA is a public service company that was created to hold facilities in Virginia if the Commission determines that GNI needs certification.

² These backbone facilities include leased dark fiber from other carriers and limited other, owned equipment.

³ While some certificated facilities-based interexchange carriers may operate as "carrier's carriers," this does not appear to be the case with GNI as it only sells telecommunications services to its Verizon affiliates.

**CASE NO. PUC-2002-00235
MAY 27, 2003**

APPLICATION OF
TELERA COMMUNICATIONS OF VIRGINIA, INC.

For cancellation of certificates of public convenience and necessity

ORDER

By Order dated February 5, 2001, in Case No. PUC-2000-00252, the State Corporation Commission ("Commission") granted Telera Communications of Virginia, Inc. ("Telera" or the "Company"), Certificate No. TT-133A to provide interexchange telecommunications services and Certificate No. T-537 to provide local exchange telecommunications services in the Commonwealth of Virginia.

By letter application dated May 7, 2003, Telera requested that the Commission cancel the above-referenced certificates. The Company advised that it never conducted business in Virginia.

NOW THE COMMISSION, having considered the matter, is of the opinion that Telera's certificates should be cancelled.

Accordingly, IT IS ORDERED THAT:

- (1) Certificate No. TT-133A and Certificate No. T-537 issued to Telera Communications of Virginia, Inc., are hereby cancelled.
- (2) Any existing tariffs of the Company currently on file with the Commission's Division of Communications are hereby cancelled.
- (3) This matter is hereby dismissed.

**CASE NO. PUC-2003-00002
JANUARY 24, 2003**

APPLICATION OF
CONCERT COMMUNICATIONS SALES OF VIRGINIA LLC

To cancel existing certificates and issue certificates reflecting new name

FINAL ORDER

By letter application filed January 3, 2003, Concert Communications Sales of Virginia LLC ("Company") informed the State Corporation Commission ("Commission") that it had changed its corporate name to BT Communications Sales of Virginia LLC. The application requested that the Company's certificates of public convenience and necessity be modified to reflect the new corporate name.

Concert Communications Sales of Virginia LLC holds certificates of public convenience and necessity, TT-72A and T-452, issued July 29, 1999, which authorize the Company to provide interexchange telecommunications services and local exchange telecommunications services in the Commonwealth of Virginia, respectively, under Case No PUC-1999-00051. The Commission is of the opinion that revised certificates of public convenience and necessity should be granted.

According, IT IS ORDERED THAT:

- (1) This matter should be docketed and assigned Case No. PUC-2003-00002.
- (2) Certificates of public convenience and necessity, T-452 for local exchange telecommunications services and TT-72A for interexchange telecommunications services, are cancelled and shall be reissued as amended Certificate Nos. T-452a and TT-72B, respectively, in the name of BT Communications Sales of Virginia LLC.
- (3) Because there is nothing further to come before the Commission, this matter is dismissed.

**CASE NO. PUC-2003-00003
DECEMBER 10, 2003**

APPLICATION OF
FRANCE TELECOM CORPORATE SOLUTIONS L.L.C.

For a certificate of public convenience and necessity to provide local exchange telecommunications services

ORDER GRANTING MOTION TO WITHDRAW AND DISMISSING CASE

On November 24, 2003, France Telecom Corporate Solutions L.L.C. ("France Telecom" or the "Applicant") filed a motion with the State Corporation Commission ("Commission") requesting authority to withdraw the above-captioned application without prejudice.¹ France Telecom states that it has been unable to furnish certain financial information to the Commission's Staff which is necessary for the Staff to investigate its application. The Applicant states that it intends to refile its application at a later date when all required financial information is available.

NOW THE COMMISSION, having considered the request, finds that such request is reasonable and should be granted, and the above-captioned case should be dismissed without prejudice.

Accordingly, IT IS ORDERED THAT France Telecom's motion to withdraw the above-referenced application is hereby granted, and this case is dismissed without prejudice from the Commission's docket of active cases.

¹ By Orders dated June 4, July 25, August 27, and November 7, 2003, the Commission extended the procedural schedule at the request of France Telecom to enable it additional time to secure its bond. Section 56-265.4:4 B 2 requires that the Commission enter an order on this application by December 11, 2003.

**CASE NO. PUC-2003-00006
FEBRUARY 14, 2003**

APPLICATION OF
AT&T BROADBAND PHONE OF VIRGINIA, INC.

To cancel existing certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services and to reissue certificates reflecting the corporate name change

FINAL ORDER

On February 15, 2002, the State Corporation Commission ("Commission") entered an Order in Case No. PUC-2002-00007, which granted AT&T Broadband Phone of Virginia, Inc ("AT&T Broadband Phone" or the "Company"), a certificate of public convenience and necessary, No. TT-30C, to provide interexchange telecommunications services subject to the restrictions set forth in the Commission's Rules Governing the Certification of Interexchange Carriers (as codified in 20 VAC 5-411-10 *et seq.*), § 56-265.4:4 of the Code of Virginia, and provisions of the February 15, 2002, Order. In the same Order, the Commission granted AT&T Broadband Phone a certificate of public convenience and necessity, No. T-371b, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Offering of Competitive Local Exchange Telephone Service (as codified in 20 VAC 5-400-180), § 56-265.4:4 of the Code of Virginia, and the provisions of the February 15, 2002, Order.

On January 15, 2003, AT&T Broadband Phone notified the Commission that it intends to effectuate its change of name to Comcast Phone of Virginia, Inc. d/b/a Comcast Digital Phone. It noted that all other information regarding the Company remained unchanged.

In its notice, AT&T Broadband Phone recited that it had filed Articles of Amendment with the Commission to change its name from AT&T Broadband Phone to Comcast Phone of Virginia, Inc., and that on November 19, 2002, the Commission issued a Certificate of Amendment changing its corporate name to Comcast Phone of Virginia, Inc. Although AT&T Broadband Phone failed to request the cancellation of certificates issued in its name and the reissuance of certificates reflecting its new name, we take notice that this should be done.

NOW, UPON CONSIDERATION of the foregoing, the Commission is of the opinion and finds that certificates of public convenience and necessity Nos. TT-30C and T-371b, issued to AT&T Broadband Phone, should be cancelled; and certificates of public convenience and necessity should be reissued to Comcast Phone of Virginia, Inc., reflecting the new name of that corporation, Comcast Phone of Virginia, Inc.

Accordingly, IT IS THEREFORE ORDERED THAT:

- (1) This matter is hereby docketed and assigned Case No. PUC-2003-00006.
- (2) Certificate of public convenience and necessity, No. TT-30C, issued to AT&T Broadband Phone is hereby cancelled.
- (3) Certificate of public convenience and necessity, No. TT-30D, is hereby issued to Comcast Phone of Virginia, Inc., authorizing it to provide interexchange telecommunications services, subject to the restrictions set forth in the Commission's Rules Governing the Certification of Interexchange Carriers (codified in 20 VAC 5-411-10 *et seq.*), § 56-265.4:4 of the Code of Virginia, and the provisions previously set out in the Commission's February 15, 2002, Final Order entered in Case No. PUC-2002-00007.
- (4) Certificate of public convenience and necessity, No. T-371b, issued to AT&T Broadband Phone is hereby cancelled.

(5) Certificate of public convenience and necessity, No. T-371c, is hereby issued to Comcast Phone of Virginia, Inc., authorizing it to provide local exchange telecommunications services, subject to the restrictions set forth in the Commission's Rules Governing the Offering of Competitive Local Exchange Telephone Service (codified in 20 VAC 5-400-180), § 56-265.4:4 of the Code of Virginia, and the provisions previously set out in the Commission's February 15, 2002, Final Order entered in Case No. PUC-2002-00007.

(6) Comcast Phone of Virginia, Inc., shall file revised tariffs no later than sixty (60) days from the date of this Order with the Commission's Division of Communications that conform with all applicable Commission rules and regulations and which use Comcast Phone of Virginia, Inc.'s name rather than that of AT&T Broadband Phone.

(7) 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-2003-00008
FEBRUARY 18, 2003**

PETITION OF
STICKDOG TELECOM, INC.

Regarding Notification of Disconnection from Verizon Virginia Inc.

ORDER PERMITTING DISCONTINUANCE

On January 15, 2003, Verizon Virginia Inc. ("Verizon Virginia") filed a letter with the Clerk of the State Corporation Commission ("Commission") pursuant to 20 VAC 5-423-80 notifying the Commission that Verizon Virginia proposes to disconnect resale local exchange telecommunications services to Stickdog Telecom, Inc. ("Stickdog"), on March 17, 2003 ("Notification of Disconnection"). As set forth in 20 VAC 5-423-80, Verizon Virginia's Notification of Disconnection provided information regarding: (1) the number of Stickdog local exchange resale customers to be disconnected and the proposed disconnection date; (2) the amount of money claimed to be owed to Verizon Virginia by Stickdog, including the identification of any disputed amounts; (3) a description of any efforts that Verizon Virginia and Stickdog have taken to prevent disconnection or disruption of service to Stickdog's customers; (4) any proposal to notify or to transfer Stickdog's customers to Verizon Virginia or other carriers; and (5) a copy of a written disconnection notice sent to Stickdog.

On January 22, 2003, Stickdog filed a letter with the Clerk of the Commission objecting to Verizon Virginia's Notification of Disconnection. Stickdog asserted that the information submitted by Verizon Virginia in the Notification of Disconnection is inaccurate and objectionable. Stickdog, among other things, challenged certain information provided by Verizon Virginia and provided additional information on the billing dispute that led to the Notification of Disconnection. In addition, Stickdog requested that if the Commission is unable to prevent Verizon Virginia from disconnecting Stickdog's customers' local phone service, the Commission at least require Verizon Virginia to confirm that it will not disconnect asynchronous digital subscriber line ("DSL") services and that it will allow DSL services to continue without interruption under Stickdog's Internet account with Verizon Virginia.

On January 29, 2003, the Commission issued an Order Establishing Proceeding docketing the proceeding and establishing a procedural schedule. Additionally, the Commission directed Stickdog to provide information required by Rule 5 VAC 5-20-100 B of the Commission's Rules of Practice and Procedure. On February 4, 2003, Stickdog filed its Supplemental Pleading, Petition for Discontinuance of Service and Petition for Injunction ("Petition"). In its Petition, Stickdog reiterated its objections to Verizon Virginia's Notification of Disconnection, petitioned the Commission for authority to discontinue the provision of all local exchange telecommunications services pursuant to the Rules Governing the Discontinuance of Local Exchange Services set forth at 20 VAC 5-423-10 *et seq.*, requested that the Commission enjoin Verizon Virginia from disconnecting Stickdog until all its customers have been notified, and further petitioned that Verizon Virginia be enjoined from interrupting service to Stickdog's DSL customers who choose to migrate their DSL service to Verizon Virginia.

Additionally, Stickdog requested a 60-day notice period after entry of the Commission's Order and asked the Commission to enjoin Verizon Virginia from discontinuing service to Stickdog's customers for at least 90 days from entry of an order. Stickdog also included suggested language to be used as its notice to customers and further indicated that it wished to include notice to its customers as a billing insert.

On February 7, 2003, Verizon Virginia filed its Answer to Stickdog's Petition ("Answer") opposing Stickdog's requests for injunction and reiterating its desire and intent to disconnect Stickdog's local exchange telecommunications services on March 17, 2003. Verizon Virginia also suggested that Stickdog be required to notify its customers by first-class mail no later than February 14, 2003. Additionally, Verizon Virginia took issue with the wording of Stickdog's proposed notice of discontinuance of service. Finally, Verizon Virginia noted that it intends to disconnect Stickdog's DSL service under the provisions of the applicable federal tariff.

On February 11, 2003, Stickdog filed its Response to Answer of Verizon Virginia Inc. ("Response"). Stickdog's Response renewed its requested relief set out in its Petition of February 4, 2003; denied that the alleged debt owed by Stickdog in the amount of \$1.1 million is undisputed; denied that Stickdog is delinquent on its DSL accounts; and renewed its request for injunctive relief as set out in Stickdog's Petition of February 4, 2003.

On February 12, 2003, Verizon Virginia filed a Motion for Leave to File Response to Stickdog's February 11, 2003, Response. In its Response, Verizon Virginia requested that the Commission deny Stickdog's request for injunctive relief and to further order Stickdog to notify its customers by first-class mail.

NOW THE COMMISSION, upon consideration of the pleadings and applicable law, finds as follows.

The Commission is concerned about the effect on Stickdog's customers stemming from the intended discontinuance by Verizon Virginia of Stickdog's resale service. The Commission finds that, to minimize customer disruption, Stickdog should not be disconnected by Verizon Virginia on Verizon Virginia's planned March 17, 2003, deadline. We find that Stickdog's customers should have additional time to select an alternative telephone

company; therefore, Verizon Virginia shall not disconnect Stickdog's service until after April 15, 2003. We find that Stickdog's customers should receive direct notice; therefore, we will not grant Stickdog's request to notify its customers via bill inserts. Stickdog shall send a separate direct notice to customers via first-class mail on or before March 3, 2003. By granting this additional time, the Commission expects that Stickdog will be able to provide its customers with close to 45 days' notice.¹

Moreover, the Commission has learned, based on experience in previous discontinuance cases, that even when some customers have timely chosen a new carrier by the required date, their service may be disrupted because the underlying or new carrier has not completed the customer's transfer order within the same timeframe. The Commission recognizes that this is not an intentional outcome, but we are also aware that it can create serious consequences for those customers in transition. Therefore, the Commission finds that Verizon Virginia shall not disconnect service to any of Stickdog's resale customers for which any order, either to migrate the customer to a new Competitive Local Exchange Carrier or to Verizon Virginia itself, has been placed (but not completed) with Verizon Virginia by the April 15, 2003, date.

We will not rule on Stickdog's request regarding its DSL service. The Commission reminds Verizon Virginia, however, of its duties pursuant to 20 VAC 5-423-80-D. We expect Verizon Virginia to make every effort to assist in the expedient and timely transfer of Stickdog's customers to their new carrier, including its DSL customers, in order to prevent disruption of service to these customers.

Finally, we will not rule on the parties' disagreement regarding the specific language to be included in Stickdog's notice to its customers. We will require, however, that certain language noted below be included in such notice.

Accordingly, IT IS ORDERED THAT:

- (1) We grant Verizon Virginia's February 12, 2003, Motion for Leave to File Response and accept Verizon Virginia's Response of February 13, 2003. We also accept Stickdog's February 11, 2003, Response, even though it was not accompanied by a motion for leave to file.
- (2) Verizon Virginia is hereby enjoined from disconnecting resale local exchange telecommunications services to Stickdog until after April 15, 2003.
- (3) Verizon Virginia is further enjoined from disconnecting any of Stickdog's local exchange customers that have an associated order to transfer local exchange telecommunications services in place on or before April 15, 2003.
- (4) Verizon Virginia shall follow its expedited ordering procedures and make every effort to assist in the timely transfer of Stickdog's customers, including its DSL customers, to the customer's new local exchange telecommunications carrier in order to prevent the disruption of service to those customers as required by 20 VAC 5-423-80 D.
- (5) Stickdog is hereby granted authority to discontinue its provision of local exchange telecommunications services to customers in Virginia.
- (6) On or before March 3, 2003, Stickdog shall complete notice by first-class mail to each customer affected by the proposed discontinuance in Verizon Virginia's territory.
- (7) Stickdog shall include the following language in its notice to customers in Verizon Virginia's territory:

"Customers are required to select an alternative local exchange telephone company on or before April 15, 2003, to avoid a loss of local telephone service. Customers who have placed an order for service with an alternative telephone company but have not yet been transferred to that company should not experience a loss of local service."
- (8) The Staff shall monitor the discontinuance process as necessary. Stickdog and Verizon Virginia shall provide any requested information to the Staff as expeditiously as possible, pursuant to Virginia Code § 56-249.
- (9) On or before April 11, 2003, Stickdog shall report to the Commission's Division of Communications the number of its remaining customers in Virginia.
- (10) Stickdog shall file notice with the Commission when it has completed discontinuance of service to its customers.
- (11) Verizon Virginia shall file notice with the Commission when it has completed discontinuance of service to Stickdog.

¹ The Commission notes that Stickdog also intends to discontinue service to its customers in Verizon South's territory. Stickdog is not precluded from giving its customers in Verizon South's territory more time to choose a new carrier. The provisions of this Order that are applicable to Verizon Virginia's authority to discontinue service to Stickdog do not apply to Stickdog's customers in Verizon South's territory. We expect Verizon South to coordinate with Stickdog before it disconnects any resale service to Stickdog.

**CASE NO. PUC-2003-00008
MARCH 3, 2003**

PETITION OF
STICKDOG TELECOM, INC.

Regarding Notification of Disconnection from Verizon Virginia Inc.

**ORDER DENYING RECONSIDERATION
AND GRANTING CLARIFICATION**

On January 15, 2003, Verizon Virginia Inc. ("Verizon Virginia"), filed a letter with the Clerk of the State Corporation Commission ("Commission") pursuant to 20 VAC 5-423-80 notifying the Commission that Verizon Virginia proposed to disconnect resale service to Stickdog Telecom, Inc. ("Stickdog"), on March 17, 2003 ("Notification of Disconnection"). As set forth in 20 VAC 5-423-80, Verizon Virginia's Notification of Disconnection provided information regarding: (1) the number of Stickdog resale customers to be disconnected and the proposed disconnection date; (2) the amount claimed to be owed to Verizon Virginia by Stickdog, including the identification of any disputed amounts; (3) a description of any efforts that Verizon Virginia and Stickdog have taken to prevent disconnection or disruption of service to Stickdog's customers; (4) any proposal to notify or transfer Stickdog's customers to Verizon Virginia or to other carriers; and (5) a copy of a written disconnection notice sent to Stickdog.

On January 22, 2003, Stickdog filed a letter with the Clerk of the Commission objecting to Verizon Virginia's Notification of Disconnection. Stickdog asserted that the information submitted by Verizon Virginia in the Notification of Disconnection was inaccurate and objectionable. Stickdog, among other things, challenged certain information provided by Verizon Virginia and provided additional information on the billing dispute that led to the Notification of Disconnection. In addition, Stickdog requested that, if the Commission is unwilling to prevent Verizon Virginia from disconnecting Stickdog's customers' local phone service, the Commission at least require Verizon Virginia to confirm that it will not disconnect asynchronous digital subscriber line ("DSL") services and that it will allow DSL services to continue without interruption under Stickdog's Internet account with Verizon Virginia.

On January 29, 2003, the Commission issued an Order Establishing Proceeding docketing the matter and establishing a procedural schedule. Additionally, the Commission directed Stickdog to provide information required by Rule 5 VAC 5-20-100 B of the Commission's Rules of Practice and Procedure.

On February 4, 2003, Stickdog filed its Supplemental Pleading, Petition for Discontinuance of Service and Petition for Injunction ("Petition"). In its Petition, Stickdog reiterated its objections to Verizon Virginia's Notification of Disconnection, petitioned the Commission for authority to discontinue the provision of all local exchange telecommunications services pursuant to the Rules Governing the Discontinuance of Local Exchange Services set forth at 20 VAC 5-423-10 *et seq.*, requested that the Commission enjoin Verizon Virginia from disconnecting Stickdog until all its customers have been notified, and further petitioned that Verizon Virginia be enjoined from interrupting service to Stickdog's DSL customers who choose to migrate their DSL service to Verizon Virginia.

Additionally, Stickdog requested a 60-day customer notice period after entry of the Commission's Order and asked the Commission to enjoin Verizon Virginia from discontinuing service to Stickdog's customers for at least 90 days from entry of an order. Stickdog also included suggested language to be used as its notice to customers and further indicated that it wished to include notice to its customers as a billing insert.

On February 7, 2003, Verizon Virginia filed its Answer to Stickdog's Petition ("Answer") opposing Stickdog's requests for injunction and reiterating its desire and intent to disconnect Stickdog's local exchange telecommunications services on March 17, 2003. Verizon Virginia also suggested that Stickdog be required to notify its customers by first-class mail no later than February 14, 2003. Additionally, Verizon Virginia took issue with the wording of Stickdog's proposed customer notice. Finally, Verizon Virginia noted that it intends to disconnect Stickdog's DSL service under the provisions of the applicable federal tariff.

On February 11, 2003, Stickdog filed its Response to Answer of Verizon Virginia Inc. ("Response"). Stickdog's Response renewed its requested relief set out in its Petition of February 4, 2003; denied that the alleged debt owed by Stickdog in the amount of \$1.1 million is undisputed; denied that Stickdog is delinquent on its DSL accounts; and renewed its request for injunctive relief as set out in Stickdog's Petition of February 4, 2003.

On February 12, 2003, Verizon Virginia filed a Motion for Leave to File Response to Stickdog's February 11, 2003, Response. In its response, Verizon Virginia requested that the Commission deny Stickdog's request for injunctive relief and order Stickdog to notify its customers by first-class mail.

On February 18, 2003, the Commission issued its Order Permitting Discontinuance, enjoining Verizon Virginia from disconnecting service to Stickdog until after April 15, 2003; enjoining Verizon Virginia from disconnecting former Stickdog customers who have pending orders for services in place on or before April 15, 2003; directing Verizon Virginia to follow its expedited ordering procedures in transferring customers; directing Stickdog to notify its customers of discontinuance by first-class mail on or before March 3, 2003; requiring Stickdog to report the number of its remaining customers on or before April 11, 2003; requiring Stickdog to notify the Commission when it has completed discontinuance of service to its customers; requiring Verizon Virginia to notify the Commission when it has completed disconnection of service to Stickdog; and requiring the Staff to monitor the discontinuance process as necessary.

On February 25, 2003, Verizon Virginia filed a Petition for Reconsideration ("Reconsideration Petition") of the Commission's February 18, 2003, Order, alleging, among other things, that the Commission violated its rules by imposing an injunction upon Verizon Virginia by expanding the interval between Verizon Virginia's notice to the Commission and the actual date of disconnection of service to Stickdog and by giving customers more than 30 days' notice of impending disconnection.

NOW THE COMMISSION, upon consideration of this matter, finds as follows. Rule 5 VAC 5-20-220 of the Commission's Rules of Practice and Procedure permits filing a petition for reconsideration in response to a final judgment, order, or decree. Our February 18, 2003, Order Permitting Discontinuance was not a final order. We will issue a final order and close this case after receiving the information required by the Order Permitting

Discontinuance and concluding that there are no issues remaining in this case. Accordingly, we will treat Verizon Virginia's Reconsideration Petition as a motion for reconsideration under 5 VAC 5-20-110.

We have reviewed and considered all of the arguments in the Reconsideration Petition, and it is hereby denied. We will, however, grant clarification on one matter. Verizon Virginia explains that even if a Stickdog customer selects another competitive local exchange carrier ("CLEC") by April 15, 2003, Verizon Virginia may not have received an associated order from the CLEC to transfer that customer's local exchange telecommunications services. Consequently, nothing in Verizon Virginia's systems would indicate the existence of the customer's selection of another carrier.

In this regard, we clarify that ordering paragraph (3) of our February 18, 2003, Order Permitting Discontinuance enjoins Verizon Virginia from disconnecting any of Stickdog's local exchange customers for which Verizon Virginia has received an associated order to transfer local exchange telecommunications services on or before April 15, 2003. We also will provide a copy of this Order to all CLECs certificated by the Commission to provide service in Virginia so that the CLECs are aware of the need promptly to notify Verizon Virginia when a Stickdog customer chooses the CLEC as its new telephone company. Finally, we also note that ordering paragraph (4) of our February 18, 2003, Order Permitting Discontinuance requires Verizon Virginia to follow its expedited ordering procedures and make every effort to assist in the timely transfer of Stickdog's customers, including its DSL customers, to the customer's new local exchange telecommunications carrier in order to prevent the disruption of service to those customers as required by 20 VAC 5-423-80 D.

Accordingly, IT IS ORDERED THAT:

- (1) Verizon Virginia's Petition for Reconsideration is denied.
- (2) The Commission's February 18, 2003, Order Permitting Discontinuance is clarified to provide that ordering paragraph (3) of that Order enjoins Verizon Virginia from disconnecting any of Stickdog's local exchange customers for which Verizon Virginia has received an associated order to transfer a customer's local exchange telecommunications services on or before April 15, 2003.
- (3) The Clerk of the Commission shall provide of copy of this Order to competitive local exchange carriers certified by the Commission.
- (4) This matter is continued until further order of the Commission.

**CASE NO. PUC-2003-00009
MAY 27, 2003**

APPLICATION OF
ALTICOMM OF VIRGINIA, INC.

For a certificate of public convenience and necessity to provide local exchange telecommunications services

FINAL ORDER

On January 16, 2003, Alticomm of Virginia, Inc. ("Alticomm" or the "Company"), filed an application for a certificate of public convenience and necessity with the State Corporation Commission ("Commission") to provide resold local exchange telecommunications services throughout the Commonwealth of Virginia.

By Order dated February 20, 2003, 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 1, 2003, the Company filed proof of publication and proof of service as required by the February 20, 2003, Order.

On April 30, 2003, the Staff filed its Report finding that Alticomm's application was in compliance with the Rules Governing the Offering of Competitive Local Exchange Telephone Service.¹ The Staff's review identified an overall weak financial condition for Alticomm. Therefore, the Staff requested a bond in lieu of the requirement to provide audited financial statements. The Company suggested a \$25,000 bond² since it is requesting only resale authority in Virginia. The Staff did not object to \$25,000 under the condition that the certificate was restricted to resale authority. Based upon its review of Alticomm's application, the Staff determined it would be appropriate to grant the Company a certificate to provide resold local exchange telecommunications services subject to the following conditions: (1) should Alticomm collect customer deposits, it should, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and should notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement should be maintained until such time as the Staff or Commission determines it is no longer necessary; (2) the Company should provide to the Division of Economics and Finance a \$25,000 continuous bond within 30 days of this Order; (3) the Company should notify the Division of Economics and Finance 30 days prior to the cancellation or lapse of its Bond and should provide a replacement Bond. This requirement should be maintained until such time as the Staff or the Commission determines that it is no longer necessary; and (4) Alticomm's certificate of public convenience and necessity should be restricted to the resale of local exchange telecommunications services.

¹ The Rules Governing the Offering of Competitive Local Exchange Telephone Service, 20 VAC 5-400-180, were recently repealed and replaced by 20 VAC 5-417 et seq., the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers by Commission Order issued April 9, 2003, in Case No. PUC-2002-00115 In the Matter of Regulations Governing Competitive Local Exchange Carriers, Localities as Competitive Local Exchange Carriers, and Local Inter-Carrier Matters. While this application was processed under 20 VAC 5-400-180, Alticomm should familiarize itself with the revised rules under which it will be regulated.

² New Local Rule, 20 VAC 5-417-20 G 1 b, requires a \$50,000 performance or surety bond for a showing of financial ability.

NOW THE COMMISSION, having considered the application and the Staff Report, finds that the Company should be granted a certificate to provide resold local exchange telecommunications services.

Accordingly, IT IS ORDERED THAT:

(1) Alticomm is hereby granted a certificate of public convenience and necessity, No. T-613, to provide only resold local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Offering of Competitive Local Exchange Telephone Service, § 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) Should Alticomm collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or Commission determines it is no longer necessary.

(4) Alticomm is hereby granted a waiver of §§ B 5 a and E 1 d of the Local Rules requiring audited financial statements.

(5) The Company shall provide to the Division of Economics and Finance a \$25,000 continuous bond within thirty (30) days of this Order.

(6) The Company shall provide thirty (30) days' prior notice to the Division of Economics and Finance of cancellation or lapse of its Bond and shall provide a replacement Bond. This condition shall remain in effect until such time as the Staff or the Commission determines that it is no longer necessary.

(7) There being nothing further to come before the Commission, this case shall be dismissed and the papers filed herein placed in the file for ended causes.

**CASE NO. PUC-2003-00013
FEBRUARY 14, 2003**

APPLICATION OF
YIPES TRANSMISSION VIRGINIA, INC.

To cancel existing certificates and reissue certificates reflecting new name

FINAL ORDER

By letter application filed February 5, 2003, Yipes Transmission Virginia, Inc. ("Yipes" or the "Company"), informed the State Corporation Commission ("Commission") that it had changed its corporate name to YTV, Inc.¹

In its notice, Yipes recited that it had completed its name change in conjunction with the Company's efforts to emerge from bankruptcy.² The Company represents that the name change was entirely transparent to consumers since it continues to provide service under the "Yipes" brand name. Although Yipes failed to request the cancellation of its certificate of public convenience and necessity ("CPCNs") issued in its name and the reissuance of a CPCN reflecting its new name, we take notice that this should be done.

NOW UPON CONSIDERATION of the foregoing, the Commission is of the opinion and finds that CPCN No. T-516, issued to Yipes Transmission Virginia, Inc., should be cancelled, and a CPCN should be reissued in the new corporate name, YTV, Inc.

Accordingly, IT IS ORDERED THAT:

(1) This case is docketed and assigned Case No. PUC-2003-00013.

(2) Certificate of public convenience and necessity No. T-516 for local exchange telecommunications services is cancelled and shall be reissued as amended Certificate No. T-516a in the name of YTV, Inc.

(3) YTV, Inc. shall file revised tariffs no later than sixty (60) days from the date of this Order with the Commission's Division of Communications that conform with all applicable Commission rules and regulations and which use YTV, Inc.'s name rather than that of Yipes Transmission Virginia, Inc.

(4) There being nothing further to be done in this matter, this cause 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 Yipes was granted certificate of public convenience and necessity No. T-516 to provide local exchange telecommunications services on November 10, 2000, in Case No. PUC-2000-00148.

² The name change was completed on August 21, 2002.

**CASE NO. PUC-2003-00015
FEBRUARY 14, 2003**

APPLICATION OF
VERIZON VIRGINIA INC.

To withdraw its request for exemption from physical collocation at its Madison, Remington, and The Crossings central offices

ORDER GRANTING REQUEST

On January 25, 2001, in Case No. PUC-2000-00250, the State Corporation Commission ("Commission") granted Verizon Virginia Inc. ("Verizon Virginia") an exemption from the requirement to provide physical collocation at its Madison, Remington, and The Crossings central offices.

On January 24, 2003, Verizon Virginia filed letters withdrawing its request for exemption from physical collocation for its Madison, Remington, and The Crossings central offices. Verizon Virginia stated in its request that the exemptions are no longer necessary due to the completion of building additions.

NOW THE COMMISSION, having considered the request, finds that it should be granted.

Accordingly, IT IS ORDERED THAT:

(1) Verizon Virginia's request for exemption from physical collocation for its Madison, Remington, and The Crossings central offices is hereby withdrawn.

(2) There being nothing further to be done herein, 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-2003-00016
FEBRUARY 28, 2003**

APPLICATION OF
VERIZON VIRGINIA INC.

To withdraw its request for exemption from physical collocation at its Lewinsville and Sterling Park central offices

ORDER GRANTING REQUEST

On November 17, 2000, in Case No. PUC-2000-00152, the State Corporation Commission ("Commission") granted Verizon Virginia Inc. ("Verizon Virginia") an exemption from the requirement to provide physical collocation from its Lewinsville and Sterling Park central offices.

On February 6, 2003, Verizon Virginia filed letters withdrawing its request for exemption from physical collocation for its Lewinsville and Sterling Park central offices. Verizon Virginia stated in its request that the exemptions are no longer necessary due to the availability of additional space.

NOW THE COMMISSION, having considered the request, finds that it should be granted.

Accordingly, IT IS ORDERED THAT:

(1) Verizon Virginia's request for exemption from physical collocation for its Lewinsville and Sterling Park central offices is hereby withdrawn.

(2) There being nothing further to be done herein, 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-2003-00017
JULY 9, 2003**

APPLICATION OF
FERONETWORKS, INC.

For a certificate of public convenience and necessity to provide local exchange telecommunications services

ORDER GRANTING MOTION TO WITHDRAW AND DISMISSING CASE

On June 18, 2003, FeroNetworks, Inc. ("FeroNetworks"), filed a request with the State Corporation Commission ("Commission") for withdrawal of its application for a certificate of public convenience and necessity ("certificate") to offer local exchange telecommunications services.

On February 12, 2003, FeroNetworks filed an application with the Commission for a certificate to provide basic local exchange telecommunications services throughout the Commonwealth of Virginia, on both a reseller and facility-based basis. On February 26, 2003, the Commission determined the application was incomplete. On April 18, 2003, after filing additional information with the Commission, FeroNetwork's application was

determined to be complete. On May 14, 2003, the Commission issued an Order for Notice and Comment finding that the application process should continue. Subsequently, the Commission received the request to withdraw the application of this certificate.

Accordingly, IT IS ORDERED THAT the application filed in Case No. PUC-2003-00017 shall be ended, and the above-captioned matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUC-2003-00020
JULY 28, 2003**

APPLICATION OF
EUREKA TELECOM, LLC

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On April 9, 2003, Eureka Telecom, LLC ("Eureka" or the "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.

By Order dated April 22, 2003, 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 June 3, 2003, the Company filed proof of publication and proof of service as required by the April 22, 2003, Order.

On June 26, 2003, the Staff filed its Report finding that Eureka's application was in compliance with the Rules Governing the Offering of Competitive Local Exchange Telephone Service ("Local Rules")¹ and the Rules Governing the Certification of Interexchange Carriers.² Based upon its review of Eureka'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 conditions: (1) should Eureka collect customer deposits, it should, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and should notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement should be maintained until such time as the Staff or Commission determines it is no longer necessary; (2) the Company should provide to the Division of Economics and Finance a \$50,000 continuous bond within 30 days of the Final Order in this case; and (3) the Company should notify the Division of Economics and Finance 30 days prior to the cancellation or lapse of its bond and should provide a replacement bond. This requirement should be maintained until such time as the Staff or the Commission determines it is no longer necessary.

The Staff Report recommends the requirement of a continuous performance or surety bond in the amount of \$50,000.³ The Staff believes this bond represents sufficient financial assurance for the potential customers of a competitive local exchange carrier; and since Eureka is unable to fulfill the financial requirement of the Local Rules under which it filed, the financial requirement of the Revised Local Rules is preferred. The Local Rules required audited financial statements as a showing of financial ability. Eureka was unable to fulfill that requirement. Therefore, the Company requested a temporary waiver of the requirement for audited financial statements, stating that it would provide audited financial statements no later than one year from the effective date of Eureka's initial Virginia tariffs.

The Commission notes that the Company did not file any rebuttal to the Staff's Report as provided for in the Order for Notice and Comment issued April 22, 2003.

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, the Commission further finds that the Company may price its interexchange telecommunications services competitively.

Accordingly, IT IS ORDERED THAT:

(1) Eureka Telecom, LLC, is hereby granted a certificate of public convenience and necessity, No. TT-196A, 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) Eureka Telecom, LLC, is hereby granted a certificate of public convenience and necessity, No. T-617, 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.

¹ The rules identified in 20 VAC 5-400-180, Rules Governing the Offering of Competitive Local Exchange Telephone Service, were repealed and replaced by 20 VAC 5-417-10 *et seq.*, Rules Governing the certification and Regulation of Competitive Local Exchange Carriers ("Revised Local Rules"), on April 9, 2003, in Case No. PUC-2002-00115.

² 20 VAC 5-411-10 *et seq.*

³ 20 VAC 5-417-20 G 1 b of the Revised Local Rules requires a continuous performance or surety bond in a minimum amount of \$50,000 in a form to be prescribed by the Staff.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- (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) Should Eureka Telecom, LLC, collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or Commission determines it is no longer necessary.
- (6) Eureka shall provide to the Division of Economics and Finance a \$50,000 continuous bond within 30 days of the Final Order, pursuant to 20 VAC 5-417-20 G 1 b of the Revised Local Rules.
- (7) Eureka shall notify the Division of Economics and Finance 30 days prior to the cancellation or lapse of the bond required in Ordering Paragraph (6) above and shall provide a replacement bond. This requirement shall be maintained until such time as the Staff or the Commission determines it is no longer necessary.
- (8) 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-2003-00020
AUGUST 18, 2003**

APPLICATION OF
EUREKA TELECOM, LLC

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

ORDER GRANTING RECONSIDERATION

On April 9, 2003, Eureka Telecom, LLC ("Eureka" or the "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.

On July 28, 2003, the Commission issued a Final Order granting Eureka certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services subject to certain requirements.

On August 14, 2003, Eureka filed a Petition for Reconsideration and/or Suspension of Final Order ("Petition"). Eureka requests that the Commission reconsider the portion of the Final Order that required Eureka to provide a continuous bond. The Company renews its request that the Commission allow it to provide audited financial statements within one (1) year of the effective date of its tariffs. In the alternative, Eureka requests that it be allowed to provide a performance or surety bond within one (1) year of the effective date of its tariffs. While the Commission considers Eureka's Petition, the Company requests that the Commission suspend its Final Order.

NOW THE COMMISSION, having considered the Petition, is of the opinion and finds as follows. We grant the Petition for the purpose of continuing our jurisdiction over this matter and considering such Petition. The July 28, 2003, Final Order is suspended pending further order of the Commission.

Accordingly, IT IS ORDERED THAT:

- (1) The Petition is hereby granted for the purpose of continuing our jurisdiction over this proceeding and considering such Petition.
- (2) The Final Order of July 28, 2003, is suspended pending further order of the Commission.
- (3) This matter is continued pending further order of the Commission.

**CASE NO. PUC-2003-00020
OCTOBER 17, 2003**

APPLICATION OF
EUREKA TELECOM, LLC

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

ORDER ON RECONSIDERATION

On April 9, 2003, Eureka Telecom, LLC ("Eureka" or the "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.

On July 28, 2003, the Commission issued a Final Order granting Eureka certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services subject to certain requirements.

On August 14, 2003, Eureka filed a Petition for Reconsideration and/or Suspension of Final Order ("Petition"). Eureka requests that the Commission reconsider the portion of the Final Order requiring Eureka to provide a continuous performance or surety bond in the amount of \$50,000. Eureka explains that it endeavored to obtain a performance or surety bond to comply with the Final Order, and it has found that obtaining such a bond is a burdensome and overly expensive matter. The Company also asserts that since the Commission's Rules in existence at the time Eureka filed its application did not require a performance or surety bond, it would be inappropriate to require Eureka to provide such bond in this proceeding.

As a result, the Company renews its request that the Commission allow it to provide audited financial statements within one (1) year of the effective date of its tariffs. In the alternative, Eureka requests that it be allowed to provide a performance or surety bond within one (1) year of the effective date of its tariffs. The Company also requested that the Commission suspend the Final Order while we consider the Petition.

On August 18, 2003, the Commission issued an Order Granting Reconsideration, wherein we: (1) granted the Petition for the purpose of continuing our jurisdiction over this matter and considering such Petition; and (2) suspended the July 28, 2003, Final Order pending further order of the Commission.

NOW THE COMMISSION, having considered the Petition, the pleadings, and the applicable law, denies the Petition. The requirement of a surety bond in our Final Order and in Rule 20 VAC 5-417-20 G 1 b,¹ among other things, is needed to demonstrate financial ability and to provide consumer protection. The Company has failed to establish that the surety bond required by the Final Order is not necessary to serve its intended purpose. Furthermore, the absence of a Commission Rule mandating a surety bond at the time Eureka filed its application does not preclude the Commission from concluding in this proceeding that such a bond is necessary prior to Eureka's commencement of service.

Accordingly, IT IS ORDERED THAT:

- (1) The Petition is hereby denied.
- (2) The Final Order of July 28, 2003, is hereby no longer suspended.
- (3) This matter is dismissed.

¹ As noted by Eureka, the Commission adopted this Rule subsequent to the Company's initiation of the instant case.

**CASE NO. PUC-2003-00026
NOVEMBER 6, 2003**

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 February 20, 2003, Level 3 Communications of Virginia, Inc. ("Level 3" 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. 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 March 5, 2003, the Commission issued an Order for Notice and Comment docketing this proceeding, directing the Applicant to provide notice to the public of its application, establishing a procedural schedule, and directing the Commission Staff ("Staff") to conduct an investigation into the reasonableness of the application. The Order for Notice and Comment permitted any person desiring to comment in writing and/or wishing to request a hearing on the application to do so by April 7, 2003.

On April 24, 2003, Brenda L. Stewart submitted late-filed comments on the application and requested that the Commission accept and consider her late-filed comments. Ms. Stewart asserted that Level 3 Communications, LLC ("Level 3 LLC"), the parent of the Applicant, had exhibited and continues to exhibit disregard for the laws of the Commonwealth of Virginia. Ms. Stewart stated that Level 3 LLC appropriated her land and the land of others with no prior notice, with no compensation, and without valid easement, license, or right of occupancy.

On April 29, 2003, Ms. Stewart filed petitions requesting a public hearing signed by over forty individuals, purportedly representing landowners of forty-one parcels of real estate allegedly affected by the actions of Level 3 LLC. Ms. Stewart stated that she was under the mistaken impression that there would automatically be a public hearing in this case, and she respectfully asked the Commission to accept the late-filed hearing requests.

On May 5, 2003, the Staff filed its report. The Staff stated that Level 3's application is acceptable and in compliance with the certification requirements of the Rules Governing the Offering of Competitive Local Exchange Telephone Service (20 VAC 5-400-180) and the Rules Governing the Certification of Interexchange Carriers (20 VAC 5-411-10 *et seq.*). The Staff concluded that it is appropriate to grant Level 3 a certificate to provide local exchange telecommunications services and a certificate to provide interexchange telecommunications services, subject to certain conditions.

On May 15, 2003, Level 3 filed a response to the Staff report and to the comments and requests for hearing. Level 3 stated that the Commission should issue the requested certificates, with certain conditions suggested by the Staff, without delay and without scheduling a hearing. Level 3 also explained that it and its parent company determined that rather than requesting a ruling from the Commission as to whether a limited liability company can possess the right of eminent domain, the more prudent and expeditious remedy would be to form a Virginia public service corporation and obtain certificates of public convenience and necessity as the Commission's General Counsel previously suggested in his letters.

On May 19, 2003, the Division of Consumer Counsel, Office of the Attorney General ("Consumer Counsel"), filed a letter requesting that the Commission grant due consideration to Ms. Stewart's request for hearing. On May 20, 2003, Ms. Stewart filed a response to the Staff report and to Level 3's response.

On May 22, 2003, the Commission issued an Order Scheduling Hearing, which accepted the comments filed by Ms. Stewart on April 24, 2003, and the petitions requesting a public hearing filed on April 29, 2003. The Commission did not consider the pleadings from Consumer Counsel and Ms. Stewart, filed on May 19 and 20, 2003, respectively, which were submitted subsequent to Level 3's response in this matter. The Order Scheduling Hearing explained that pursuant to § 56-265.4:4 B 1 of the Code, before granting the requested certificates the Commission must find, among other things, that such action is in the public interest. The Commission noted that Level 3 LLC is the parent of Level 3, the company requesting certificates in this case, and that the alleged conduct of Level 3 LLC as discussed in the Staff report and in the comments and requests for hearing raise questions as to whether it is in the public interest to grant certificates to its affiliate, Level 3. The Commission scheduled a public evidentiary hearing for July 15, 2003.

Level 3 filed its direct testimony on June 10, 2003. On June 24, 2003, the Woodpecker Road Area Property Rights Association ("Association") filed a notice of participation and its direct testimony. On July 1, 2003, the Staff filed notice that it was adopting the Staff report as its prefiled testimony. Level 3 filed rebuttal testimony on July 8, 2003.

The Commission held public evidentiary hearings on July 15 and 16, 2003. Counsel appearing at the hearings were Eric M. Page, Michael R. Romano, Karen S. Davis, and T. Borden Ellis for Level 3; Michael J. Quinan and Ashley C. Beuttel for the Association; and Don R. Mueller for the Staff. Seventeen public witnesses appeared and gave testimony. William P. Hunt, III, and C. Loyall Meade presented testimony on behalf of Level 3. Brenda L. Stewart, Billy William Harris, and Kenneth Gerald Porter presented testimony on behalf of the Association. Level 3, the Association, and the Staff filed post-hearing briefs on September 5, 2003.

On September 16, 2003, the Association filed a Motion to Strike Evidence and Argument Presented in Level 3's Post-Hearing Brief ("Motion to Strike"). The Association asserts that Level 3's Post-Hearing Brief contains arguments based on evidence that is not in the record and that Level 3 includes approximately seventy (70) pages of new evidence as part of its Post-Hearing Brief. The Association asserts that its right to cross-examine witnesses on evidence put in issue and relevant to the proceeding is an absolute right, not a privilege.

On October 6, 2003, Level 3 filed a Reply to the Motion to Strike. Level 3 states that the additional evidence in its Post-Hearing Brief "is information that the Commissioners specifically requested be included in the parties' submissions," and that "[t]he Association's counsel was present during each and every request made by the Commissioners for further information, and counsel was obviously aware, especially after the point was raised by Level 3's counsel, that additional evidence would be supplied in the brief."¹ Level 3 also asserts that the additional evidence presents rebuttal to erroneous factual allegations made by public witnesses, for which there was insufficient time to research and challenge at the hearing, and that it ensures the Commission will be able to rely on an accurate and reliable record. In addition, Level 3 contends that its introduction of additional evidence does not prejudice the Association and does not deny the Association due process.

On October 20, 2003, the Association filed a Reply. The Association requests the Commission to strike Level 3's additional evidence and its brief to the extent it relies on matters outside the record rather than to re-open the record for additional evidence.

NOW UPON CONSIDERATION of the record, the pleadings, and the applicable law, the Commission denies, without prejudice, Level 3's application for certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services throughout the Commonwealth of Virginia and Level 3's request for authority to price its interexchange telecommunications services on a competitive basis pursuant to § 56-481.1 of the Code.

We find that it is not in the public interest to issue the requested certificates to Level 3. The Applicant acknowledged that the Commission may fairly judge the potential management of Level 3 by looking at the practices of Level 3 LLC.² The management practices of Level 3 LLC involving the installation of its facilities in Virginia, and its efforts to identify and remedy its potential wrongdoings related thereto, are not in the public interest. Based on

¹ Level 3 Reply at 7.

² Tr. at 280-81. Level 3 also explained that "[m]any of the members of the management of Virginia are Vice Presidents or hold substantial positions in LLC." Tr. at 280.

the record in this case, Level 3 has not established that it possesses sufficient managerial resources, policies, and abilities such that granting the requested certificates would be in the public interest.

Level 3 asserts that the "evidence in this proceeding shows unequivocally that Level 3 LLC's management acted appropriately before, during and after the installation of its fiber optic cable facilities in Virginia."³ We do not reach the same conclusion. For example, after becoming aware of problems involving the installation of its facilities, Level 3 LLC failed to take reasonable steps to identify the landowners that may have been aggrieved by Level 3 LLC or its contractors and failed to establish reasonable means to address the wrongdoings of which it was aware.⁴

Level 3 contends, however, that the Commission cannot consider management's actions surrounding the construction of fiber optic cable facilities as a reason to deny certificates to render telecommunications services. Level 3 asserts that the Commission may only look at its management for the purpose of determining whether it has the "ability to provide local exchange and interexchange telecommunications services," and that its actions involving construction of facilities do not relate to its ability to provide telecommunications services.⁵ We disagree. The construction of facilities to be used for telecommunications services is part of an applicant's rendering of such service. Furthermore, Level 3 incorrectly concludes that the Commission's rules requiring an applicant to show its ability "to render" telecommunications services somehow prohibit the Commission from finding, based on the management practices of an applicant, that it is not in the public interest to grant the requested certificates.⁶

Level 3 also states that denying the requested certificates violates the Telecommunications Act of 1996 ("Act"), 47 U.S.C. § 253(a), which provides that no state "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." We again disagree. Denial of the requested certificates for failure to satisfy reasonable and identifiable state criteria is not a violation of the Act. Moreover, Level 3 LLC currently can offer the same services that Level 3 would be able to offer, and Level 3 will not be able to offer services more affordably than Level 3 LLC.⁷

The Applicant further contends that it "would be untenable to deny Level 3's request while at the same time allowing other bankrupt or troubled companies to continue to maintain their certificates."⁸ In this regard, we note that the statutory standard for revoking a certificate is not the same as for initially obtaining a certificate. For example, the Commission could not revoke the certificate of Level 3 LLC without providing Level 3 LLC an opportunity, within a "reasonable time to be fixed by the Commission," to comply with the lawful order, rule, or regulation of the Commission found to have been violated by Level 3 LLC.⁹

We emphasize that our denial of the application is without prejudice for Level 3 to reapply at some point in the future. At the hearing and on brief, Level 3 discussed actions and policies that it plans to implement, which begin to address the management problems identified in this proceeding. These new actions and policies involve, for example, Level 3's future construction activities and Level 3 LLC's dealings with known and unknown landowners that may have been aggrieved as a result of actions by Level 3 LLC and/or its contractors.¹⁰

Any subsequent application by Level 3 should demonstrate, among other things, that Level 3 LLC's new policies and practices (which are not necessarily limited to those identified in this case) have been implemented successfully and that its management possesses the resources and ability to act responsibly and in the public interest in matters involving the construction of facilities and involving citizens and businesses that have, or may have, a claim against Level 3 LLC or the Applicant now or in the future. Moreover, Level 3's ultimate responsibilities as a certificate holder cannot be delegated to its contractors; Level 3 must establish that it is capable of fulfilling its obligations through adequate monitoring and scrutiny of such contractors.

Finally, having denied Level 3's application in this proceeding, we find it unnecessary to rule on the Association's Motion to Strike.

³ Level 3 Post-Hearing Brief at 53-54.

⁴ In addition, Level 3 LLC failed to obtain proper permission to enter onto private land for the construction of its facilities. Level 3 LLC wrongfully installed cable on numerous parcels of private property. Level 3 LLC failed to reasonably advise property owners of its activities before, during, and after installation. Level 3 LLC performed little or no investigation to determine the scope of the problem after discovering that it may have violated the rights of private property owners. Level 3 LLC did not employ right-of-way agents in Virginia, though it believes it probably employed such agents in many other states. Level 3 LLC was unaware of the preparation and steps taken by its contractor regarding the installation complained of by the landowners in this proceeding. Level 3 LLC did not know if it had a system in place to make sure that its contractor was responsibly doing the job it was supposed to do regarding the installation complained of by the landowners in this proceeding. Moreover, Level 3 LLC admitted that it had not yet put into place a higher degree of monitoring of its contractors and that it did not know what that higher degree of monitoring would be. Level 3 LLC also informed a property owner that Level 3 LLC had the right of condemnation after it was advised in writing of the Commission's Office of General Counsel's position that Level 3 LLC did not possess such authority and that Level 3 LLC should immediately desist from informing landowners that it may wield such authority.

⁵ Level 3 Post-Hearing Brief at 8-10 (emphasis added).

⁶ See 20 VAC 5-417-20 G and 20 VAC 5-411-30 D.

⁷ Tr. at 275.

⁸ Level 3 Post-Hearing Brief at 9.

⁹ Va. Code § 56-265.6.

¹⁰ For example, in its Post-Hearing Brief Level 3 LLC asserts that it has: (1) established a toll-free telephone number for potential claimants to use for claims or questions; (2) directed its surveyor to map its running line along certain older, rural roads in an effort to identify other potential claimants; (3) formulated a new policy for construction work that will be performed for Level 3 after certification, including formal standards of construction to be followed by its contractors; and (4) established a new procedure, which includes non-binding mediation, in an attempt to settle existing and future claims made by landowners.

Accordingly, IT IS ORDERED THAT:

(1) Level 3's application for certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services throughout the Commonwealth of Virginia and its request for authority to price its interexchange telecommunications services on a competitive basis pursuant to § 56-481.1 of the Code of Virginia are hereby denied without prejudice as discussed herein.

(2) This matter is dismissed.

**CASE NO. PUC-2003-00026
NOVEMBER 25, 2003**

APPLICATION OF
LEVEL 3 COMMUNICATIONS OF VIRGINIA, INC.

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

ORDER DENYING RECONSIDERATION

On February 20, 2003, Level 3 Communications of Virginia, Inc. ("Level 3" 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. 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 November 6, 2003, the Commission issued a Final Order denying, without prejudice, Level 3's application for certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services throughout the Commonwealth of Virginia and its request for authority to price its interexchange telecommunications services on a competitive basis.

On November 21, 2003, Level 3 filed a Petition for Reconsideration and Motion to Suspend Final Order ("Petition"). Level 3 requests that the Commission reconsider its Final Order, reopen the proceeding, and allow Level 3 to supplement the existing record in order to meet the standards for certification articulated by the Commission in the Final Order. Level 3 also requests that the Commission indefinitely stay the effectiveness of the Final Order and, in doing so, explicitly extend the time for the taking of an appeal to the Supreme Court of Virginia. If the Commission denies the Petition, in whole or in part, Level 3 requests that the Commission stay the effectiveness of its Final Order while Level 3 prosecutes its appeal before the Supreme Court of Virginia.

NOW UPON CONSIDERATION of the Petition, the pleadings, the record, and the applicable law, the Commission is of the opinion and finds as follows. We deny the Petition. We issued a Final Order in this case within the time period required under § 56-265.4:4 B 2 of the Code. Our Final Order emphasized that Level 3 may reapply for the requested certificates at some point in the future. We do not find sufficient justification to reconsider or to stay the Final Order.

Accordingly, IT IS ORDERED THAT:

(1) Level 3's Petition for Reconsideration and Motion to Suspend Final Order is hereby denied.

(2) This matter is dismissed.

**CASE NO. PUC-2003-00027
MARCH 3, 2003**

APPLICATION OF
NTELOS TELEPHONE INC.,
ROANOKE & BOTETOURT TELEPHONE COMPANY,
NTELOS TELEPHONE LLC,
and
R&B TELEPHONE LLC

For approval of certain transactions pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On February 24, 2003, NTELOS Telephone Inc. ("NTELOS Telephone"), Roanoke & Botetourt Telephone Company ("R&B Telephone"), NTELOS Telephone LLC, and R&B Telephone LLC (collectively, "Applicants") filed an application with the State Corporation Commission ("Commission") under Chapter 4 of Title 56 of the Code of Virginia requesting approval for the transfer of NTELOS Telephone's and R&B Telephone's membership interests in Virginia Telephone Alliance, L.C. ("VITAL"), to NTELOS Telephone LLC and R&B Telephone LLC, respectively.

NTELOS Inc. ("NTELOS") is a Virginia corporation headquartered in Waynesboro, Virginia. NTELOS is an integrated communications provider that offers products and services to customers in Virginia, West Virginia, Tennessee, Kentucky, and North Carolina, including wireless digital PCS, dial-up Internet access, high-speed DSL, and local and long distance telecommunications services. NTELOS is the parent company of several subsidiary companies, including two Virginia incumbent local exchange carriers ("ILEC"), R&B Telephone and NTELOS Telephone.

NTELOS Telephone is a certificated ILEC that provides telecommunications services primarily in Allegheny County, the Cities of Covington and Waynesboro, and the Town of Clifton Forge. R&B Telephone is certificated as an ILEC that provides telecommunications services in Botetourt County.

NTELOS Telephone LLC is a single-member Virginia limited liability company ("LLC") wholly owned by NTELOS Telephone. R&B Telephone LLC is a single-member Virginia LLC wholly owned by R&B Telephone.

On June 23, 1993, NTELOS Telephone and R&B Telephone and several other Virginia public service companies (collectively referred to as "Members")¹ filed Articles of Organization with the Commission to form VITAL. VITAL'S purpose was to deploy two signal transfer point nodes in a nationwide SS7 network. The Members have used these nodes to deliver intelligent network services to their customers and to provide other related services. These nodes are located in Troutville and Waynesboro, Virginia.

The Members entered into an Operating Agreement ("Agreement") on June 30, 1993, providing for the terms and conditions under which VITAL would be operated. NTELOS Telephone currently owns 44.7% membership interest, and R&B Telephone holds a 9% membership interest in VITAL.

NTELOS Telephone and R&B Telephone have each formed a single-member, wholly owned LLC for the purpose of holding its VITAL membership interests. NTELOS Telephone and R&B Telephone, therefore, request approval to transfer their respective membership interests in VITAL to NTELOS Telephone LLC and R&B Telephone LLC, respectively. NTELOS Telephone and R&B Telephone represent that these transfers will be in the public interest and will not be disruptive to the current operations of VITAL, NTELOS Telephone, or R&B Telephone.

NOW THE COMMISSION, upon consideration of the application and representations of Applicants and having been advised by its Staff, is of the opinion and finds that the above-described transfers of membership interests in VITAL are in the public interest and should, therefore, be approved. We note that the Agreement referenced herein did not initially require Commission approval under Chapter 4 of Title 56 of the Code of Virginia because no affiliated interests were parties to the agreement. Such was not the case after NTELOS² acquired R&B Telephone. At that time, R & B Telephone and NTELOS Telephone should have filed and obtained approval to participate in the agreement. A new Operating Agreement should be filed for approval incorporating R&B Telephone LLC and NTELOS Telephone LLC as parties to the agreement and reflecting NTELOS Telephone's and R & B Telephone's interests in such entities.

In addition, the Commission is advised by its Staff that there is a Maintenance Agreement among the Members. Such agreement also requires Commission approval pursuant to the Affiliates Act.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code of Virginia, NTELOS Telephone and R&B Telephone are hereby granted approval to transfer their respective interests to NTELOS Telephone LLC and R&B Telephone LLC as described herein.

(2) Within 30 days from the date of this order, Applicants shall file an application for approval of a new Operating Agreement and Maintenance Agreement for the operation of VITAL reflecting NTELOS Telephone LLC and R&B Telephone LLC as parties to the Operating Agreement and the Maintenance Agreement and reflecting the interests of NTELOS Telephone and R&B Telephone in such entities.

(3) The approval granted herein shall have no ratemaking implications.

(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) 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 otherwise regulates such affiliate.

(6) The transactions approved herein shall be included in Applicants' Annual Report of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting by April 1 of each year, subject to extension by the Director of Public Utility Accounting.

(7) There appearing nothing further to be done in this matter, it hereby is dismissed.

¹ The other current members are Buggs Island Telephone Cooperative, Citizens Telephone Cooperative, Highland Telephone Cooperative, Mountain Grove-Williamsville Telephone Company, New Hope Telephone Company, North River Telephone Cooperative, Pembroke Telephone Cooperative, Scott County Telephone Cooperative, and Shenandoah Telephone Company.

² At the time of the acquisition NTELOS was known as CFW Communications Company.

**CASE NO. PUC-2003-00028
JUNE 26, 2003**

APPLICATION OF
KDL OF VIRGINIA, INC.

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On April 14, 2003, KDL of Virginia, Inc. ("KDL" or the "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.¹ 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 dated April 22, 2003, 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 May 19, 2003, the Company filed proof of publication and proof of service as required by the April 22, 2003, Order.

On May 30, 2003, the Staff filed its Report finding that KDL's application was in compliance with the Rules Governing the Offering of Competitive Local Exchange Telephone Service² and the Rules Governing the Certification of Interexchange Carriers.³ Based upon its review of KDL'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 conditions: (1) should KDL collect customer deposits, it should, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and should notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement should be maintained until such time as the Staff or Commission determines it is no longer necessary; and (2) at such time as voice services are initiated by KDL, it should comply with all requirements of § C (Conditions for certification) of the Local Rules.⁴

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, the Commission further finds that the Company may price its interexchange telecommunications services competitively.

Accordingly, IT IS ORDERED THAT:

(1) KDL of Virginia, Inc., is hereby granted a certificate of public convenience and necessity, No. TT-194A, 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) KDL of Virginia, Inc., is hereby granted a certificate of public convenience and necessity, No. T-615, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Offering of Competitive Local Exchange Telephone Service, § 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) Should KDL collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or Commission determines it is no longer necessary.

(6) At such time as voice services are initiated by KDL, it shall comply with all requirements of § C (Conditions for certification) of the Local Rules.

(7) There being nothing further to come before the Commission, this case shall be dismissed and the papers filed herein placed in the file for ended causes.

¹ The application was originally filed as Kentucky Data Link, Inc.

² The Rules Governing the Offering of Competitive Local Exchange Telephone Service, 20 VAC 5-400-180, were recently repealed and replaced by 20 VAC 5-417 *et seq.*, the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers by Commission Order issued April 9, 2003, in Case No. PUC-2002-00115, In the Matter of Regulations Governing Competitive Local Exchange Carriers, Localities as Competitive Local Exchange Carriers, and Local Inter-Carrier Matters. While this application was processed under 20 VAC 5-400-180, KDL should familiarize itself with the revised rules under which it will be regulated.

³ The Rules Governing the Certification of Interexchange Carriers were recodified from 20 VAC 5-400-60 to 20 VAC 5-411-10 *et seq.* by Commission Order issued October 17, 2001, in Case No. PUC-2001-00122, In the Matter of Updating Certain Regulations Relating to Telecommunications.

⁴ This section is codified at 20 VAC 5-417-30 in the revised Local Rules.

**CASE NO. PUC-2003-00030
MARCH 7, 2003**

APPLICATION OF
XO LONG DISTANCE SERVICES (VIRGINIA), LLC

For cancellation of certificate of public convenience and necessity

ORDER

By Order dated November 27, 2001, in Case No. PUC-2001-00171, the State Corporation Commission ("Commission") granted XO Long Distance Services (Virginia), LLC ("XO Long Distance" or the "Company"), Certificate No. TT-164A to provide interexchange telecommunications services in Virginia.

By letter application dated February 25, 2003, XO Long Distance requested that the Commission cancel its certificate.

NOW THE COMMISSION, having considered the matter, is of the opinion that XO Long Distance's certificate should be cancelled.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed and assigned Case No. PUC-2003-00030.
- (2) Certificate No. TT-164A is hereby cancelled.
- (3) Any existing tariffs of the Company currently on file with the Commission's Division of Communications are hereby cancelled.
- (4) This matter is hereby dismissed.

**CASE NO. PUC-2003-00033
MARCH 4, 2003**

APPLICATION OF
VERIZON VIRGINIA INC.

To withdraw its request for exemption from physical collocation at its Bethia central office

ORDER GRANTING REQUEST

On February 20, 2001, in Case No. PUC-2000-00307, the State Corporation Commission ("Commission") granted Verizon Virginia Inc. ("Verizon Virginia") an exemption from the requirement to provide physical collocation at its Bethia central office.

On February 20, 2003, Verizon Virginia filed its Withdrawal of Exemption Request for its Bethia Central Office ("Withdrawal"), which requests that the exemption from physical collocation for its Bethia central office previously granted in Case No. PUC-2000-00307 be withdrawn. Verizon Virginia stated in its Withdrawal that the exemption is no longer necessary due to the completion of a building addition.

NOW THE COMMISSION, having considered the Withdrawal, finds that it should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) Verizon Virginia's request for exemption from physical collocation for its Bethia central office is hereby withdrawn.
- (2) There being nothing further to be done herein, 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-2003-00035
MARCH 25, 2003**

APPLICATION OF
PPL PRISM, LLC

For a certificate of public convenience and necessity to provide interexchange telecommunications services and for interim operating authority

**ORDER FOR NOTICE AND COMMENT AND
GRANTING INTERIM OPERATING AUTHORITY**

On March 19, 2003, PPL Prism, LLC ("PPL Prism" or "Applicant"), completed an application with the State Corporation Commission ("Commission") for a certificate of public convenience and necessity ("certificate") to provide interexchange telecommunications services throughout the Commonwealth of Virginia. The Applicant requests authority to price its interexchange telecommunications services on a competitive basis pursuant to

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

§ 56-481.1 of the Code of Virginia. The Applicant further requests interim operating authority to provide interexchange telecommunications services to customers of Cambrian Communications of Virginia LLC ("Cambrian")¹ pursuant to Cambrian's tariffs on file with the Commission's Division of Communications so that service remains uninterrupted to Cambrian's existing customers² pending the Commission's final determination in this proceeding.

NOW UPON CONSIDERATION of the application, the Commission is of the opinion and finds that PPL Prism's application should be docketed; that the Applicant should give notice to the public of its application; that interested parties should have an opportunity to comment and request a hearing on PPL Prism's application; that the Commission Staff should conduct an investigation into the reasonableness of the application and present its findings in a Staff Report; and that PPL Prism should be granted interim operating authority.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUC-2003-00035.
- (2) PPL Prism is hereby granted interim operating authority to provide interexchange telecommunications services to existing Cambrian customers pursuant to Cambrian's tariffs on file with the Commission's Division of Communications until such time as the Commission renders a final order in this proceeding.
- (3) On or before April 14, 2003, the Applicant shall complete publication of the following notice to be published on one (1) occasion as classified advertising in newspapers having general circulation throughout the Applicant's proposed service territory:

NOTICE TO THE PUBLIC OF AN APPLICATION BY PPL PRISM, LLC, FOR A CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE INTEREXCHANGE
TELECOMMUNICATIONS SERVICES THROUGHOUT THE COMMONWEALTH OF VIRGINIA
CASE NO. PUC-2003-00035

On March 19, 2003, PPL Prism, LLC ("PPL Prism" or "Company"), filed an application with the State Corporation Commission ("Commission") for a certificate of public convenience and necessity ("certificate") to provide interexchange telecommunications services throughout the Commonwealth of Virginia. The Company requested authority to price its interexchange telecommunications services on a competitive basis pursuant to § 56-481.1 of the Code of Virginia.

PPL Prism also requested, and was granted, interim operating authority to provide interexchange telecommunications services to existing customers of Cambrian Communications of Virginia LLC ("Cambrian") pursuant to Cambrian's existing tariffs. PPL Prism is purchasing substantially all of Cambrian's telecommunications assets; and, pending the Commission's final determination of the Company's application, interim operating authority will allow service to remain uninterrupted.

Copies of the application are available for public inspection between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, in the Commission's Document Control Center located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, or can be ordered from PPL Prism's counsel, Richard D. Gary, Esquire, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074.

Any person desiring to comment on PPL Prism's application for a certificate to provide interexchange telecommunications services may do so by directing such comments in writing on or before April 30, 2003, to the Clerk of the Commission at the address set forth below and shall serve a copy of the same on or before April 30, 2003, upon PPL Prism's counsel at the address set forth above.

Any person may request a hearing on PPL Prism's application by filing an original and fifteen (15) copies of its request for hearing on or before April 30, 2003, with the Clerk of the Commission at the address set forth below. Requests for hearing must state with specificity why a hearing should be conducted. Persons filing a request for hearing shall serve a copy of their request on or before April 30, 2003, upon PPL Prism's counsel at the address set forth above.

All written communications to the Commission concerning PPL Prism's application should be directed to Joel H. Peck, Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and must refer to Case No. PUC-2003-00035.

PPL PRISM, LLC

- (4) On or before April 14, 2003, Applicant shall provide a copy of the notice contained in Ordering Paragraph (3) to each local exchange telephone carrier certificated in Virginia and each interexchange carrier certificated in Virginia by personal delivery or first-class mail, postage prepaid, to the customary place of business. Lists of all current local exchange and interexchange carriers in Virginia are attached to this Order as Appendices A and B, respectively.

¹ Cambrian holds certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services, T-555 and TT-150A, respectively, which were granted in Case No. PUC-2001-00017.

² PPL Prism is purchasing substantially all of Cambrian's telecommunications assets in several East Coast states, including the Commonwealth of Virginia and the District of Columbia. PPL Prism and Cambrian have agreed to complete this transaction on March 31, 2003.

(5) Any person desiring to comment in writing on PPL Prism's application for a certificate to provide interexchange telecommunications services may do so by directing such comments on or before April 30, 2003, to Joel H. Peck, Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. On or before April 30, 2003, a copy of such comments shall be served on PPL Prism's counsel, Richard D. Gary, Esquire, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074. Comments must refer to Case No. PUC-2003-00035.

(6) On or before April 30, 2003, any person wishing to request a hearing on PPL Prism's application for a certificate to provide interexchange telecommunications services shall file an original and fifteen (15) copies of its request for hearing in writing with the Clerk of the Commission at the address set forth above. Written requests for hearing shall refer to Case No. PUC-2003-00035 and shall state the following: (i) a precise statement of the interest of the filing party; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in the matter. Copies shall also be served on the Applicant at the address set forth above.

(7) On or before May 9, 2003, the Applicant shall file with the Commission proof of notice and proof of service as ordered herein.

(8) The Commission Staff shall analyze the reasonableness of PPL Prism's application and present its findings in a Staff Report to be filed on or before May 16, 2003.

(9) On or before May 23, 2003, the Applicant shall file with the Clerk of the Commission an original and fifteen (15) copies of any responses to the Staff Report or parties' objections and requests for hearing. A copy of the response shall be delivered to Staff and the other parties by overnight delivery.

(10) The Applicant shall respond to written interrogatories or data requests within seven (7) days after the receipt of the same. Parties shall provide to the Applicant, other additional parties, and Staff any workpapers or documents used in preparation of their requests for hearing promptly upon request. Except as so modified, discovery shall be in accordance with Part IV of the Commission's Rules of Practice and Procedure.

(11) The Applicant shall respond promptly to requests from interested parties for copies of the Application and shall provide one copy of same free of charge to the requesting party.

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

**CASE NO. PUC-2003-00035
JUNE 20, 2003**

APPLICATION OF
PPL PRISM, LLC

For a certificate of public convenience and necessity to provide interexchange telecommunications services

FINAL ORDER

On March 19, 2003, PPL Prism, LLC ("PPL Prism" or the "Company"), completed an application with the State Corporation Commission ("Commission") for a certificate of public convenience and necessity to provide interexchange telecommunications services throughout the Commonwealth of Virginia. The Company also requested interim operating authority to allow PPL Prism to provide interexchange telecommunications services to the existing customers of Cambrian Communications of Virginia LLC and authority to price its interexchange telecommunications services on a competitive basis pursuant to § 56-481.1 of the Code of Virginia.

By Order dated March 25, 2003, the Commission granted PPL Prism the requested interim operating authority, 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 May 16, 2003, counsel for the Company filed a Motion for Leave to File Proof of Publication and Proof of Notice to Carriers with the required proofs attached thereto.¹

On May 22, 2003, the Staff filed its Report finding that PPL Prism's application was in compliance with the Rules Governing the Certification of Interexchange Carriers.² Based upon its review of the Company's application, the Staff determined it would be appropriate to grant the Company a certificate to provide interexchange telecommunications services.

NOW THE COMMISSION, having considered the application and the Staff Report, finds that the Company should be granted a certificate to provide interexchange telecommunications services. Having considered § 56-481.1, the Commission further finds that the Company may price its interexchange telecommunications services competitively. Moreover, the Commission is of the opinion that the Company's Motion for Leave to File Proof of Publication and Proof of Notice to Carriers should be granted. We will also accept the proofs attached thereto.

¹ Pursuant to the Commission's Order dated March 25, 2003, proof of publication and proof of service were required to be filed on or before May 9, 2003.

² The Commission's Order dated May 16, 2003, granted Staff's motion requesting extensions of time to file its Report and any responses thereto. Specifically, the date for the filing of Staff's Report was extended from May 16, 2003, to May 30, 2003, and the date for filing any responses thereto was extended from May 23, 2003, to June 6, 2003.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Accordingly, IT IS ORDERED THAT:

- (1) The Company's Motion for Leave to File Proof of Publication and Proof of Notice to Carriers is hereby granted and the attached proofs are hereby accepted.
- (2) PPL Prism, LLC, is hereby granted a certificate of public convenience and necessity, No. TT-193A, 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.
- (3) The Company shall provide tariffs in its own name to the Division of Communications within sixty (60) days from the date of this Order. Such tariffs shall conform with all applicable Commission rules and regulations.
- (4) The Company shall continue to provide interexchange telecommunications services to the existing customers of Cambrian Communications of Virginia LLC pursuant to the Commission's Order for Notice and Comment and Granting Interim Operating Authority issued March 25, 2003, using the tariffs of that entity until such time as the Company has accepted tariffs in its own name on file with the Commission.
- (5) Pursuant to § 56-481.1 of the Code of Virginia, the Company may price its interexchange telecommunications services competitively.
- (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-2003-00036
MARCH 12, 2003**

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

Ex Parte: In re: Investigation of revision to Verizon Virginia Inc.'s Network Service Interconnection Tariff S.C.C. Va.-No. 218

**ORDER ACCEPTING REVISION FILED FEBRUARY 11, 2003,
ON INTERIM BASIS AND REQUESTING COMMENTS**

On June 28, 2002, the State Corporation Commission ("Commission") issued an Order Approving Settlement Agreement Filed February 1, 2002, which approved the Network Services Interconnection Tariff ("collocation tariff") of Verizon Virginia Inc. ("Verizon Virginia"), now on file with the Commission's Division of Communications.

On February 11, 2003, Verizon Virginia filed with the Commission's Division of Communications revisions to its collocation tariff, which incorporates similar provisions (*i.e.*, termination of collocation arrangements, implementation of collocation charges, and casualty) to those in the tariff revision filed by Verizon South Inc. ("Verizon South") on February 11, 2003, in Case No. PUC-2000-00027.¹ Verizon South's tariff revision has been accepted on an interim basis, and comments are presently requested.²

Pursuant to 5 VAC 5-20-90 A, the Commission, on its own motion, initiates the above-docketed investigative proceeding to examine revisions to Verizon Virginia's collocation tariff filed with the Division of Communications on February 11, 2003 (hereinafter "February 11, 2003, collocation tariff revision"). The February 11, 2003, collocation tariff revision is to become effective March 13, 2003, and is attached hereto as Exhibit "A."

The Commission finds that Verizon Virginia's February 11, 2003, collocation tariff revision should be approved on an interim basis pending further investigation and comments by all interested parties.

Accordingly, IT IS ORDERED THAT:

- (1) Verizon Virginia's February 11, 2003, collocation tariff revision, attached hereto as Exhibit "A," is hereby docketed for further investigation, pursuant to 5 VAC 5-20-90 A, and approved on an interim basis, effective March 13, 2003, subject to refunds of collocation charges and/or modifications in terms and conditions as may be further ordered upon investigation.
- (2) Verizon Virginia shall promptly furnish a copy of its February 11, 2003, collocation tariff revision to any person requesting a copy. Requests may be directed to Lydia R. Pulley, Vice President, General Counsel, and Secretary, Verizon Virginia Inc., 600 East Main Street, Suite 1100, Richmond, Virginia 23219-2441.
- (3) Any interested party is granted leave to file comments on Verizon Virginia's February 11, 2003, collocation tariff revision on or before April 7, 2003.
- (4) This matter is continued generally.

¹ The Commission issued in Case No. PUC-2000-00027 its Order Accepting Revision Filed February 11, 2003, To Collocation Service Tariff on Interim Basis and Requesting Comments on March 7, 2003.

² *Id.*

CASE NO. PUC-2003-00038
APRIL 10, 2003

APPLICATION OF
NTELOS INC., NTELOS TELEPHONE COMPANY,
and
ROANOKE & BOTETOURT TELEPHONE COMPANY

For authority to guarantee obligations and execute security agreements

ORDER GRANTING AUTHORITY

On March 12, 2003, NTELOS Inc. ("NTELOS"), NTELOS Telephone Inc. ("NTELOS Telephone"), and Roanoke & Botetourt Telephone Company ("R&B") (collectively "Applicants") filed an application with the State Corporation Commission ("Commission") under Chapters 3 and 4 of Title 56 of the Code of Virginia ("Code") requesting authority for NTELOS Telephone and R&B (collectively "the Companies") to guarantee \$35 million of Debtor-In-Possession obligations ("DIP Financing") of NTELOS.¹ The Companies have paid the requisite fee of \$250.00.

By Commission Orders dated July 26, 2000, in Case No. PUF-2000-00022, and May 11, 2001, in Case No. PUF-2001-00009, CFW Telephone, Inc. (the predecessor of NTELOS Telephone), and R&B were authorized to guarantee a \$325 million loan package of NTELOS. The loan package was comprised of \$225 million in term loans and a \$100 million revolver facility (the "Revolver"). As of March 4, 2003, \$224.5 million in term loans were outstanding; and \$36 million had been drawn under the Revolver. According to the application, currently no more monies can be drawn under the \$325 million loan package, effectively capping the amount of loans the Companies currently guarantee at \$260.5 million.

On March 4, 2003, the Applicants filed petitions under Chapter 11 of the Bankruptcy Code. NTELOS as arranged \$35 million in DIP Financing. According to the application, the DIP Financing represents the only available financing to NTELOS and its subsidiaries, including the Companies, during bankruptcy. Until the Companies provide financial guarantees on the \$35 million in DIP Financing, only \$10 million is available. Applicants represent that access to only \$10 million in DIP Financing could compromise service to the public as it could jeopardize NTELOS' opportunity to reorganize under Chapter 11; and, in such an event, Chapter 7 liquidation would be a distinct possibility.

NTELOS has submitted a plan for reorganization and is currently working on the details of the plan with its current and future bondholders and bankers, subject to bankruptcy court approval. The Applicants represent that many of the terms, conditions, and covenants will be finalized in the coming weeks and months. As part of that plan, NTELOS will issue \$75 million in unsecured Convertible Notes. The Applicants expect that a portion of those proceeds will be used to repay the DIP Financing and the \$36 million outstanding under the Revolver.

NOW THE COMMISSION, upon consideration of the application, representations of the Applicants, and having been advised by its Staff, is of the opinion and finds that approval of this application subject to the conditions set forth below will not be detrimental to the public interest. We are concerned about the financial condition of NTELOS, and we remain especially concerned about the long-term interests of the Companies' customers due to the continued dependence of the NTELOS wireless business upon these customers through long-term financial guarantees. These concerns are not isolated to the financial health of the Companies and the impact on their customers' rates. Our concerns also relate to the ability of the Companies to continue to provide local exchange telecommunications services at or above current quality levels in light of the financial condition of NTELOS. Consequently, we expect NTELOS to do everything in its power to extinguish the debt on which the Companies are acting as guarantor. At the latest, we expect NTELOS to be able to finance its operations without guarantees by the time the debt matures in 2008.

Our Staff has advised us in its Action Brief filed in this docket, that the borrowing limit under the Revolver has been reduced to \$36 million from the original \$100 million. Further, our Staff has advised us in the Action Brief that the Applicants expect this reduction to be made permanent upon its emergence from bankruptcy. In order to minimize the amount of debt the Companies are guaranteeing, we are approving the DIP Financing conditioned, in part, upon the necessary agreements being amended to reduce the limit on the Revolver to \$36 million. Consequently, if the borrowing limit is subsequently increased, any amount above \$36 million will not be guaranteed by the Companies unless further approval from the Commission under Chapters 3 and 4 of the Code is obtained.

Further, with regard to the Revolver, we direct NTELOS to explore the terms available to it on a revolving credit agreement that will replace the existing \$36 million Revolver guaranteed by the Companies. We direct NTELOS to report the results of this solicitation to our Staff within six months of the emergence from bankruptcy. In addition, we direct NTELOS to work with our Staff to consider the costs and benefits of replacing the \$36 million Revolver without the Companies acting as guarantors.

In addition, the Action Brief raises concerns regarding the effect of Section 8.02 of the DIP Agreement on the Commission's ability to regulate the Companies. The Applicants responded that Section 8.02 will not affect the Commission's ratemaking authority and that the Commission retains full ratemaking jurisdiction to determine if any payments on the guarantees relate to the Companies' jurisdictional cost of service such that they may be properly reflected in the Companies' rates. The Action Brief also notes the Companies have committed that they will not seek to recover debt service obligations unrelated to the cost of service. Language identical to that contained in Section 8.02 of the DIP Agreement is also found in the agreements related to the guarantee previously approved by the Commission.

We agree with the Applicants that Section 8.02 of the DIP Agreement, as well as the agreements already approved by the Commission, do not limit our jurisdiction. We find that it is not necessary to require the amendment of Section 8.02 of the DIP Agreement, or to condition our approval on amendment of the same Section 8.02 language contained in the agreements related to the guarantee we previously authorized, in order to preserve the Commission's ability to regulate the Companies. The Order we issue today, as with the authorization in Case Nos. PUF-2000-00022 and PUF-2001-00009, explicitly states that the authority granted by the Commission shall have no ratemaking implications. Accordingly, for both the instant and prior authorizations, the Commission has limited the authorization such that it in no manner affects our ability to regulate the Companies. For example, rates paid

¹ By Order dated April 2, 2003, the Commission extended the time for review of the Chapter 3 portion of this application to May 5, 2003.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

by the Companies' customers must reflect the just and reasonable costs necessary to provide public utility service. Other costs incurred by the Companies, whether such costs are attendant to the guarantees or otherwise, are not properly reflected in rates.

We note that there have been several amendments to the Credit Agreement approved in Case Nos. PUF-2000-00022 and PUF-2001-00009. Such amendments shall be presented promptly to the Commission for our approval. In the future, the Companies should be more diligent and ensure that all necessary approvals are obtained in a timely fashion as required by Virginia law.

Accordingly, IT IS ORDERED THAT:

- 1) NTELOS Telephone Company and Roanoke & Botetourt Telephone Company are hereby authorized to provide guarantees and security agreements of up to \$35 million on the Debtor-In-Possession Financing Agreement with Wachovia Securities, subject to the terms, conditions, purposes, and representations detailed herein.
- 2) Approval herein is conditioned upon the necessary agreements being amended to reduce the limit on the Revolver to \$36 million. If the borrowing limit is subsequently increased, any amount above \$36 million will not be guaranteed by the Companies unless further approval from the Commission under Chapters 3 and 4 of the Code is obtained.
- 3) The authority granted herein shall expire upon the emergence of NTELOS Inc. from Chapter 11 bankruptcy protection.
- 4) The authority granted herein shall have no implications for ratemaking purposes.
- 5) Any subsequent financing arrangements with affiliates or other affiliate agreements shall require separate authority, which shall not be implied by approval of the application herein.
- 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, 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.
- 8) Within six (6) months of the emergence from bankruptcy, NTELOS shall submit to our Staff the results of its solicitation for a new revolving credit agreement in the amount of \$36 million to be used to replace the existing \$36 million Revolver on which the Companies are acting as guarantors.
- 9) NTELOS shall work with our Staff to consider the costs and benefits of replacing the \$36 million Revolver without the Companies acting as guarantors.
- 10) Should either NTELOS Telephone or R&B seek rate relief while the guarantees are in place, it shall, at the time notice is mailed to customers, pursuant to § 56-532, file a report pursuant to § 56-249 of the Code. Such report shall include data detailed in 20 VAC 5-200-30.
- 11) NTELOS shall provide a copy to the Commission's Divisions of Public Utility Accounting and Economics and Finance of all financial statements, reports, and other data submitted to its lenders as long as the Companies are acting as guarantors on any debt of NTELOS Inc.
- 12) This matter shall remain under the continued review, audit, and appropriate directive of the Commission.

**CASE NO. PUC-2003-00039
JUNE 27, 2003**

APPLICATION OF
VERIZON SELECT SERVICES OF VIRGINIA INC.

For a certificate of public convenience and necessity to provide local exchange telecommunications services

FINAL ORDER

On March 14, 2003, Verizon Select Services of Virginia Inc. ("VSSI-VA" or the "Company") filed an application for a certificate of public convenience and necessity with the State Corporation Commission ("Commission") to provide local exchange telecommunications services throughout the Commonwealth of Virginia. The Company also requested interim authority to bid to provide local exchange telecommunications services to the Commonwealth of Virginia and a waiver of 20 VAC 5-400-180 B 6 that requires an initial tariff be provided with the application.¹

¹ VSSI-VA's initial intention was to provide telecommunications services to only one customer, the Commonwealth of Virginia. VSSI-VA requested the interim authority to allow it to bid to provide the government of Virginia's telecommunications services. See Commonwealth's Request for Proposal No. 2002-33.

By Order dated March 25, 2003, 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.² On May 12, 2003, the Company filed proof of publication and proof of service as required by the March 25, 2003, Order.

On March 21, 2003, and March 25, 2003, WorldCom, Inc. ("WorldCom"), and Cavalier Telephone, LLC ("Cavalier"), respectively, filed Notices of Participation as a Respondent and Opposition to the Application of Verizon Select Services of Virginia Inc. On April 29, 2003, WorldCom filed its Comments and Request for a Hearing.³ Both WorldCom and Cavalier opposed the granting of the requested "interim authority to bid to provide" on the Request for Proposal No. 2002-33. WorldCom also raised concerns regarding the nondiscrimination safeguards of § 272 of the Telecommunications Act.

On May 16, 2003, VSSI-VA filed a Supplement to the applications withdrawing its request for interim authority and its request for waiver of 20 VAC 4-500-180 B 6.⁴

On May 27, 2003, the Staff filed its Report finding that VSSI-VA's application was in compliance with the Rules Governing the Offering of Competitive Local Exchange Telephone Service ("Local Rules").⁵ Based upon its review of VSSI-VA'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: should VSSI-VA collect customer deposits, it should, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and should notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement should be maintained until such time as the Staff or Commission determines it is no longer necessary.

NOW THE COMMISSION, having considered the application, Staff Report, and filed comments finds that the Company should be granted a certificate to provide local exchange telecommunications services.

Accordingly, IT IS ORDERED THAT:

(1) Verizon Select Services of Virginia Inc. is hereby granted a certificate of public convenience and necessity, No. T-614, 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) Should VSSI-VA collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or 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.

² The Commission, in its Order for Notice and Comment issued March 25, 2003, declined to rule on VSSI-VA's requested interim authority to bid to provide local exchange telecommunications services to the government of the Commonwealth of Virginia.

³ While it appeared from the title of WorldCom's comments that it was requesting a hearing, the actual text of its comments stated that it believed that a hearing was not necessary but if one was scheduled, WorldCom reserved the right to participate.

⁴ The Supplement to the application contained an illustrative tariff.

⁵ The rules identified in 20 VAC 5-400-180, the Rules Governing the Offering of Competitive Local Exchange Telephone Service have been repealed and replaced by 20 VAC 5-417-10 *et seq.*, the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers by Commission Order issued April 9, 2003, in Case No. PUC-2002-00115, In the Matter of Regulations Governing Competitive Local Exchange Carriers, Localities as Competitive Local Exchange Carriers, and Local Inter-Carrier Matter. VSSI-VA has been made aware that it will be regulated under the revised rules.

**CASE NO. PUC-2003-00040
JUNE 13, 2003**

JOINT PETITION OF
UNITED TELEPHONE-SOUTHEAST, INC.
and
CENTRAL TELEPHONE COMPANY OF VIRGINIA

For approval of modification to the Companies' Alternative Regulatory Plan

FINAL ORDER

On March 20, 2003, United Telephone-Southeast, Inc. and Central Telephone Company of Virginia (collectively, "the Companies" or "Sprint"), filed a Joint Petition ("Petition") requesting the State Corporation Commission ("Commission") to approve modifications to Sprint's Alternative Regulatory Plan ("Plan") adopted by the Commission in its Final Order dated October 18, 1994, in Case No. PUC -1993-00036, and as last modified by Final Order dated September 5, 2000, in Case No. PUC -1999-00160.

Sprint proposes to modify the Financial Reporting provisions of the Plan, which are currently set forth in Section L and the quarterly monitoring schedule set forth in Section P of the Plan. The Federal Communications Commission ("FCC") has relieved Sprint of the requirement to file an ARMIS Form 43-02. Accordingly, Sprint asks that the requirement in the current Plan to file the ARMIS Form 43-02 with the Commission's Division of Public Utility Accounting be deleted. Instead, Sprint proposes to file the Telephone Annual Financial and Operating Report provided by the Commission's Division of Public Utility Accounting and the ARMIS Form 43-08. Also, the Companies request a waiver of the FCC /SCC Form M and ARMIS Form 43-02 filing requirements as presently stated in Section L of the Plan for calendar year 2002 reporting. According to the Petition, the FCC has relieved Sprint of these filing requirements for 2002, and these forms are no longer being generated.

In addition, Sprint requests modification of Section P of the Plan to provide for an annual, rather than a quarterly, schedule reporting units and revenues for Competitive Services. According to Sprint, such a modification in reporting will reduce expense to the Companies, yet continue to provide the Commission with sufficient information for it to monitor the level of competitive services in a meaningful manner.

On April 9, 2003, the Commission issued an Order for Notice and Comment, docketing Sprint's Petition, giving the public notice, and establishing a schedule for the receipt of comments or requests for hearing. On May 8, 2003, Sprint filed proof of public notice provided by it pursuant to the Commission's Order. No comments or requests for hearing were received.

NOW THE COMMISSION, upon consideration of the Petition, is of the opinion and finds that the Companies' proposal to amend their Alternative Regulatory Plan should be approved. The requested waiver from filing the ARMIS 43-02 for 2002 is also granted. In addition, the Commission has made a minor administrative change to the attached modified Alternative Plan and updated Appendix A to this Plan in order to reflect changes and/or additions made to service classifications since its adoption in Case No. PUC-1993-00036. By letter filed June 5, 2003, Sprint agrees with the updates as reflected in the attached Appendix A.

Accordingly, IT IS ORDERED THAT:

- (1) The Companies' Joint Petition to modify their Alternative Regulatory Plan is hereby approved.
- (2) A copy of the Companies' Modified Alternative Plan is attached to this Order.
- (3) The Companies' request for waiver from filing ARMIS 43-02 for calendar year 2002 is granted.
- (4) There being nothing further to come before the Commission, this matter is dismissed.

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

**CASE NO. PUC-2003-00042
APRIL 10, 2003**

APPLICATION OF
CABLE & WIRELESS OF VIRGINIA, INC.

To cancel existing certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services and to reissue certificates reflecting the corporate name change

FINAL ORDER

On July 21, 1997, the State Corporation Commission ("Commission") entered an Order in Case No. PUC-1997-00027, which granted Cable & Wireless of Virginia, Inc. ("Cable & Wireless" or the "Company"), a certificate of public convenience and necessary, No. TT-5B, to provide interexchange telecommunications services subject to the restrictions set forth in the Commission's Rules Governing the Certification of Interexchange Carriers (as codified in 20 VAC 5-411-10 *et seq.*), § 56-265.4:4 of the Code of Virginia, and provisions of the July 21, 1997, Order. In the same Order, the Commission granted Cable & Wireless a certificate of public convenience and necessity, No. T-380, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Offering of Competitive Local Exchange Telephone Service (as codified in 20 VAC 5-400-180), § 56-265.4:4 of the Code of Virginia, and the provisions of the July 21, 1997, Order.

On March 21, 2003, the Company petitioned the Commission to amend its certificates to reflect a change of its corporate name to Cable & Wireless USA of Virginia, Inc. Apparently, all other information regarding the Company remains unchanged.

In its notice, the Company recited that it had filed Articles of Amendment with the Commission to change its name from Cable & Wireless of Virginia, Inc. to Cable & Wireless USA of Virginia, Inc. and that on July 12, 1999, the Commission issued a Certificate of Amendment changing its corporate name to Cable & Wireless USA of Virginia, Inc.

NOW, UPON CONSIDERATION of the foregoing, the Commission is of the opinion and finds that the certificates of public convenience and necessity, Nos. TT-5B and T-380, issued to Cable & Wireless of Virginia, Inc., should be cancelled; and certificates of public convenience and necessity should be reissued to Cable & Wireless USA of Virginia, Inc., reflecting the new name of that corporation.

Accordingly, IT IS THEREFORE ORDERED THAT:

- (1) This matter is hereby docketed and assigned Case No. PUC-2003-00042.

(2) Certificate of public convenience and necessity, No. TT-5B, issued to Cable & Wireless of Virginia, Inc., is hereby cancelled.

(3) Certificate of public convenience and necessity, No. TT-5C, is hereby issued to Cable & Wireless USA of Virginia, Inc., authorizing it to provide interexchange telecommunications services, subject to the restrictions set forth in the Commission's Rules Governing the Certification of Interexchange Carriers (codified in 20 VAC 5-411-10 *et seq.*), § 56-265.4:4 of the Code of Virginia, and the provisions previously set out in the Commission's July 21, 1997, Final Order entered in Case No. PUC-1997-00027.

(4) Certificate of public convenience and necessity, No. T-380, issued to Cable & Wireless of Virginia, Inc., is hereby cancelled.

(5) Certificate of public convenience and necessity, No. T-380a, is hereby issued to Cable & Wireless USA of Virginia, Inc., authorizing it to provide local exchange telecommunications services, subject to the restrictions set forth in the Commission's Rules Governing the Offering of Competitive Local Exchange Telephone Service (codified in 20 VAC 5-400-180), § 56-265.4:4 of the Code of Virginia, and the provisions previously set out in the Commission's July 21, 1997, Final Order entered in Case No. PUC-1997-00027.

(6) Cable & Wireless USA of Virginia, Inc., shall file revised tariffs no later than sixty (60) days from the date of this Order with the Commission's Division of Communications that conform with all applicable Commission rules and regulations and which use Cable & Wireless USA of Virginia, Inc.'s name rather than that of Cable & Wireless of Virginia, Inc.

(7) 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-2003-00043
APRIL 16, 2003**

APPLICATION OF
FOCAL COMMUNICATIONS CORPORATION OF VIRGINIA

For approval to discontinue local exchange and interexchange telecommunications services in certain areas of Virginia

ORDER PERMITTING PARTIAL DISCONTINUANCE OF SERVICES

On March 24, 2003, Focal Communications of Virginia ("Focal" or the "Company") filed an application with the State Corporation Commission ("Commission") requesting Commission approval to discontinue its provision of telecommunications services to customers located at a certain building in Fairfax, Virginia. Focal states that it currently serves one customer in the building affected by the proposed discontinuance.¹ In its application, Focal states that it has made a business decision to discontinue telecommunications services provided to former OnSite Access Local LLC ("OnSite") customers that Focal began serving when OnSite ceased its operations.²

The Company proposes to discontinue telecommunications services to its customer located at 12011 Lee Jackson Memorial Highway, Fairfax, Virginia 22033, on or before April 30, 2003. Former OnSite customers were provided notice of the discontinuance via first-class mail on March 18, 2003.

The Commission's primary concern with authorizing any discontinuance of telecommunications services is that adequate notice to customers be provided. The Commission's rule regarding partial discontinuance, 20 VAC 5-423-30 (Requirements for Partial Discontinuance), requires that an application include a description of the customer notification efforts and that customers be provided at least 30 days' written notice of a proposed partial discontinuation of telecommunications services. Focal's customer was provided 30 days' notice of the pending discontinuance of telecommunications services.

NOW THE COMMISSION, being sufficiently advised, will grant the requested partial discontinuance of local exchange and interexchange telecommunications services.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUC-2003-00043.

(2) On or before April 25, 2003, Focal shall report to the Commission's Division of Communications the status of the remaining customer in Virginia affected by the proposed discontinuance.

(3) Focal is hereby granted authority to discontinue its provision of local exchange and interexchange telecommunications services to its customer located at 12011 Lee Jackson Memorial Highway in Fairfax, Virginia, effective April 30, 2003.

(4) There being nothing further to come before the Commission in this matter, this case shall be closed, and the papers herein shall be placed in the file for ended causes.

¹ The application states that the Company will continue to provide telecommunications services to its other customers in Virginia.

² The Commission issued its Order Canceling OnSite's Certificates of Public Convenience and Necessity on December 19, 2001, in Case No. PUC-2001-00173.

CASE NO. PUC-2003-00045
JUNE 3, 2003

JOINT PETITION OF
 BROADWING COMMUNICATIONS SERVICES OF VIRGINIA, INC.,
 C III COMMUNICATIONS, LLC,
 and
 C III COMMUNICATIONS OPERATIONS, LLC,

For approval to transfer assets and customers

ORDER GRANTING APPROVAL

On April 10, 2003, Broadwing Communications Services of Virginia, Inc. ("Broadwing CSV"), C III Communications, LLC ("C III"), and C III Communications Operations, LLC ("C III Ops") (collectively, the "Petitioners"), completed a joint petition filed with the State Corporation Commission ("Commission") on March 25, 2003, requesting approval, pursuant to the Utility Transfers Act, to transfer the assets and customers of Broadwing CSV to C III Ops.

Broadwing CSV is a Virginia public service corporation, wholly owned by Broadwing Communications Services, Inc. Broadwing CSV was granted a certificate of public convenience and necessity ("CPCN") to provide facilities-based interexchange telecommunications services in Virginia on July 16, 1999, in Case No. PUC-1999-00084.¹ Broadwing CSV operates as a wholesale provider of telecommunications services to other carriers and does not currently provide telecommunications services to end-user customers. Broadwing CSV is a wholly owned subsidiary of Broadwing Communications Services, Inc. ("Broadwing CSI").

Broadwing CSI is a Delaware corporation and also operates as a wholesale provider of telecommunications services to other carriers. Broadwing CSI does not provide telecommunications services to end-user customers. Broadwing CSI is a wholly owned subsidiary of Broadwing Communications, Inc. ("Broadwing Communications").

Broadwing Communications is also a Delaware corporation. Broadwing Communications is an all-optical, switched network provider that offers businesses nationwide data, voice, and Internet solutions on its optical network and IP backbone. Broadwing Communications is a wholly owned subsidiary of Broadwing, Inc. ("Broadwing").

Broadwing, a publicly traded company, is an Ohio corporation, headquartered in Cincinnati. Broadwing is an integrated communications company comprised of Broadwing Communications and Cincinnati Bell.²

C III is a privately held Delaware limited liability company. C III does not currently hold any authority to provide telecommunications services.

C III Ops is a Delaware limited liability company and is wholly owned by C III. Upon the closing of the proposed transaction and the granting of a CPCN, C III Ops will be the certificated service provider and will enter into contracts with customers for the provision of telecommunications services. C III Ops does not currently hold a CPCN to provide telecommunications services.³

To facilitate the transaction, four Special Purpose Entities ("SPEs") have been created and organized to hold the assets of C III Ops. These SPEs include C III Communications Real Estate, LLC; C III Communications IRU, LLC; C III Communications Assets, LLC; and C III Communications Employees, Inc. All of the SPEs are wholly owned by C III Ops, and are Delaware limited liability companies, with the exception of C III Communications Employees, Inc., which is a Delaware corporation.

Corvis Corporation ("Corvis") is a publicly traded Delaware corporation headquartered in Columbia, Maryland. Corvis is the majority and controlling owner of C III. Corvis provides optical network solutions. Corvis does not currently hold any authority to provide telecommunications services.

Cequel III, LLC ("Cequel HI"), is a privately held Delaware limited liability company. Cequel III is a minority owner of C III and will control less than one percent of the voting interests of C III. Cequel III's mission is to acquire or invest in, and subsequently manage, growth oriented firms in the telecommunications and cable industries, focusing on those that offer platforms for future acquisitions and industry consolidation.

The Petitioners request approval to transfer the assets and customers of Broadwing CSV to C III Ops. On February 22, 2003, Broadwing CSI, including its subsidiary, Broadwing CSV, entered into an Agreement for the Purchase and Sale of Assets ("Purchase Agreement") with C III and C III Ops. Under this Purchase Agreement, Broadwing CSI has agreed to sell to C III its entire broadband business, which includes interstate and intrastate long distance and private line services. As a result of the transaction, substantially all of the assets of Broadwing CSV and Broadwing CSI are to be transferred to C III Ops.

C III Communications Real Estate, LLC, will hold all of the real property used to provide the telecommunications services offered by C III Ops. C III Communications IRU, LLC, will hold all of the IRUs used to provide the telecommunications services. C III Communications Assets, LLC, will be used to hold all the assets that are not held by C III Communications Real Estate, LLC, or C III Communications IRU, LLC. C III Communications Employees, Inc., will employ all of the employees used to provide the telecommunications services.

¹ The CPCN was originally granted to IXC Communications Services of Virginia, Inc. The CPCN was cancelled and re-issued to reflect the name change to Broadwing CSV on March 3, 2000, in Case No. PUC-2000-00040.

² The proposed transaction does to involve the transfer of any of the assets of Cincinnati Bell.

³ C III Ops has filed an application with the State Corporation Commission to provide interexchange telecommunications services in Case No. PUC-2003-00046. C III Ops has been granted interim operating authority in this case.

The assets to be transferred include inventory, equipment, accounts, general intangibles, contract rights, instruments, investment property, all other personal property, and the proceeds and products thereof in whatever form they may be. The real property located in Virginia to be transferred includes owned land, a commercial lease, and an administrative office lease. This property is currently held by Broadwing Communications Real Estate Services, LLC, and will be transferred to C III Communications Real Estate, LLC. The existing service arrangements between Broadwing CSV and its carrier customers will be transferred to C III Ops.

Corvis and Cequel III plan to invest substantial capital to purchase the assets of Broadwing Telecommunications, Inc., and Broadwing CSV. The petition states that Corvis and Cequel III will pay approximately \$129 million in cash to ensure the financial success of C III Ops. The petition further states that Corvis has committed to making a working capital infusion of up to \$50 million, as needed, upon the closing of the transaction.

The Petitioners state that, once the transaction is completed, C III will be renamed Broadwing, LLC, and C III Ops will be renamed Broadwing Communications, LLC. The SPEs will also be renamed to Broadwing Communications Real Estate, LLC; Broadwing Communications IRU, LLC; Broadwing Communications Assets, LLC; and Broadwing Communications Employees, Inc. The joint petition also states that, after the closing of the proposed transaction, Broadwing, Broadwing Communications, Broadwing CSI, and Broadwing CSV will all be renamed to a name that does not include "Broadwing," and Broadwing CSV will file a request to surrender its CPCN.

As a result of the transaction, C III Ops will become the direct owner of all of the assets of Broadwing CSV, and Corvis will hold ultimate ownership of Broadwing CSV's assets.

THE COMMISSION, upon consideration of the joint petition and representations of the Petitioners and having been advised by its Staff, is of the opinion and finds that the transfer of the assets of Broadwing CSV from Broadwing CSV to C III Ops, resulting in C III Ops becoming the direct owner of the assets of Broadwing CSV, and Corvis becoming the ultimate owner of Broadwing CSV's assets, as described herein, will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to §§ 56-88.1 and 56-90 of the Code of Virginia, approval is hereby granted for the transfer of all of the assets of Broadwing CSV from Broadwing CSV to C III Ops, resulting in C III Ops becoming the direct owner of the assets of Broadwing CSV, and C III Ops becoming the ultimate owner of Broadwing CSV's assets, as described herein.
- 2) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUC-2003-00046
APRIL 21, 2003**

APPLICATION OF
C III COMMUNICATIONS OPERATIONS, LLC

For a certificate of public convenience and necessity to provide interexchange telecommunications services and for interim operating authority

**ORDER FOR NOTICE AND COMMENT AND
GRANTING INTERIM OPERATING AUTHORITY**

On March 28, 2003, C III Communications Operations, LLC ("C III" or "Applicant"), completed an application with the State Corporation Commission ("Commission") for a certificate of public convenience and necessity ("certificate") to provide 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 Applicant further requested interim operating authority to provide interexchange telecommunications services to customers of Broadwing Communications Services of Virginia, Inc. ("Broadwing"), pursuant to Broadwing's tariff on file with the Commission's Division of Communications.¹

NOW UPON CONSIDERATION of the application, the Commission is of the opinion and finds that C III's application should be docketed; that the Applicant should give notice to the public of its application; that interested parties should have an opportunity to comment and request a hearing on C III's application; that the Commission Staff should conduct an investigation into the reasonableness of the application and present its findings in a Staff Report; and that C III should be granted interim operating authority.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUC-2003-00046.
- (2) C III is hereby granted interim operating authority to provide interexchange telecommunications services to existing Broadwing customers pursuant to Broadwing's tariff on file with the Commission's Division of Communications until such time as the Commission renders a final order in this proceeding.
- (3) On or before May 7, 2003, the Applicant shall complete publication of the following notice to be published on one (1) occasion as classified advertising in newspapers having general circulation throughout the Applicant's proposed service territory:

¹ Broadwing holds a certificate of public convenience and necessity to provide interexchange telecommunications services, Certificate No. TT-70B, which was granted in Case No. PUC-1999-00084 (originally certificated as IXC Communications Services of Virginia, Inc., Certificate No. TT-70A.)

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOTICE TO THE PUBLIC OF AN APPLICATION BY C III COMMUNICATIONS OPERATIONS,
 LLC, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE
 INTEREXCHANGE TELECOMMUNICATIONS SERVICES THROUGHOUT THE
 COMMONWEALTH OF VIRGINIA AND FOR INTERIM OPERATING AUTHORITY
CASE NO. PUC-2003-00046

On March 28, 2003, C III Communications Operations, LLC ("C III" or "Applicant"), filed an application with the State Corporation Commission ("Commission") for a certificate of public convenience and necessity ("certificate") to provide interexchange telecommunications services throughout the Commonwealth of Virginia. In its 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.

C III also requested and was granted interim operating authority to provide interexchange telecommunications services to the existing customers of Broadwing Communications Services of Virginia, Inc. ("Broadwing"), pursuant to Broadwing's existing tariff. C III is purchasing substantially all of Broadwing's telecommunications assets. Interim operating authority will allow interexchange telecommunications services to remain uninterrupted pending the Commission's final determination of C III's application.

Copies of the application are available for public inspection between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, in the Commission's Document Control Center located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, or can be ordered from C III's counsel, Shannon Omia Pierce, Esquire, McGuireWoods, LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219.

On or before May 29, 2003, any person desiring to comment on C III's application for a certificate to provide interexchange telecommunications services may do so by directing such comments in writing to the Clerk of the Commission at the address set forth below. Interested persons desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.state.va.us/scc/caseinfo/notice.htm>. A hard copy of the comments, whether submitted in writing or electronically, shall be simultaneously served upon C III's counsel at the address set forth above.

Any person may request a hearing on C III's application by filing an original and fifteen (15) copies of its request for hearing on or before May 29, 2003, with the Clerk of the Commission at the address set forth below. Requests for hearing must include: (i) a precise statement of the interest of the filing party; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in the matter. Persons filing a request for hearing shall serve a copy of their request on or before May 29, 2003, upon C III's counsel at the address set forth above.

All written communications to the Commission concerning C III'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, and shall refer to Case No. PUC-2003-00046.

C III COMMUNICATIONS OPERATIONS, LLC

(4) On or before May 7, 2003, the Applicant shall provide a copy of the notice contained in ordering paragraph (3) to each local exchange telephone carrier certificated in Virginia and each interexchange carrier certificated in Virginia by personal delivery or first-class mail, postage prepaid, to the customary place of business. Lists of all current local exchange and interexchange carriers in Virginia are attached to this Order as Appendices A and B, respectively.

(5) Any person desiring to comment on C III's application for a certificate to provide interexchange telecommunications services may do so by directing such comments in writing on or before May 29, 2003, to Joel H. Peck, Clerk of the 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 by following the instructions found on the Commission's website: <http://www.state.va.us/scc/caseinfo/notice.htm>. A hard copy of such comments, whether submitted in writing or electronically, shall be simultaneously served upon C III's counsel, Shannon Omia Pierce, Esquire, McGuireWoods, LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219. Comments must refer to Case No. PUC-2003-00046.

(6) On or before May 29, 2003, any person wishing to request a hearing on C III's application for a certificate to provide interexchange telecommunications services shall file an original and fifteen (15) copies of its request for hearing in writing with the Clerk of the Commission at the address set forth above. Written requests for hearing shall refer to Case No. PUC-2003-00046 and shall include: (i) a precise statement of the interest of the filing party; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in the matter. A copy shall also simultaneously be served on the Applicant at the address set forth above.

(7) On or before June 4, 2003, the Applicant shall file with the Commission proof of notice and proof of service as ordered herein.

(8) The Commission Staff shall analyze the reasonableness of C III's application and present its findings in a Staff Report to be filed on or before June 19, 2003.

(9) On or before June 26, 2003, the Applicant shall file with the Clerk of the Commission an original and fifteen (15) copies of any responses to the Staff Report or comments and requests for hearing filed with the Commission. A copy of the response shall be delivered to Staff and any other persons who filed comments or requests for hearing by overnight delivery.

(10) The Applicant shall respond to written interrogatories or data requests within seven (7) days after the receipt of the same. Persons who filed requests for hearing shall provide to the Applicant, the Commission Staff, and any other persons who filed requests for hearing any workpapers or documents used in preparation of their requests for hearing, promptly upon request. Except as so modified, discovery shall be in accordance with Part IV of the Commission's Rules of Practice and Procedure.

(11) The Applicant shall respond promptly to requests from interested persons for copies of the application and shall provide one copy free of charge.

(12) This matter is continued generally.

CASE NO. PUC-2003-00046
JULY 9, 2003

APPLICATION OF
C III COMMUNICATIONS OPERATIONS, LLC

For a certificate of public convenience and necessity to provide interexchange telecommunications services

FINAL ORDER

On March 28, 2003, C III Communications Operations, LLC ("C III" or the "Company"), completed an application with the State Corporation Commission ("Commission") for a certificate of public convenience and necessity to provide interexchange telecommunications services throughout the Commonwealth of Virginia. The Company also requested interim operating authority to allow C III to provide interexchange telecommunications services to the existing customers of Broadwing Communications Services of Virginia, Inc., and authority to price its interexchange telecommunications services on a competitive basis pursuant to § 56-481.1 of the Code of Virginia.

By Order dated April 21, 2003, the Commission granted C III the requested interim operating authority, 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.

C III filed proof of publication and proof of service on May 30, 2003, as required by the April 21, 2003, Order.

On June 19, 2003, the Staff filed its Report finding that C III's application was in compliance with the Rules Governing the Certification of Interexchange Carriers. Based upon its review of C III's application, the Staff determined it would be appropriate to grant the Company a certificate to provide interexchange telecommunications services.

On June 24, 2003, the Company filed a response to the Staff Report wherein it stated that it supports Staff's recommendation to grant C III the requested certificate.

NOW THE COMMISSION, having considered the application and the Staff Report, finds that the Company should be granted a certificate to provide interexchange telecommunications services. Having considered § 56-481.1, the Commission further finds that the Company may price its interexchange telecommunications services competitively.

Accordingly, IT IS ORDERED THAT:

(1) C III Communications Operations, LLC, is hereby granted a certificate of public convenience and necessity, No. TT-195A, 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) The Company shall provide tariffs in its own name to the Division of Communications within sixty (60) days from the date of this Order. Such tariffs shall conform with all applicable Commission rules and regulations.

(3) The Company shall continue to provide interexchange telecommunications services to the existing customers of Broadwing Communications Services of Virginia, Inc., pursuant to the Commission's Order for Notice and Comment and Granting Interim Authority issued April 21, 2003, using the tariffs of that entity until such time as the Company has accepted tariffs in its own name on file with the Commission.

(4) Pursuant to § 56-481.1 of the Code of Virginia, the Company may price its interexchange telecommunications services competitively.

(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-2003-00048
JUNE 20, 2003**

APPLICATION OF
NTELOS INC., DEBTOR IN POSSESSION,
NTELOS TELEPHONE INC.,
ROANOKE & BOTETOURT TELEPHONE COMPANY,
NTELOS TELEPHONE LLC,
R&B TELEPHONE LLC,
and
VIRGINIA INDEPENDENT TELEPHONE ALLIANCE, L.C.

For authority to continue arrangements under Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING AUTHORITY

On March 27, 2003, NTELOS Inc. ("NTELOS"), NTELOS Telephone Inc. ("NTELOS Telephone"), Roanoke & Botetourt Telephone Company ("R & B Telephone"), NTELOS Telephone LLC, R & B Telephone LLC, and Virginia Independent Telephone Alliance, L.C. ("VITAL") (collectively, "Applicants"), filed an application with the State Corporation Commission ("Commission") under Chapter 4 of Title 56 of the Code of Virginia (the "Code") requesting approval of: (1) Schedule 1 of the Operating Agreement; (2) the new Administrative Services Agreement; and (3) the new Maintenance Services Agreement. On May 15, 2003, the Applicants filed an Application Amendment requesting approval of the Operating Agreement of the Virginia Independent Telephone Alliance, L.C.

NTELOS is a Virginia corporation headquartered in Waynesboro, Virginia. NTELOS is an integrated communications provider that offers products and services to customers in Virginia, West Virginia, Tennessee, Kentucky, and North Carolina, including wireless digital PCS, dial-up Internet access, high-speed DSL (high-speed Internet access), and local and long distance telecommunications services. NTELOS is the parent company of several subsidiary companies, including two Virginia incumbent local exchange carriers ("ILEC"), R & B Telephone and NTELOS Telephone.

NTELOS Telephone is a certificated ILEC that provides local exchange telecommunications services primarily in Allegheny County, the Cities of Covington and Waynesboro, and the Town of Clifton Forge. R & B Telephone is certificated as an ILEC that provides local exchange telecommunications services in Botetourt County.

NTELOS Telephone LLC is a single-member Virginia limited liability company wholly owned by NTELOS Telephone. R & B Telephone LLC is a single-member Virginia LLC wholly owned by R & B Telephone.

On June 23, 1993, NTELOS Telephone and R & B Telephone and several other Virginia public service companies (collectively referred to as "Members")¹ filed Articles of Organization with the Commission to form VITAL. VITAL'S purpose was to purchase and to deploy two signal transfer point nodes in a nationwide SS7 network. The Members have used these nodes to deliver intelligent network services to their customers and to provide other related services. These nodes are located in Troutville and Waynesboro, Virginia.

On February 24, 2003, the Applicants filed an application with the Commission requesting approval of the transfer of NTELOS Telephone's and R & B Telephone's membership interests in VITAL to NTELOS Telephone LLC and R & B Telephone LLC, respectively. The Commission approved the application in its Order dated March 3, 2003, in Case No. PUC-2003-00027 and required the Applicants to file for approval of a new Operating Agreement and Maintenance Agreement reflecting the new parties to those agreements. In addition, the Commission required a formal change to VITAL'S Operating Agreement to reflect the ownership interests of NTELOS Telephone LLC and R & B Telephone LLC. The current application was filed in accordance with the above-referenced Order.

The following discussion provides details regarding the Agreements for which approval is requested.

Operating Agreement

The Operating Agreement provides for the formation of VITAL and its management by its Members, which include NTELOS Telephone LLC and R & B Telephone LLC. ²According to the Operating Agreement, NTELOS Telephone LLC and R & B Telephone LLC must make initial capital contributions and continuing capital contributions to VITAL proportional to their ownership interests in VITAL (44.7% and 9.0%, respectively). The term of the Operating Agreement is through December 31, 2023.

The Operating Agreement provides the terms and conditions by which the Members may transfer their interests in VITAL to an affiliate. Although NTELOS Telephone and R & B Telephone have transferred their ownership interests in VITAL to affiliates, they are still providing services to VITAL because the equipment is located on the property of NTELOS Telephone and R & B Telephone.

According to the Operating Agreement, a Management Committee made up of one manager from each of the 12 Members (including R & B Telephone LLC and NTELOS Telephone LLC) will have the sole responsibility for managing the business and affairs of VITAL. The Chairman of the Management Committee will have the responsibility for the daily oversight of VITAL'S operations. The Chairman is elected by the Management Committee.

¹ The other current members are Buggs Island Telephone Cooperative, Citizens Telephone Cooperative, Highland Telephone Cooperative, Mountain Grove-Williamsville Telephone Company, New Hope Telephone Company, North River Telephone Cooperative, Pembroke Telephone Cooperative, Scott County Telephone Cooperative, and Shenandoah Telephone Company.

² It is the 100% ownership of NTELOS Telephone LLC and R & B Telephone LLC by NTELOS Telephone and R & B Telephone, respectively, that requires approval of the Operating Agreement under Chapter 4 of Title 56 of the Code of Virginia.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The only cost involved under the Operating Agreement is a membership fee that each Member pays. The current fee is \$100 per month for one A-link pair, and such fee is established and reviewed by the Members on an annual basis. All Members pay the same fee.

Certain termination events are listed in the Operating Agreement. These include a written decision of two-thirds of the Members to dissolve VITAL or an entry of a decree of judicial dissolution.

Administrative Services Agreement

NTELOS Telephone entered into an Administrative Services Agreement, effective as of January 1, 1994, with VITAL. Through this Administrative Services Agreement, NTELOS Telephone agreed to provide certain administrative services to VITAL at a monthly rate of \$925 plus the actual labor rate of any employee providing additional industry-related services to that entity. The new Administrative Services Agreement for which approval is being requested in this case between VITAL, NTELOS, and NTELOS Telephone LLC specifies that NTELOS will provide services to VITAL in satisfaction of the obligation of NTELOS Telephone LLC, the substitute member of VITAL for NTELOS Telephone.

Under the current Administrative Services Agreement, NTELOS is providing the same services to VITAL on behalf of NTELOS Telephone LLC as originally provided by NTELOS Telephone. Employees and facilities of NTELOS are used to provide such services, and the Applicants represent that no costs are charged or allocated down to NTELOS Telephone or R & B Telephone in connection with NTELOS providing such services.

Pursuant to the Administrative Services Agreement, NTELOS will provide accounting, billing and collection, tax preparation, and treasury services. The services are provided by an unregulated company to an unregulated company on behalf of NTELOS Telephone LLC. These are services that VITAL needs to support its ability to provide the nodes used by NTELOS Telephone and R & B Telephone in providing services to customers. Such services are provided within NTELOS at similar labor rates to those charged to VITAL.

The Administrative Services Agreement may be terminated on 30 days' notice.

Maintenance Services Agreement

NTELOS Telephone and R & B Telephone each entered into a Maintenance Services Agreement as of January 1, 1998, with VITAL by which each would provide building space, maintenance and engineering support, and alarm monitoring for VITAL with respect to the node in each central office in Waynesboro and Troutville, Virginia.

The Maintenance Services Agreement was updated effective as of September 1, 2001, through a replacement agreement between NTELOS and VITAL. The Maintenance Services Agreement was amended again on April 1, 2003, pursuant to the Commission's Order dated March 3, 2003, and is currently between VITAL, NTELOS Telephone, and R & B Telephone. It continues to provide for alarm monitoring, building space, and maintenance and engineering support for VITAL. The personnel and facilities of NTELOS Telephone and R & B Telephone are used in performing the services. The Maintenance Services Agreement may be terminated on 30 days' notice.

Under the Maintenance Services Agreement, NTELOS Telephone and R & B Telephone will each provide floor space and power, alarm monitoring, engineering and maintenance support, and miscellaneous supplies to VITAL. Floor space will be provided at \$15.54 per square foot per month; power will be provided at \$14.40 per square foot per month; alarm monitoring will be provided at \$500 per month; engineering and maintenance support will be provided at the actual labor rate of the employee(s) providing the service, plus overhead; and miscellaneous supplies will be provided at \$70 per month.

The rates specified in the Maintenance Services Agreement are reviewed annually by NTELOS Telephone and R & B Telephone. The Maintenance Services Agreement provides that additional services will be billed at a rate to be approved by VITAL'S management. The Applicants represent that the services are provided based on current labor rates and calculated hours of services.

Since VITAL is owned and operated by its Members, its Members pay a monthly fee, which the Members establish and review. The services provided under the Maintenance Services Agreement are provided to VITAL to enable it to run smoothly and enable it to provide the signal transfer nodes used by NTELOS Telephone and R & B Telephone. The Maintenance Services Agreement will enable VITAL to have needed services to operate and will also enable NTELOS Telephone and R & B Telephone to provide network services to customers.

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 above-described agreements are in the public interest and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, the Applicants are hereby granted authority for the Operating Agreement, including Schedule 1; the Administrative Services Agreement; and the Maintenance Services Agreement, under the terms and conditions and for the purposes as described herein.

(2) Commission authority shall be required for any changes in the terms and conditions of the Agreements detailed in Ordering Paragraph (1) herein.

(3) The authority granted herein shall have no ratemaking implications.

(4) The authority granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

(5) The Commission reserves the authority to examine the books and records of any affiliate in connection with the authority granted herein whether or not the Commission otherwise regulates such affiliate.

(6) The transactions authorized herein shall be included in Applicants' Annual Report of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting by April 1 of each year, subject to extension by the Director of Public Utility Accounting.

(7) There appearing nothing further to be done in this matter, it hereby is dismissed.

CASE NO. PUC-2003-00049
APRIL 10, 2003

APPLICATION OF
ESSEX TELECOMMUNICATIONS OF VIRGINIA, INC.

For cancellation of a certificate of public convenience and necessity

ORDER

By Order dated January 13, 1999, in Case No. PUC-1998-00158, the State Corporation Commission ("Commission") granted Essex Telecommunications of Virginia, Inc. ("Essex" or the "Company"), Certificate No. T-428 to provide local exchange telecommunications services in Virginia.

By application received March 28, 2003, Essex requested that the Commission cancel its certificate and tariffs.¹

NOW THE COMMISSION, having considered the matter, is of the opinion that Essex's certificate should be cancelled.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed and assigned Case No. PUC-2002-00049.
- (2) Certificate No. T-428 is hereby cancelled.
- (3) Any existing tariffs of the Company currently on file with the Commission's Division of Communications are hereby cancelled.
- (4) This matter is hereby dismissed.

¹ On December 23, 2002, in Case No. PUC-2002-00206, the Commission approved the transfer of Essex's assets to Essex Acquisition Corporation. Essex Acquisition Corporation holds Certificate No. T-605 to provide local exchange telecommunications services and Certificate No. TT-189A to provide interexchange telecommunications services in Virginia. Essex states in its application that, due to the transfer of its entire customer base to Essex Acquisition Corporation, no customers will be affected by the cancellation of its certificate.

CASE NO. PUC-2003-00051
OCTOBER 7, 2003

APPLICATION OF
KMC TELECOM V, INC.,
KMC DATA HOLDCO, LLC,
and
KMC DATA SUB HOLDINGS I LLC

For authority to transfer control of KMC Telecom V, Inc., from KMC Data Holdco, LLC, to KMC Data Sub Holdings I LLC

DISMISSAL ORDER

On June 2, 2003, KMC Telecom V, Inc., KMC Data Holdco, LLC, and KMC Data Sub Holdings I LLC (collectively, the "Applicants") completed an application originally filed with the State Corporation Commission ("Commission") on April 3, 2003, for authority to transfer control of KMC Telecom V, Inc., from KMC Data Holdco, LLC, to KMC Data Sub Holdings I LLC. On July 30, 2003, the Commission issued its Order Extending Time for Review extending its review period through September 30, 2003, and on September 30, 2003, further extended by Order its review period through October 30, 2003.

In response to Staff inquiries, on September 30, 2003, counsel for the Applicants provided clarifying information regarding the ownership structure before and after the restructuring. After Staff review of information provided on September 30, 2003, and further discussions with Applicants' counsel, it appears that the additional information provided by the Applicants in essence indicates that the proposed restructuring does not constitute a transfer of control as defined in § 56-88.1 of the Code of Virginia and, therefore, does not require Commission approval.

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 restructuring contemplated by the Applicants does not constitute a transfer of control as defined in § 56-88.1 of the Code of Virginia and, therefore, does not require approval under the Utility Transfers Act.

Accordingly, IT IS ORDERED THAT there appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUC-2003-00052
OCTOBER 22, 2003**

APPLICATION OF
KMC DATA, LLC,
KMC DATA HOLDCO, LLC,
and
KMC DATA SUB HOLDINGS IV LLC

For authority to transfer control of KMC Data, LLC, from KMC Data Holdco, LLC, to KMC Data Sub Holdings IV LLC

ORDER GRANTING AUTHORITY

On June 2, 2003, KMC Data, LLC, KMC Data Holdco, LLC, and KMC Data Sub Holdings IV LLC (collectively, the "Applicants") completed an application originally filed with the State Corporation Commission ("Commission") on April 3, 2003, for authority to transfer control of KMC Data, LLC, from KMC Data Holdco, LLC, to KMC Data Sub Holdings IV LLC.

KMC Data, LLC ("KMC Data"), is a Delaware limited liability company headquartered in Bedminster, New Jersey. KMC Data holds a certificate of public convenience and necessity ("CPCN") to provide local exchange telecommunications services in Virginia but does not currently provide local exchange telecommunications services to customers in Virginia. KMC Data also does not have an accepted tariff on file with the Commission. KMC Data's direct parent is KMC Data Holdco LLC ("Data Holdco").

Data Holdco is a privately held Delaware limited liability company located in Bedminster, New Jersey. Data Holdco operates as a holding company and holds all of the ownership interests in KMC Data.

KMC Data Holdco Sub LLC is a Delaware limited liability company also located in Bedminster, New Jersey. All of KMC Data Holdco Sub LLC's membership interest is owned by Data Holdco.

KMC Data Sub Holdings IV LLC is a Delaware limited liability company also in Bedminster, New Jersey. All of KMC Data Sub Holdings IV LLC's membership interest is owned by KMC Data Holdco Sub LLC.

KMC Telecom Holdings, Inc. ("KMC Holdings"), KMC Data's ultimate parent, is a Delaware corporation headquartered in Bedminster, New Jersey.

KMC Data and its direct parent, Data Holdco, request approval of a restructuring of KMC Data's ownership resulting in the transfer of direct ownership of KMC Data from Data Holdco to KMC Data Sub Holdings IV LLC. The restructuring reflects the addition of a new direct holding company, KMC Data Sub Holdings IV LLC, and a new indirect holding company, KMC Data Holdco Sub LLC. KMC Data Holdco Sub LLC will be owned by Data Holdco, which will be owned by KMC Holdings. Data Holdco will become an indirect parent of KMC Data, and KMC Holdings will continue to hold ultimate ownership of KMC Data. KMC Data represents that the restructuring will not affect its CPCN in Virginia, the identity of the entity providing telecommunications services, or the rates, terms, and conditions under which services will be provided in Virginia in the future.

Since KMC Data's direct parent is changing, the proposed restructuring represents a change in control of KMC Data, which requires approval under Chapter 5 of Title 56 of the Code of Virginia.

KMC Data represents that the restructuring will not affect its technical or managerial qualifications, as all technical and managerial personnel previously available to KMC Data will continue to be available. The existing officers and directors will remain the same, as will the customer and regulatory contacts for KMC Data. KMC Data represents that the restructuring is intended to permit KMC Holdings to do business under a more efficient, rational structure and provide it with greater access to working capital and improved marketing and administrative operations.

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 above-described transfer of control will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to §§ 56-88.1 and 56-90 of the Code of Virginia, KMC Data is hereby granted authority for the transfer of control of KMC Data from Data Holdco to KMC Data Sub Holdings IV LLC as described herein.

(2) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUC-2003-00063
APRIL 21, 2003**

PETITION OF
ENRON BROADBAND SERVICES OF VIRGINIA, INC.

For cancellation of certificates of public convenience and necessity

ORDER

By Order dated November 22, 2000, in Case No. PUC-2000-00219, the State Corporation Commission ("Commission") granted Enron Broadband Services of Virginia, Inc. ("EBS" or the "Company"), Certificate No. TT-115A to provide interexchange telecommunications services in Virginia. By Order dated October 16, 2001, the Commission granted the Company Certificate No. T-570 to provide local exchange telecommunications services in Virginia.

By letter dated April 4, 2003, EBS requests that the Company's certificates be cancelled. EBS indicates that it has not offered any interexchange or local exchange telecommunications services pursuant to the certificates and that the Company will not move forward with any such services.

NOW THE COMMISSION, having considered the matter, is of the opinion that EBS' certificates should be cancelled.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed and assigned Case No. PUC-2003-00063.
- (2) Certificate No. TT-115A is hereby cancelled.
- (3) Certificate No. T-570 is hereby cancelled.
- (4) This matter is hereby dismissed.

**CASE NO. PUC-2003-00064
MAY 2, 2003**

APPLICATION OF
AES COMMUNICATIONS, L.L.C.

For cancellation of certificates of public convenience and necessity

ORDER

By Order dated April 20, 2001, in Case No. PUC-2001-00011, the State Corporation Commission ("Commission") granted AES Communications, L.L.C. ("AES" or the "Company"), Certificate No. TT-149A to provide interexchange telecommunications services and Certificate No. T-553 to provide local exchange telecommunications services in Virginia.

By letter application dated April 7, 2003, AES requested that the Commission cancel its certificates. The letter states that AES has never provided any telecommunications services in Virginia. Additionally, the Company states that its business plans have changed and it no longer intends to provide telecommunications services in Virginia.

NOW THE COMMISSION, having considered the matter, is of the opinion that AES's certificates should be cancelled.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed and assigned Case No. PUC-2003-00064.
- (2) Certificate No. TT-149A is hereby cancelled.
- (3) Certificate No. T-553 is hereby cancelled.
- (4) Any existing tariffs of the Company currently on file with the Commission's Division of Communications are hereby cancelled.
- (5) This matter is hereby dismissed.

**CASE NO. PUC-2003-00065
JUNE 26, 2003**

PETITION OF
THE CITY OF STAUNTON

For approval of authority to provide qualifying communications services pursuant to Article 5.1 to Title 56 of the Code of Virginia

ORDER DISMISSING PETITION

On April 9, 2003, the City of Staunton ("Staunton" or "City") filed a petition with the State Corporation Commission ("Commission") requesting that the Commission grant it authority, pursuant to §§ 56-484.7:1 and 56-584.7:2 of the Code of Virginia ("Code"), to provide "qualifying communications services"¹ within the City of Staunton in the Commonwealth of Virginia.

Staunton seeks authority to provide fully scalable data transport services over fiber optic and wireless networks using industry standard Internet Protocol ("IP"). The City's architecture will deploy native Ethernet to transport IP packets over its optical and wireless network, as described in Appendix C to the petition filed herein. Staunton states that "[n]o service provider is offering scalable bandwidth over Ethernet; none provide functionally and economically equivalent services in the City of Staunton."

On April 29, 2003, the Commission issued an Order for Notice and Comment docketing this proceeding, directing Staunton to provide public notice of its petition, permitting interested persons to file comments and requests for hearing, and permitting Staunton to file reply comments. On June 5, 2003, Staunton filed proof of publication on May 12, 2003, of notice in the newspaper having general circulation throughout the City's proposed service territory.

On May 16, 2003, the Virginia Cable Telecommunications Association ("VCTA") filed a notice of participation as a respondent. On May 23, 2003, Verizon Virginia Inc. and Verizon South Inc. (jointly, "Verizon") filed a notice of participation.

On June 6, 2003, Verizon filed a Motion to Dismiss, Comments, and Request for Hearing. Verizon states that § 56-484.7:1 of the Code requires Staunton to "demonstrate in its petition that the qualifying communications service does not meet the standard set forth in § 56-484.7:2 within the geographic area specified in the petition" (quoting Va. Code § 56-484.7:1) (emphasis in original). Verizon asserts that the City fails to demonstrate, per the standard set forth in § 56-484.7:2, that Staunton's qualifying communications service is not readily and generally available from three or more companies in a manner that is functionally and economically equivalent. Verizon requests that the Commission dismiss the petition for failure to demonstrate that the standards of § 56-484.7:2 are not met.

Verizon also attached an affidavit asserting, among other things, that functionally and economically equivalent services are offered by three or more providers. If the petition is not dismissed, Verizon contends that the Commission should deny the petition "on the basis that (i) the qualifying communications service 'is readily and generally available from three or more nonaffiliated companies in a manner that is functionally and economically equivalent for consumers' or (ii) 'the petition is not in compliance with the requirements of § 56-484.7:1'" (quoting Va. Code § 56-484.7:2). If the Commission does not deny the petition, Verizon requests that the Commission "schedule a hearing in accordance with Va. Code § 56-484.7:1 to permit the presentation of evidence to demonstrate to the Commission that one or more of the disqualifying conditions of Va. Code § 56-484.7:2 are present."

On June 6, 2003, VCTA filed a Motion to Dismiss, Comments, and Request for Hearing. VCTA states that "[b]efore the Commission can find that it is in the public interest to approve the Petition, the City must demonstrate that its proposed services are not, within the Staunton area, 'readily and generally available from three or more nonaffiliated companies in a manner that is functionally and economically equivalent for consumers'" (quoting Va. Code § 56-484.7:2). VCTA asserts that the City "has not met its burden of proof regarding functionally and economically equivalent service, and the Commission should dismiss the Petition on these grounds without a hearing."

VCTA further states "if the Commission determines that the City has not failed to meet its burden of proof, the Commission should still dismiss the Petition without a hearing on the grounds that the VCTA Comments and the comments filed [by Verizon] demonstrate that, within the Staunton Area, the City's proposed services are 'generally and readily available from three or more nonaffiliated companies in a manner that is functionally and economically equivalent for consumers'" (quoting Va. Code § 56-484.7:2).² If the Commission does not dismiss the petition without a hearing, then VCTA requests that the Commission schedule a hearing to address the issues raised by VCTA and Verizon.

On June 19, 2003, Staunton filed Reply Comments and Response to Motions to Dismiss. The City states that it demonstrates in its petition "that the qualifying communications service[s] for which it seeks approval are not readily and generally available in the City of Staunton from three or more companies unaffiliated with Staunton in a manner that is functionally and economically equivalent for consumers." Staunton asserts that requiring any other information in the petition to demonstrate that functionally and economically equivalent services are not available would create an impossible standard by making the petitioner "prove a negative by presenting evidence that it is nonexistent."

In addition, Staunton attached an affidavit to provide "a detailed analysis of the communications services that are actually generally and readily available to residents and businesses in the City of Staunton" (emphasis in original). The City contends that there are not three providers of functionally equivalent services in Staunton. Staunton also states that as long as its petition demonstrates that "others' services are not functionally equivalent, then it necessarily follows that others' services are not economically equivalent." Staunton asserts that Verizon and VCTA "have failed to rebut the presumption that granting Staunton's Petition is in the public interest, as provided in Virginia Code § 56-484.7:2." Staunton requests that the Commission deny the motions to dismiss, deny the requests for hearing, grant Staunton authority to provide qualifying communications services in the City of Staunton, and afford such further relief as is warranted.

¹ A "qualifying communications service" is defined by § 56-484.7:1 of the Code as "a communications service, which shall include but is not limited to, high-speed data service and Internet access service, of general application."

² In addition, VCTA attaches testimony to address issues raised by the petition.

NOW UPON CONSIDERATION of the pleadings and the applicable law, the Commission finds that the petition should be dismissed without prejudice.

Section 56-484.7:1 of the Code states that the petitioner "shall demonstrate in its petition that the qualifying communications services do not meet the standard set forth in § 56-484.7:2 within the geographic area specified in the petition." The standard set forth in § 56-484.7:2 includes whether the qualifying communications service is "readily and generally available from three or more nonaffiliated companies in a manner that is functionally and economically equivalent for consumers." If the petitioner demonstrates in the petition that the qualifying communications services do not meet the standard set forth in § 56-484.7:2, the Commission "shall find that it is in the public interest to approve the offering of qualifying communications services ... unless it shall be demonstrated to the Commission and found that" any of the standards in § 56-484.7:2 are met.³

The City's petition states that "[n]o service provider is offering scalable bandwidth over Ethernet; none provide functionally and economically equivalent services in the City of Staunton." This assertion, however, does not satisfy Staunton's statutory requirement to demonstrate in its petition that the qualifying communications service is not readily and generally available from three or more nonaffiliated companies in a manner that is functionally and economically equivalent for consumers. The petition should include evidence, under oath, to demonstrate that the qualifying communications services do not meet the standard set forth in § 56-484.7:2 within the geographic area specified in the petition.⁴ Such evidence, for example, could be in the form of an affidavit or of sworn pre-filed testimony.

Section 56-484.7:1 of the Code provides a limited time period within which the Commission must act on Staunton's petition. We find that there may be insufficient time to permit Staunton to file an amended petition in this case and timely conclude the proceeding. Consequently, we will dismiss the petition without prejudice and permit Staunton subsequently to file a new petition.

Finally, we recognize that this is the first proceeding initiated under §§ 56-484.7:1 and 56-584.7:2 of the Code. Effective July 1, 2003, § 56-484.7:1 E states that the Commission "may promulgate rules necessary to implement this section." We will soon initiate a separate proceeding to consider promulgating such rules.

Accordingly, IT IS ORDERED THAT:

- (1) The petition filed by the City of Staunton in this proceeding is hereby dismissed without prejudice.
- (2) This case shall be dismissed and removed from the list of pending cases.

³ Va. Code § 56-484.7:2.

⁴ In addition, any comments filed by participants opposing the petition and seeking to demonstrate that any of the standards in § 56-484.7:2 are met also should include evidence submitted under oath.

**CASE NO. PUC-2003-00069
JULY 30, 2003**

APPLICATION OF
THE CITY OF SALEM

For a certificate of public convenience and necessity to provide local exchange telecommunications services

FINAL ORDER

On April 10, 2003, the City of Salem ("Salem" or the "Applicant"), filed an application for a certificate of public convenience and necessity with the State Corporation Commission ("Commission") to provide local exchange telecommunications services in the cities of Salem and Roanoke and the County of Roanoke.

By Order dated April 22, 2003, the Commission directed the Applicant to provide notice to the public of its application and directed the Commission Staff to conduct an investigation and file a Staff Report. The Commission received written notices of participation from Verizon Virginia Inc. and Verizon South Inc. (jointly, "Verizon") and CoxCom, Inc. d/b/a Cox Communications Roanoke ("Cox") on May 12 and 13, 2003, respectively. On May 28, 2003, the Commission received written comments from Cox.

In its comments, Cox represents that Salem did not satisfy the provisions of 20 VAC 5-417-20 L,¹ which requires an applicant to provide an attestation that it will comply with the provisions set forth in 20 VAC 5-427-40 ("MLEC requirements").² Cox states that Salem, based on its interrogatory responses, has provided no documents regarding its decision to enter into the provision of telecommunications services, has no formal business plan, and states that the Applicant "provided an affidavit concerning 'telecommunications services' when the City does not have a clear idea of what providing those 'telecommunications services' will involve." Cox requested that the Commission not grant the requested certification until Salem "shows some indication that it actually plans to enter the telecommunications market and is capable . . . [of complying] with safeguards that it has given no serious consideration to."

¹ Section 20 VAC 5-417 et seq., the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers ("Local Rules") were adopted by Commission Order issued April 9, 2003, in Case No. PUC-2002-00115, In the Matter of Regulations Governing Competitive Local Exchange Carriers, Localities as Competitive Local Exchange Carriers, and Local Inter-Carrier Matters.

² In response to a Staff data request, Salem provided the required attestation that it would comply with the requirement in 20 VAC 5-417-40.

On June 5, 2003, the Applicant filed proof of publication and proof of service as required by the April 22, 2003, Order. On June 25, 2003, the Staff filed its Report. Salem filed its Response to the Staff Report and to Cox's comments on July 7, 2003. Salem indicated in its Response that it had no objection to the recommendations contained in the Staff Report. Regarding the comments of Cox, Salem responded by stating that the Affidavit of Compliance with Competitive Safeguards filed with the original application satisfied the statutory and regulatory requirements but that in response to a Staff data request it had also provided an attestation that it would comply with 20 VAC 5-417-40. In addition, Salem responds that neither the General Assembly's statute that allowed MLECs, nor the Commission's Local Rules, require an MLEC or a competitive local exchange carrier ("CLEC") to have a business plan in place when an application is filed or approved. Additionally, Salem represents that Cox's concern over the financial information/prices of its services should be addressed in the tariff approval process much like the Commission has ordered in other MLEC cases.

In its June 25, 2003, Staff Report, the Staff represented that Salem's application was in compliance with the Local Rules. Based upon its review of Salem's application, the Staff determined it would be appropriate to grant the Applicant a certificate to provide local exchange telecommunications services subject to the following conditions: (1) should Salem collect customer deposits, it should, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Applicant and should notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement should be maintained until such time as the Staff or Commission determines it is no longer necessary; and (2) at such time as voice services are initiated by Salem, it should comply with all requirements of New Entrants and Municipal Local Exchange Carriers of the Local Rules.

In responding to Cox's comments, the Staff Report stated that, of the previous four MLEC applications that have been granted,³ only Bristol represented itself as being ready and able to actually provide local exchange telecommunications services.⁴ Staff noted that the other localities, much like Salem, represented that they initially would provide Internet access and not local exchange telecommunications services; and Front Royal, Danville, and Martinsville responded to similar data requests and interrogatories regarding specifics and details regarding the provision of local exchange telecommunications services in much the same manner as Salem. Staff asserted that when Salem proposes to offer intrastate voice telecommunications services, it will be required to comply with all the rules and regulations of the Commission, including the Local Rules, in the same manner as all other certificated MLECs. Additionally, Staff noted that Salem, once it plans to offer local exchange telecommunications services, may be required to serve a copy of its initial tariffs on the service list for this case as the Commission previously ordered in the Front Royal, Danville, and Martinsville cases.

NOW THE COMMISSION, having considered the application and the Staff Report, finds that Salem should be granted a certificate to provide local exchange telecommunications services.

Accordingly, IT IS ORDERED THAT:

(1) Salem is hereby granted a certificate of public convenience and necessity, No. T-616, 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) Salem shall provide tariffs to the Division of Communications that conform to all applicable Commission rules and regulations before it begins offering local exchange telecommunications services. Salem shall serve upon the service list for this case a copy of those tariffs.

(3) Should Salem collect customer deposits, it shall, prior to collecting any deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union that is unaffiliated with the Company and shall notify the Division of Economics and Finance of the escrow arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the Staff or Commission determines it is no longer necessary.

(4) At such time as voice services are initiated by Salem, it shall comply with all requirements of New Entrants and MLECs of the Local Rules.

(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.

³ The previous applications from a locality were the City of Bristol, Case No. PUC-2002-00126; the City of Danville, Case No. PUC-2002-00128; the Town of Front Royal, Case No. PUC-2002-00208; and the City of Martinsville, Case No. PUC-2002-00207. All four of the applicants were granted certificates to provide local exchange telecommunications services.

⁴ A separate proceeding regarding the rates and charges of Bristol is currently pending.

**CASE NO. PUC-2003-00075
JULY 24, 2003**

JOINT APPLICATION OF
UNIVERSAL ACCESS, INC.
and
CITYNET TELECOMMUNICATIONS, INC

For authority for transfer of control

ORDER GRANTING AUTHORITY

On May 16, 2003, Universal Access, Inc. ("Universal Access"), and CityNet Telecommunications, Inc. ("CityNet") (collectively, the "Applicants"), completed a joint application filed with the State Corporation Commission ("Commission") on April 22, 2003, requesting authority pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Code") to consummate a transaction through which CityNet will acquire indirect control of Universal Access.

Universal Access, a Delaware corporation, is a telecommunications carrier authorized by the Federal Communications Commission and the public utility commissions of 46 states and the District of Columbia to provide telecommunications services. Universal Access is certificated in Virginia as Universal Access of Virginia, Inc. ("Universal Access-Virginia"), to provide local exchange telecommunications services pursuant to Commission Order dated June 30, 2000, in Case No. PUC-2000-00041. However, Universal Access-Virginia does not provide local exchange telecommunications services in Virginia. Universal Access provides telecommunications carriers and Internet service providers with dedicated transport circuits to meet bandwidth demand and cross-connects the networks of various telecommunications carriers. Universal Access also provides private line and interconnection services.

Universal Access is a wholly owned subsidiary of Universal Access Global Holdings, Inc. ("UAXS"). UAXS, also a Delaware corporation, does not hold any regulatory licenses from this Commission or any other telecommunications regulatory agency.

CityNet is a Delaware corporation headquartered in Silver Spring, Maryland. CityNet has been granted the right, in the United States and in Europe, to build dark fiber networks and point-to-point dark fiber connections. These networks are typically constructed in the applicable city's water mains and sewer systems. In Virginia, CityNet's subsidiary is certificated to provide both local exchange and interexchange telecommunications services pursuant to the Commission's Order dated January 16, 2001, in Case No. PUC-2000-00229, as CityNet Telecom of Virginia, Inc.

In the application, the Applicants request authority for the proposed transaction that will result in CityNet acquiring 55% ownership interest in UAXS. The transaction includes an acquisition of previously un-issued shares of UAXS's common stock that will total 55% of the outstanding common stock. The transaction will result in CityNet holding a controlling interest in UAXS and, therefore, in Universal Access and Universal Access-Virginia. The transaction will not result in any change in the name under which Universal Access and Universal Access-Virginia currently operate or any change in the manner in which they currently offer services in Virginia.

The Applicants represent that Universal Access-Virginia does not currently provide telecommunications services to customers in Virginia and that the transfer of control to CityNet will be transparent to Universal Access' and, therefore, Universal Access-Virginia's customers. Applicants represent that the proposed transaction will serve the public interest in promoting competition among telecommunications carriers by providing Universal Access and Universal Access-Virginia with the opportunity to strengthen their competitive positions by strengthening their balance sheet and gaining access to CityNet's business and managerial expertise.

THE COMMISSION, upon consideration of the joint application and representations of the Applicants and having been advised by its Staff, is of the opinion and finds that the above-described transfer of control 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 of the Code, the Applicants are hereby granted authority to consummate the transaction as described herein to allow CityNet to acquire indirect control of Universal Access, and thereby, acquire indirect control of Universal Access-Virginia.
- (2) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUC-2003-00077
JUNE 19, 2003**

APPLICATION OF
NTELOS INC., DEBTOR IN POSSESSION,
NTELOS TELEPHONE INC.,
ROANOKE & BOTETOURT TELEPHONE COMPANY,
and
OTHER AFFILIATES

For approval of amendments to credit agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING AUTHORITY

On April 23, 2003, NTELOS Inc. ("NTELOS"), NTELOS Telephone Inc. ("NTELOS Telephone")¹, Roanoke & Botetourt Telephone Company ("R&B"), and certain other affiliates (collectively "Applicants") filed an application with the State Corporation Commission ("Commission") under Chapter of Title 56 of the Code of Virginia ("Code") seeking approval for multiple existing amendments to the credit agreement previously approved by the Commission.

By Orders dated July 26, 2000, in Case No. PUF-2000-00022, and May 11, 2001, in Case No. PUF-2001-00009, the Commission authorized NTELOS Telephone and R&B (the "Companies") to guarantee a \$325,000,000 loan package of NTELOS (the "Credit Agreement").

On March 4, 2003, the Applicants filed separate petitions under Chapter 11 of the Bankruptcy Code. By Commission Order dated April 10, 2003, in Case No. PUC—2003-00038, NTELOS Telephone and R&B were authorized to guarantee \$35,000,000 of the Debtor In Possession obligations ("DIP Financing") of NTELOS.² NTELOS submitted a plan for reorganization, subject to bankruptcy court approval.

Section 9.01 of the Credit Agreement, approved by the Commission in Case Nos. PUF-2000-00022 and PUF-2001-00009, provides terms and conditions governing amendments of the Credit Agreement. According to the application, the following amendments to the Credit Agreement were executed between July 23, 2001, and February 28, 2003. Applicants represent that, with the exception of the amendment dated February 28, 2003, these amendments were generally for technical and administrative purposes to ensure the orderly performance of the Credit Agreement. Each amendment is discussed below.

On July 23, 2001, NTELOS executed Amendment No. 1, permitting the acquisition of Conestoga Enterprises, Inc., and the addition of a swingline facility to the working capital line of credit.³

On November 14, 2001, NTELOS executed Amendment No. 2 to clarify the definition of "Senior Leverage Ratio" and to amend the financial covenant relating to the ratio of senior secured debt to total capital.

On March 6, 2002, NTELOS executed Amendment No. 3 relaxing certain financial covenants in order to remain in compliance with the terms thereof and to add certain permitted asset sales. Amendment No. 3 also shortened the timeframe for existing reporting requirements and revised provisions relating to the application of net cash proceeds from asset sales.

On April 11, 2002, NTELOS executed a Letter Amendment in order to clarify that certain curtailment and settlement charges associated with its newly adopted early retirement incentive program would be added back to "Consolidated Net Income" for purposes of calculating earnings before interest, taxes, depreciation, and amortization.

On November 29, 2002, NTELOS obtained a waiver of any default or event of default (Waiver No. 1, which expired on February 1, 2003) arising out of or relating to NTELOS' failure to comply with certain requirements of the Credit Agreement. In exchange for such waiver, NTELOS agreed to an amendment (Amendment No. 4) placing limitations on new extensions of credit under the working capital and swingline facilities and additional reporting obligations and deliverables.

On January 14, 2003, NTELOS executed Amendment No. 5, which substituted Wachovia Bank N.A. as the Administrative Agent and Collateral Agent under the Credit Agreement.

On February 28, 2003, NTELOS and the Companies executed Amendment No. 6 to permit the transfer of NTELOS Telephone's and R&B's ownership interest in the Virginia Independent Telephone Alliance L.C. ("Alliance") and the Valley Network Partnership ("Partnership"), thereby avoiding the effect of bankruptcy on the Alliance and the Partnership.

THE COMMISSION, upon consideration of the application and having been advised by its Staff, is of the opinion and finds that approval of this application is in the public interest.

Accordingly, IT IS ORDERED THAT:

1) Pursuant to § 56-77 of the Code of Virginia, the amendments to the Credit Agreement, as specified in the application, are hereby approved.

¹ NTELOS Telephone was formerly known as CFW Telephone, Inc.

² In that Order, we noted that there had been several amendments to the Credit Agreement approved in Case Nos. PUF-2000-00022 and PUF-2001-00009. This application seeks to remedy that deficiency.

³ NTELOS terminated the agreement to acquire Conestoga Enterprises, Inc., on December 3, 2001.

- 2) The approval granted herein shall have no ratemaking implications.
- 3) 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.
- 4) The Commission, pursuant to § 56-79 of the Code of Virginia, 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) There being nothing further in this matter, it is hereby dismissed.

**CASE NO. PUC-2003-00090
MAY 29, 2003**

APPLICATION OF
TELECENTS OF VIRGINIA, INC.

To cancel certificate of public convenience and necessity to provide local telecommunications services

ORDER

By Order dated December 14, 2001, in Case No. PUC-2001-00187, the State Corporation Commission ("Commission") granted TeleCents of Virginia, Inc. ("TeleCents" or the "Company"), Certificate No. TT-166A to provide interexchange telecommunications services and Certificate No. T-574 to provide local exchange telecommunications services in Virginia.

By letter application filed on May 5, 2003, TeleCents requested the cancellation of its certificate of public convenience and necessity to provide local exchange telecommunications services.¹ TeleCents advised that it currently has no local exchange customers and has never operated as a competitive local exchange carrier in the Commonwealth of Virginia.

NOW THE COMMISSION, having considered the matter, is of the opinion that TeleCents' Certificate No. T-574 should be cancelled.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed and assigned Case No. PUC-2003-00090.
- (2) Certificate No. T-574 issued to TeleCents of Virginia, Inc., to provide local exchange telecommunications services is hereby cancelled.
- (3) This matter is hereby dismissed.

¹ In its May 15, 2003, filing, Staff stated that it verified that TeleCents wants to retain Certificate No. TT-166A. Staff also stated that TeleCents does not have accepted tariffs on file with the Commission's Division of Communications for either its local exchange or its interexchange telecommunications services.

**CASE NO. PUC-2003-00091
DECEMBER 19, 2003**

PETITION OF
AT&T COMMUNICATIONS OF VIRGINIA, LLC

For reductions in the intrastate carrier access rates of Verizon Virginia Inc. and Verizon South Inc.

ORDER ESTABLISHING INVESTIGATION

On May 8, 2003, AT&T Communications of Virginia, LLC ("AT&T"), filed a Petition with the State Corporation Commission ("Commission") seeking a reduction in the intrastate carrier access rates charged by Verizon Virginia Inc. ("Verizon Virginia") and Verizon South Inc. ("Verizon South") (collectively, "Verizon"). On June 6, 2003, Verizon filed a Motion to Dismiss, Answer, and Affirmative Defenses. On June 17, 2003, AT&T filed a Response; and on June 27, 2003, Verizon filed a Reply. In their pleadings, both AT&T and Verizon discuss the Commission's Orders in two prior cases where the Commission approved settlement agreements between Verizon and the Commission Staff ("Staff") regarding intrastate access service prices.¹

On July 24, 2003, the Commission issued an Order Requesting Additional Filings. We directed Staff to file a report on the results that have been achieved through implementing the settlement agreements adopted in Case Nos. PUC-2000-00242 and PUC-2000-00283, and we permitted the parties to file additional comments subsequent thereto.

¹ 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-2000-00242, 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.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Staff filed its report on September 22, 2003, which included the following observations:

- (1) Both settlements have produced access revenue and average access revenue per minute ("ARPM") reductions to date;
- (2) The actual access and ARPM reductions resulting from the settlements to date have not been at the levels originally estimated and are not expected to meet those original estimates during the remainder of the settlement period;
- (3) The access revenues of both Verizon Virginia and Verizon South are significantly decreasing; however, a large proportion of the decreases are a result of the overall decrease in minutes of use ("MOU") rather than the rate/structure changes adopted in the settlements;
- (4) The forecasts of MOUs and access lines used in the original settlement estimates were not unreasonable at the time in light of historical trends; however, actuals have been significantly different during the settlement period to date;
- (5) The ARPMs are estimated to be higher in 2003 than they were in 2000 for both Verizon Virginia and Verizon South; however, without the settlements the ARPMs would have been even higher;
- (6) The ARPM for Verizon Virginia is expected to increase through the remaining settlement period based on the revised forecast; however, without the settlement the ARPM would increase even further;
- (7) The ARPM for Verizon South is still expected to decline somewhat during the settlement period based on the revised forecast; however, without the settlement the ARPM would increase dramatically; and
- (8) The continuation of the previous per line Carrier Common Line ("CCL") recovery method instead of the fixed CCL revenue method would have resulted in further access revenue reductions and lower ARPMs.

MCI Worldcom Communications of Virginia, Inc. ("MCI"), filed comments on October 3, 2003. MCI requests that the Commission commence an investigation of Verizon's intrastate carrier access charges.

AT&T filed comments on October 3, 2003. AT&T states that the Commission should reduce Verizon's access charges to cost-based levels and that one approach would be to require Verizon to match its access rates to its existing UNE rates. AT&T asserts that, at a minimum, the Commission should direct Verizon to reduce its intrastate access rates to levels no higher than the rates Verizon currently charges at the interstate level.

Verizon filed comments on October 3, 2003. Verizon states that the amount of revenue collected by Verizon Virginia and Verizon South has substantially decreased in the past several years to a level far below that anticipated by the settlements and that no participant suggests that Verizon's current access rates are not just and reasonable. Verizon requests that the Commission deny the relief requested by AT&T and dismiss the Petition in its entirety. In the alternative, Verizon states that if the Commission is inclined to address access charges at this time, it should do so in a generic proceeding for all carriers in Virginia.

NOW THE COMMISSION, upon consideration of the pleadings and applicable law, finds as follows. We deny Verizon's Motion to Dismiss and grant AT&T's Petition for purposes of initiating an investigation to determine the proper level of intrastate access charges for Verizon Virginia and Verizon South. No participant has asserted that Verizon's current access charges are based on cost of service. Furthermore, it is unclear whether Verizon's access charges should be based solely on cost of service. We assign this case to a Hearing Examiner to conduct all further proceedings in this matter and to prepare a report and recommendations on, among other things, the proper level of intrastate access service prices for Verizon Virginia and Verizon South.

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) We deny the Motion to Dismiss filed by Verizon.
- (2) We grant the Petition filed by AT&T for purposes of establishing an investigation to determine the proper level of intrastate access charges for Verizon Virginia and Verizon South.
- (3) This case is assigned to a Hearing Examiner, pursuant to 5 VAC 5-20-120, for further proceedings.
- (4) This matter is continued.

**CASE NO. PUC-2003-00092
JUNE 19, 2003**

QWEST COMMUNICATIONS CORPORATION OF VIRGINIA
and
QWEST INTERPRISE AMERICA, INC. OF VIRGINIA

To Discontinue Certain Telecommunications Services in Virginia

**ORDER PERMITTING THE PARTIAL
DISCONTINUANCE OF SERVICES**

On May 12, 2003, Qwest Communications Corporation of Virginia and Qwest Interprise America, Inc. of Virginia ("Qwest" or the "Company"),¹ filed a petition with the State Corporation Commission ("Commission") requesting Commission approval to discontinue its provision of certain telecommunications services to customers in Virginia.² The Company's petition specifically requests approval to discontinue its provision of bundled DSL Internet Access services, affecting 775 Virginia customers.

In its petition, Qwest states that it has two groups of bundled digital subscriber line ("DSL") Internet access customers: the first group is served by digital subscriber line access multiplexers ("DSLAMs") located in incumbent local exchange carrier's central offices; and the second group is served by DSLAMs located on customer premises. Qwest proposes to sell to Covad Communications Company ("Covad") the customer base of the first group of DSL customers, which affects 773 customers. Unless those customers make other arrangements, they will be automatically transferred to Covad. The remaining two customers belong to the second group of DSL Internet access customers, whose customer base Qwest is not selling to Covad. Those two customers will lose their DSL service unless they make other arrangements.

The Commission's primary concern with authorizing any discontinuance of telecommunications services is that adequate notice to the customers be provided. The Commission's rule regarding partial discontinuance, 20 VAC 5-423-30 (Requirements for Partial Discontinuance), requires that a petition include a description of the customer notification efforts and that customers be provided at least 30 days' written notice of a proposed partial discontinuation of telecommunications services.

Qwest provided with its petition copies of the notices that will be mailed to customers affected by the partial discontinuance of services. We find that the notices meet the requirements of the rules and that the 30 day notice requirement will be met.

NOW THE COMMISSION, being sufficiently advised, will grant the requested partial discontinuance of Qwest's bundled DSL Internet Access services.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed and assigned Case No. PUC-2003-00092.
- (2) Qwest is hereby granted its request for discontinuance of its bundled DSL Internet Access services to Virginia customers.
- (3) There being nothing further to come before the Commission in this matter, this case shall be closed, and the papers herein shall be placed in the file for ended causes.

¹ Qwest Communications Corporation of Virginia holds both a local exchange and interexchange certificate of public convenience and necessity ("CPCN"), T-476 and TT-80A, respectively. This Petition is not requesting any change or modification of said certificates. Qwest Interprise America, Inc. of Virginia does not hold a CPCN in Virginia.

² Although Qwest stated in its application that it was filing its petition pursuant to 20 VAC 5-423-20 ("Requirements for discontinuance"), we take notice that its petition is properly filed pursuant to 20 VAC 5-423-30 ("Requirements for partial discontinuance").

**CASE NO. PUC-2003-00094
AUGUST 13, 2003**

PETITION OF
GLOBAL CROSSING LTD (Debtor-in-Possession)
and
GC ACQUISITION LIMITED

For approval of the transfer of control of Global Crossing Ltd.'s Virginia operating subsidiaries to GC Acquisition Limited

ORDER GRANTING APPROVAL

On May 15, 2003, Global Crossing Ltd. (Debtor-in-Possession) ("GCL") and GC Acquisition Limited ("New GX") (collectively, the "Petitioners") filed a petition with the State Corporation Commission ("Commission"), pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Code"), requesting approval to transfer control of GCL's Virginia-Licensed Subsidiaries from GCL to New GX.¹

GCL is a global telecommunications company organized under the laws of Bermuda. GCL owns and operates, through its subsidiaries, a global Internet Protocol-based fiber optic network that covers approximately 75,800 miles and over 200 major cities (the "Global Crossing Network"). The Global Crossing Network is used by GCL's operating subsidiaries to provide integrated telecommunications services, including a full range of managed data, voice, and Internet services, to large corporations, government agencies, and telecommunications carriers. In the United States, GCL's operating subsidiaries provide intrastate, interstate, and international telecommunications services. GCL's subsidiaries are authorized by the Federal Communications Commission ("FCC") and the public utility commissions of all 50 states and the District of Columbia to provide telecommunications services.

New GX is a newly formed company organized for the purpose of carrying out the proposed transaction. GCL is the sole shareholder of New GX.

Budget Call Long Distance, Inc. (Debtor-in-Possession) ("Budget Call"), is an indirect wholly owned subsidiary of GCL. Budget Call is a Delaware corporation with its principal office located in Pittsford, New York. Budget Call provides intrastate long distance telecommunications services in Virginia on a resale basis.² Budget Call does not hold a certificate of public convenience and necessity ("CPCN") to provide telecommunications services in Virginia.³

Global Crossing North American Networks, Inc. (Debtor-in-Possession) ("GCNAN"), is an indirect wholly owned subsidiary of GCL. GCNAN is a Delaware corporation with its principal office located in Pittsford, New York. GCNAN provides long distance telecommunications services in Virginia on a resale basis, but at the present time it does not have Virginia customers. GCNAN does not hold a CPCN to provide telecommunications services in Virginia.

Global Crossing Telecommunications, Inc. (Debtor-in-Possession) ("GCTI"), is also an indirect wholly owned subsidiary of GCL. GCTI is a Wisconsin corporation with its principal office located in Pittsford, New York. GCTI provides long distance telecommunications services in Virginia on a resale basis. GCTI does not hold a CPCN to provide telecommunications services in Virginia.

Global Crossing Telemangement of VA, LLC (Debtor-in-Possession) ("GCTVA"), is an indirect wholly owned subsidiary of GCL.⁴ GCTVA is a Virginia limited liability company with its principal office located in Pittsford, New York. GCTVA holds a CPCN to provide competitive local exchange telecommunications services in Virginia. That CPCN was granted in Case No. PUC-1997-00157 (PUC970157) on January 5, 1998.⁵

Singapore Technologies Telemedia Pte Ltd. ("ST Telemedia") is a Singapore telecommunications and information technologies company. ST Telemedia, through subsidiaries, provides fixed and mobile telecommunications, data, and Internet services, telephone equipment distribution, managed hosting, teleport, broadband cable and video, and e-business software development services in Singapore. ST Telemedia is a wholly owned subsidiary of Singapore Technologies Pte Ltd, which is a wholly owned subsidiary of Temasek Holdings [Private] Limited. ST Telemedia, along with its parent companies, is organized under the laws of Singapore. ST Telemedia does not operate directly in the United States, nor does ST Telemedia or its subsidiaries provide intrastate telecommunications services in Virginia.

On January 2, 2003, in Case No. PUC-2002-00193, the Commission granted approval for the transfer of GCTVA from GCL to New GX. Under the transaction as approved by the Commission, Hutchison Telecommunications Limited ("Hutchison Telecom") and ST Telemedia each would invest \$125 million in cash in New GX in exchange for each obtaining 30.75% of New GX's equity and voting power in the form of common and preferred stock.

After issuance of the Commission's January 2, 2003, Order granting approval for the proposed transfer of control, the transfer still required approval by the FCC and the Committee on Foreign Investment in the U.S. ("CFIUS"). After extensive investigations into Hutchison Telecom's possible ties to the Chinese government, Hutchison Telecom decided not to participate or invest \$125 million in New GX.

¹ The GCL "Virginia-Licensed Subsidiaries" include Budget Call Long Distance, Inc. (Debtor-in-Possession), Global Crossing North American Networks, Inc. (Debtor-in-Possession), Global Crossing Telecommunications, Inc. (Debtor-in-Possession), and Global Crossing Telemangement of VA, LLC (Debtor-in-Possession).

² In Virginia, resellers of interexchange telecommunications services are not required to have a certificate of public convenience and necessity but are required to have a Certificate to Transact Business issued by the Clerk of the Commission.

³ Facilities-based interexchange telecommunications service providers are required to have a CPCN issued by the Commission.

⁴ While the petition identifies the certificated local exchange carrier in Virginia as Global Crossing Telemangement VA, LLC, the certificated name in Virginia is Global Crossing Telemangement of VA, LLC. For the purposes of this case we will use the certificated name.

⁵ Global Crossing Telemangement of VA, LLC, was formerly known as Frontier Telemangement LLC. The name was changed in 2000.

The Petitioners now request approval pursuant to Chapter 5 of Title 56 of the Code to transfer control of GCL's Virginia-Licensed Subsidiaries, including GCTVA, from GCL to New GX. Since GCTVA is the only one of the Virginia-Licensed Subsidiaries holding a CPCN in Virginia, approval is required under Chapter 5 of Title 56 of the Code only for the transfer of control of GCTVA. This proposal differs from the one previously approved in that instead of Hutchison Telecom and ST Telemedia each proposing to obtain a 30.75% interest in New GX, ST Telemedia now proposes to obtain a 61.5% equity and voting interest in New GX and therefore would control New GX and GCTVA. Other than the ownership stake in New GX, the terms of the new transaction are substantially the same as previously approved by the Commission.

Under the terms of the proposed transaction, ST Telemedia proposes to increase its investment in New GX to \$250 million. In return, ST Telemedia will acquire a 61.5% equity and voting interest in New GX and will control New GX. As described in the original transaction, creditors of GCL and its debtor subsidiaries will obtain 38.5% of New GX's equity and voting power in the form of common stock. New GX also plans to issue \$200 million in senior secured notes and \$300 million in cash to those creditors. These notes will be secured by the assets of various GCL subsidiaries, including the Virginia-Licensed Subsidiaries.

As indicated previously, the Petitioners seek approval of a transfer of control of GCL's Virginia-Licensed Subsidiaries from GCL to New GX. On January 28, 2002, GCL and certain of its subsidiaries, including the Virginia-Licensed Subsidiaries, filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code with the Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"). On August 9, 2002, the Bankruptcy Court authorized GCL to enter into a Purchase Agreement to effectuate the proposed transaction. The Supreme Court of Bermuda has also authorized GCL to enter into the proposed transaction.

Under this proposed transaction, GCL will indirectly transfer substantially all of its assets and operations, including its ownership interests in the Virginia-Licensed Subsidiaries, to New GX. Once the transaction has been completed, GCL will relinquish all of its equity and voting power in New GX, and New GX will become the new ultimate parent of the Virginia-Licensed Subsidiaries.

The Commission issued its Order for Notice and Comment on May 29, 2003. No comments were filed.

On August 1, 2003, Staff filed its report in which it noted that the FCC and CFIUS are continuing their review of the proposed transaction. Staff noted concerns raised at the federal level concerning ST Telemedia's participation in the proposed transaction and the Singapore government's ownership of ST Telemedia. Because of these concerns, Staff believes that it cannot adequately determine whether the proposed transaction will impair or jeopardize the provision of adequate service to the public until issues regarding national security, foreign ownership, and other issues under review at the federal level are resolved. Therefore, Staff recommended that approval of the proposed transaction be conditioned upon approval by the FCC and CFIUS. Once reviews are completed and approvals at the federal level occur, Staff believes that the Commission can then be assured that the applicable Chapter 5 standard will be satisfied.

The Petitioners, through counsel, filed Comments to Staff Report ("Comments") together with a Motion for Admission out of Time.⁶ The Motion for Admission out of Time is granted. In the Comments, the Petitioners take exception to Staff's recommendation to condition any approval of the proposed transaction by this Commission to the approval by the FCC and CFIUS. Petitioners maintain this recommendation is unnecessary and redundant. However, in the event that the Commission adopts the proposed condition, Petitioners request that the Commission's Order be clear that the Order will be effective as soon as the condition of federal approvals is satisfied and that no further action will be required by the Commission of the Petitioners to make the Order effective other than the Petitioners advising the Commission that the federal approvals have been obtained.

NOW THE COMMISSION, upon consideration of the joint petition, representations of the Petitioners, the Staff Report, and of Petitioners' Comments, is of the opinion and finds that the petition should be approved upon the condition recommended by Staff. Once the issues raised by Staff are resolved at the federal level, we can be assured that the transfer of control of GCTVA from GCL to New GX, as described herein, will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates. We, therefore, believe that our approval of the proposed transaction should be conditioned upon approval by the FCC and CFIUS and that the Petitioners should keep the Staff aware of any developments regarding review by the FCC and CFIUS.

Accordingly, IT IS ORDERED THAT:

- (1) The Petitioners' Motion for Admission out of Time is hereby granted.
- (2) Pursuant to §§ 56-88.1 and 56-90 of the Code, approval is hereby granted for the transfer of control of GCTVA from GCL to New GX as described herein, conditioned upon approval by the FCC and CFIUS.
- (3) The Petitioners shall file with the Commission proof of approval by both the FCC and CFIUS of the proposed transfer of control within ten (10) days of such approvals.
- (4) Should approval not be granted by the FCC and CFIUS, Petitioners shall promptly file proof of denial with the Commission. Should the proposed transfer of control be terminated by any of the Petitioners, notification of such shall be promptly filed with the Commission.
- (5) This matter shall be continued until the requirements of ordering paragraph (3) have been met.

⁶ Staff has advised that it has no objection to Comments filed out of time.

**CASE NO. PUC-2003-0094
NOVEMBER 3, 2003**

PETITION OF
GLOBAL CROSSING LTD. (Debtor-in-Possession)
and
GC ACQUISITION LIMITED

For approval of the transfer of control of Global Crossing Ltd.'s Virginia operating subsidiaries to GC Acquisition Limited

DISMISSAL ORDER

By Order Granting Approval dated August 13, 2003, the State Corporation Commission ("Commission") granted approval, pursuant to §§ 56-88.1 and 56-90 of the Code of Virginia, for the transfer of control of Global Crossing Telemanagement of VA, LLC (Debtor-in-Possession), an indirect wholly owned subsidiary of Global Crossing Ltd. (Debtor-in-Possession) ("GCL") from GCL to GC Acquisition Limited ("New GX") (GCL and New GX collectively, the "Petitioners") conditioned upon approval by the Federal Communications Commission ("FCC") and the Committee on Foreign Investment in the U.S. ("CFIUS"). The Petitioners were required to provide proof of such approvals within ten days of obtaining the approvals. The Petitioners filed proof of approval by CFIUS on September 30, 2003, and the FCC on October 10, 2003.

NOW THE COMMISSION, upon consideration of the filed reports and having been advised by its Staff, is of the opinion and finds that there appearing nothing further to be done, this matter should be dismissed.

Accordingly, IT IS ORDERED THAT there appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUC-2003-00095
SEPTEMBER 23, 2003**

APPLICATION OF
PPL TELCOM, LLC

For a certificate of public convenience and necessity to provide interexchange telecommunications services

FINAL ORDER

On May 20, 2003, PPL Telcom, LLC ("PPL" or the "Company"), filed an application with the State Corporation Commission ("Commission") for a certificate of public convenience and necessity to provide 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 13, 2003, 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 23, 2003, PPL filed proof of publication and proof of service as required by the June 13, 2003, Order.

On August 14, 2003, the Staff filed its Report finding that PPL's application was in compliance with 20 VAC 5-411-10 *et seq.*, the Rules Governing the Certification of Interexchange Carriers. Based upon its review of PPL's application, the Staff determined it would be appropriate to grant the Company a certificate to provide interexchange telecommunications services.

NOW THE COMMISSION, having considered the application and the Staff Report, finds that the Company should be granted a certificate to provide interexchange telecommunications services. Having considered § 56-481.1, the Commission further finds that the Company may price its interexchange telecommunications services competitively.

Accordingly, IT IS ORDERED THAT:

(1) PPL Telcom, LLC, is hereby granted a certificate of public convenience and necessity, No. TT-197A, 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) The Company shall provide tariffs to the Division of Communications that conform with all applicable Commission rules and regulations.

(3) Pursuant to § 56-481.1 of the Code of Virginia, the Company may price its interexchange telecommunications services competitively.

(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-2003-00097
NOVEMBER 7, 2003**

PETITION OF
ONESTAR COMMUNICATIONS, LLC

For an Order Directing Verizon Virginia Inc. to Cease and Desist from Disconnecting Service

ORDER PERMITTING DISCONTINUANCE

On June 3, 2003, Verizon Virginia Inc. ("Verizon") filed a letter with the Clerk of the State Corporation Commission ("Commission") pursuant to 20 VAC 5-423-80 notifying the Commission that Verizon would disconnect resale and UNE-P service to OneStar Communications, LLC ("OneStar"), on August 6, 2003 ("Notification of Disconnection"), if OneStar did not cure resale and UNE-P payment defaults of at least \$172,681.82.

As set forth in 20 VAC 5-423-80, Verizon's Notification of Disconnection provided information on: (1) the number of OneStar resale customers to be disconnected and the proposed disconnection date; (2) any proposal to notify or transfer OneStar's customers to Verizon or to other carriers; (3) a description and quantification of the service offerings to OneStar to be disconnected; (4) the amount claimed to be owed to Verizon by OneStar, including the identification of any disputed amounts; (5) a description of any efforts that Verizon and OneStar have taken to prevent disconnection or disruption of service to OneStar's customers; and (6) a copy of a written disconnection notice sent to OneStar.

On October 14, 2003, Verizon filed a letter with the Clerk of the Commission stating as follows:

Verizon suspended its service termination action when OneStar entered into a Debt Restructure Agreement and signed a secured Note with Verizon that required, among other things, cure payment for all payment defaults to be made on specified dates. OneStar failed to make the cure payment scheduled and due on September 15, 2003. Section 9 of the Debt Restructure Agreement grants Verizon the right to terminate all service to OneStar within 5 days of its default. Accordingly, on October 8, 2003, Verizon notified OneStar of its initiation of the service suspension and termination process. Because OneStar has failed to cure payment defaults for undisputed resale and UNE-P charges of at least \$198,689.21, Verizon intends to disconnect resale and UNE-P service to OneStar on November 21, 2003.

Verizon states that, according to its records, OneStar has approximately 197 resale customers and 283 UNE-P customers in Virginia.

On October 24, 2003, OneStar filed an emergency petition ("Petition") with the Commission under 5 VAC 5-20-100 B, requesting an order directing Verizon: (1) to cease and desist from terminating telecommunications services and facilities provided on a wholesale basis to OneStar pending resolution of settlement talks between carriers and pending Verizon's compliance with applicable laws and rules governing one carrier's discontinuance of service to another carrier; and (2) to terminate its embargo against OneStar's use of Verizon's Graphic User Interface ("GUI") that provides access to Verizon's operations support system. OneStar asserts that it appears Verizon eagerly awaits OneStar's exit from the market but that, at the present time, OneStar does not desire or intend to exit the Virginia market voluntarily.

OneStar states that the amount it owes Verizon for services and facilities provided in Virginia has been reduced by approximately \$90,000 as a result of deposits paid by OneStar to Verizon this summer. OneStar contends that Verizon's suspension of its termination action voids the effect of its 60-day notice filed on June 3, 2003, and that Verizon's letter filed on October 14, 2003, begins a new 60-day period. OneStar asserts that Verizon is violating common law by "discriminating in the provision of credit between its retail customers and its competitors" and that Verizon has failed to comply with federal requirements for the disconnection of OneStar's services. OneStar also contends that Verizon's attempt to disconnect service is anti-competitive and that, "at a bare minimum," the Commission must delay Verizon's disconnection of service to OneStar so that public safety entities (such as police and fire departments) have at least thirty (30) days in which to make other arrangements for telephone service.

On November 5, 2003, Verizon filed a Motion to Dismiss, Answer, and Affirmative Defenses. Verizon requests that the Commission deny the relief requested by OneStar in its entirety, dismiss the Petition in its entirety, and order OneStar to immediately provide notice to its customers of its pending termination of service on November 21, 2003. In the event that the Commission finds that more time is necessary for OneStar to provide adequate notice to its customers, Verizon requests that the discontinuation deadline be extended by no more than one week with a requirement that OneStar provide prepayment to Verizon in the amount of charges for all services that were and continue to be billed post-September 15, 2003 (the date of OneStar's default on the Demand Note), for services secured through the extended termination date. Finally, Verizon states that "[g]iven OneStar's flouting of the Commission's rules regarding customer notice (as other [competitive local exchange carriers ("CLECs")] have done in the past), Verizon also urges the Commission in future disconnect instances to vigilantly enforce the Commission's Rules requiring CLECs to provide notice immediately, rather than allowing CLECs to bide their time and make baseless, eleventh hour emergency requests."

NOW THE COMMISSION, upon consideration of this matter, finds as follows. OneStar has not provided sufficient factual and legal justification for the Commission to prohibit Verizon from disconnecting resale and UNE-P service to OneStar or for the Commission to direct Verizon to provide OneStar access to Verizon's GUI. As required by 20 VAC 5-423-80, on June 3, 2003, Verizon provided notification with the Commission "at least 60 days prior to the proposed date of disconnection." Verizon did not withdraw such notice, and Verizon provided OneStar and the Commission additional notification on or about October 9 and 14, 2003, respectively, of its intention to discontinue service to OneStar.¹ Based on our findings below regarding prior notice to OneStar's customers, we do not have to decide in this case the temporal outer limits of a notification of disconnection by Verizon that has not been withdrawn.

¹ Moreover, in the Debt Restructure Agreement OneStar acknowledges its outstanding debt to Verizon and agrees that Verizon may, in its sole and absolute discretion, terminate all services provided to OneStar within five (5) calendar days of default under such agreement without further notice to OneStar. Given these circumstances, OneStar cannot now be heard to complain.

We find that OneStar's customers must receive sufficient notice to select an alternative telephone company and to minimize customer disruption. OneStar shall send a direct notice of disconnection to its customers via first-class mail on or before November 12, 2003. Verizon shall not discontinue service to OneStar prior to December 13, 2003, and we will not grant Verizon's request to place additional requirements on OneStar's contractual payment obligations.

In addition, to avoid potentially serious consequences for those customers in transition, Verizon shall not disconnect any of OneStar's local exchange customers for which Verizon has received an associated order on or before December 12, 2003, to transfer a customer's local exchange telecommunications services. Furthermore, as required by 20 VAC 5-423-80 D, Verizon shall follow its expedited ordering procedures and make every effort to assist in the timely transfer of OneStar's customers to the customer's new local exchange telecommunications carrier in order to prevent the disruption of service to those customers.

Accordingly, IT IS HEREBY ORDERED THAT:

(1) On or before November 12, 2003, OneStar shall complete notice by first-class mail to each customer affected by the proposed discontinuance in Verizon's territory.

(2) Verizon shall not discontinue service to OneStar prior to December 13, 2003.

(3) Verizon shall not disconnect any of OneStar's local exchange customers for which Verizon has received an associated order on or before December 12, 2003, to transfer a customer's local exchange telecommunications services.

(4) As required by 20 VAC 5-423-80 D, Verizon shall follow its expedited ordering procedures and make every effort to assist in the timely transfer of OneStar's customers to the customer's new local exchange telecommunications carrier in order to prevent the disruption of service to those customers.

(5) OneStar shall include the following language in its notice to customers:

Customers are required to select an alternative local exchange telephone company on or before December 12, 2003, to avoid a loss of local telephone service. Customers who have timely placed an order for service with an alternative telephone company but have not yet been transferred to that company should not experience a loss of local service.

(6) The Commission's Staff shall monitor the discontinuance process as necessary. OneStar shall provide confirmation to the Commission's Staff on or before November 13, 2003, that customer notice has been provided as required herein. OneStar and Verizon shall work to ensure the timely transfer of all customers, including any public safety customers identified by OneStar. OneStar and Verizon shall provide any requested information to the Commission's Staff as expeditiously as possible, pursuant to Virginia Code § 56-249.

(7) On or before December 8, 2003, OneStar shall report to the Commission's Division of Communications the number of its remaining customers in Virginia.

(8) OneStar shall file notice with the Commission when it has completed discontinuance of service to its customers.

(9) Verizon shall file notice with the Commission when it has completed discontinuance of service to OneStar.

(10) The Clerk of the Commission shall provide a copy of this Order to all competitive local exchange carriers licensed by the Commission.

(11) This matter is continued pending further Order of the Commission.

**CASE NO. PUC-2003-00098
JULY 9, 2003**

APPLICATION OF
CITY OF BRISTOL d/b/a BRISTOL VIRGINIA UTILITIES BOARD

To cancel existing certificates and issue certificates reflecting new name

FINAL ORDER

By letter filed June 5, 2003, City of Bristol d/b/a Bristol Virginia Utilities Board ("Bristol"), informed the State Corporation Commission ("Commission") that it proposes to change its name to City of Bristol d/b/a Bristol Virginia Utilities, effective July 1, 2003. Although Bristol failed to request the cancellation of certificates issued in its name and the reissuance of certificates reflecting its new name, we take notice that this should be done.

Bristol holds a certificate of public convenience and necessity, T-598, issued November 26, 2002, in Case No. PUC-2002-00126, which authorizes Bristol to provide local exchange telecommunications services in the cities of Bristol and Norton and the counties of Washington, Scott, Lee, Wise, Russell, Tazewell, Smyth, and Grayson. The Commission is of the opinion that a revised certificate of public convenience and necessity should be granted.

Accordingly, IT IS ORDERED THAT:

(1) This matter should be docketed and assigned Case No. PUC-2003-00098.

(2) Bristol's certificate of public convenience and necessity, T-598, is cancelled and shall be reissued as amended Certificate No. T-598a in the name of City of Bristol d/b/a Bristol Virginia Utilities.

(3) There being nothing further to come before the Commission, this matter is dismissed.

**CASE NO. PUC-2003-00099
AUGUST 13, 2003**

PETITION OF
MFN OF VA L.L.C.
and
METROMEDIA FIBER NETWORK, INC

For approval of transfer of control pursuant to Chapter 5 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On June 6, 2003, under Chapter 5 of Title 56 of the Code of Virginia, MFN of VA, L.L.C. ("MFN VA"), and Metromedia Fiber Network, Inc. ("MFN"), its indirect parent, filed a petition with the State Corporation Commission ("Commission") for approval of transfer of control of MFN VA from MFN to a newly reorganized Metromedia Fiber Network, Inc. ("Reorganized MFN"), with MFN VA emerging from bankruptcy as a newly reorganized MFN of VA L.L.C., ("Reorganized MFN VA"), pursuant to the bankruptcy Plan of Reorganization ("Plan") submitted to the U.S. Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

On July 18, 2003, an amendment to the petition was filed with the Commission to reflect the substitution of one minority investor who would hold more than 10% equity for another minority investor who would hold more than 10% equity in the Reorganized MFN.

By Order dated August 1, 2003, the Commission extended the time for review of issues in this case through September 4, 2003.

MFN VA is a limited liability company formed in Delaware with headquarters in White Plains, New York. MFN VA was granted Certificates of Public Convenience and Necessity to provide interexchange and local exchange telecommunications services in Virginia on June 26, 1998, in Case No. PUC-1998-00047

MFN VA is a wholly owned subsidiary of Metromedia Fiber Network Services, Inc. ("MFN Services"), the direct parent of MFN VA, which is a wholly owned subsidiary of MFN, the indirect parent of MFN VA. Both MFN Services and MFN are incorporated in Delaware with headquarters in White Plains, New York. MFN is a holding company with extensive operating subsidiaries (collectively, the "MFN Companies"), including MFN Services and MFN VA.

The MFN Companies combine extensive metropolitan area fiber networks in the U.S. and abroad with a global optical IP network, data centers, and managed services to deliver integrated services to carriers, large businesses, and governments.

MFN VA currently has a network of dark fiber in Northern Virginia and provides services to 42 customers. Of those, 41 customers lease dark fiber from MFN VA to establish and maintain their own private optical networks. MFN VA also provides WaveChannel service to one customer in Virginia. WaveChannel is a complete optical network, based on DWDM technology, which is private and dedicated to the single customer.

On March 13, 2003, MFN proposed its initial bankruptcy Plan of Reorganization (the "Plan") and filed its amended Plan on May 9, 2003. MFN anticipates that the Bankruptcy Court will hold a hearing to consider confirmation of the Plan in mid-August 2003. MFN is simultaneously seeking all other necessary regulatory approvals.

Upon implementation of the Plan, all then-current equity interests in MFN will be extinguished and deemed cancelled. The MFN Companies will be recapitalized by converting certain secured claims and a substantial portion of allowed general unsecured claims into equity in Reorganized MFN in the form of new stock and through obtaining new funding through a \$50 million rights offering.

Upon emergence from bankruptcy, it is anticipated that there will be only two stockholders who will hold more than 10% equity in the Reorganized MFN and none having controlling interest.

After emergence from bankruptcy, Reorganized MFN and Reorganized MFN Services are to be renamed AboveNet Communications, Inc., and AboveNet, Inc., respectively, and MFN VA will change its name to AboveNet of VA, L.L.C.

The Petitioners represent that the transfer of control will not affect the ability of MFN VA to continue to provide telecommunications services in Virginia pursuant to the same rates, terms, and conditions as currently on file with the Division of Communications.

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 transaction, as described herein, involving transfer of control 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 of Virginia, approval is hereby granted for the transfer of control of MFN VA, as described herein.
- 2) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUC-2003-00100
AUGUST 8, 2003**

APPLICATION AND PETITION OF
NTELOS INC., DEBTOR IN POSSESSION, A VIRGINIA CORPORATION,
NTELOS TELEPHONE INC.,
ROANOKE & BOTETOURT TELEPHONE COMPANY,
NTELOS SUBSIDIARIES,
CAPITAL RESEARCH AND MANAGEMENT COMPANY, AND
MORGAN STANLEY & CO. INCORPORATED

For authority under Chapters 3, 4, and 5 of Title 56 of the Code of Virginia

ORDER GRANTING AUTHORITY

On June 18, 2003, NTELOS Inc. ("NTELOS"), NTELOS Telephone Inc.¹ ("NTELOS Telephone"), Roanoke & Botetourt Telephone Company ("R&B" and collectively with NTELOS Telephone, "the Telephone Companies"), certain other subsidiaries² of NTELOS ("NTELOS Subsidiaries") (collectively, the "NTELOS Entities"), Capital Research and Management Company ("Capital Research") and Morgan Stanley & Co. Incorporated ("Morgan Stanley") completed an application with the State Corporation Commission ("Commission") under Chapters 3, 4, and 5 of Title 56 of the Code of Virginia ("the Code"). The requisite fee of \$250.00 has been paid.

The NTELOS Entities, along with Capital Research and Morgan Stanley (collectively "the Applicants"), are requesting authority under Chapters 3, 4, and 5 of the Code for the Telephone Companies to emerge from bankruptcy.³ According to a response to a data request from our Staff, at the time of emergence from bankruptcy, NTELOS will execute a Credit and Guarantee Agreement ("New Credit Agreement") by which the Telephone Companies will guarantee the obligations of NTELOS and secure those guarantees by granting liens on their assets. Included in the New Credit Agreement is a cash consolidation arrangement that covers the bank accounts of the Telephone Companies.

To effect the guarantees and place a lien on the property of the Telephone Companies, the New Credit Agreement requires the Telephone Companies to execute the Security Agreement on the personal property, including bank accounts, of the Telephone Companies under the Uniform Commercial Code and the agreement entitled Deed of Trust, Assignment of Rents Security Agreement and Fixture Filing, which will place security interests on the real and other property of the Telephone Companies. The NTELOS Companies request approval of the following contracts and arrangements to effect the guarantees and to place liens on their personal and real property to give security for those guarantees: 1) the Credit and Guarantee Agreement; 2) Security Agreement on the personal property, including the cash consolidation arrangement; and 3) the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing.

To emerge from bankruptcy, the NTELOS Entities will replace the comprehensive package of debt financing ("Credit Agreement") approved by Commission Orders in Case Nos. PUF-2000-00022⁴ and PUF-2001-00009.⁵ The Credit Agreement approved in Case Nos. PUF-2000-00022 and PUF-2001-00009 provided NTELOS with an eight-year, \$100,000,000 revolving credit facility ("the Revolver") and \$225,000,000 in term loans and commitments.

On March 4, 2003, NTELOS and the Telephone Companies filed separate petitions under Chapter 11 of the Bankruptcy Code. In order to continue operations while in bankruptcy, NTELOS sought and received approval of \$35,000,000 of additional debt as Debtor-In-Possession Financing ("DIP

¹ Formerly CFW Telephone Inc.

² Attachment A to the Application and Petition contains the following entities: NTELOS Acquisition Corp.; NTELOS Cable Inc.; NTELOS Cable of Virginia; NTELOS Communications Services Inc.; NTELOS Cornerstone Inc.; NTELOS Licenses Inc.; NTELOS Network Inc.; NTELOS PCS Inc.; NTELOS Wireless Inc.; NTELOS of Maryland Inc.; NTELOS of Kentucky Inc.; NTELOS Net Access Inc.; NTELOS PCS North Inc.; NA Communications Inc.; Richmond 20 MHZ, LLC; RLB Communications, Inc.; Botetourt Leasing, Inc.; RLB Cable, Inc.; RLB Network, Inc.; The Beeper Company; Virginia PCS Alliance, L.C.; Virginia RSA 6 Cellular Limited Partnership; and West Virginia PCS Alliance, L.C.

³ By Order dated July 9, 2003, the Commission extended the time for review of the Chapter 3 portion of this application to August 12, 2003.

⁴ Application of CFW Communications Company and CFW Telephone, Inc. For authority to guarantee obligations of an affiliate, Order Granting Authority, Case No. PUF-2000-00022 (July 26, 2000).

⁵ Application of NTELOS Inc. and Roanoke & Botetourt Telephone Company. For authority to guarantee obligations of an affiliate, Order Granting Authority, Case No. PUF-2001-00009 (May 11, 2001) ("May 2001 Order").

Financing") in Case No. PUC-2003-00038.⁶ On June 19, 2003, the NTELOS Entities received approval of amendments to the Credit Agreement that had been executed subsequent to the May 2001 Order.⁷

NTELOS has submitted a joint plan for reorganization ("Joint Plan") and is currently nearing approval of the Joint Plan with the Bankruptcy Court.⁸ NTELOS anticipates that the August 11, 2003, hearing will result in an approval of the Joint Plan, and the NTELOS Entities may emerge from Chapter 11 as soon as ten days after the Bankruptcy Court approves the Joint Plan. According to the Joint Plan, NTELOS' current common stock will be cancelled and the substantial portion of its new common stock will be issued to holders of its Senior Notes and Subordinated Notes. The cancellation of the old common stock and the issuance of the new common stock will effect a change in control of the Telephone Companies under § 56-88.1 of the Code. Additionally, 9.00% senior convertible notes ("Convertible Notes") having an aggregate principal amount of \$75,000,000 will be issued without requiring additional guarantees by the Telephone Companies. NTELOS represents that the proceeds from the Convertible Note will be used to retire all of the outstanding balance of DIP Financing and the outstanding balance of the Revolver.

The Joint Plan anticipates that NTELOS' pre-bankruptcy equity will be cancelled, and the reorganized NTELOS will issue new equity to the formerly unsecured senior debt holders, including the companies affiliated with Capital Research and Morgan Stanley, subordinated debt holders, and the purchasers of the Convertible Notes. On the effective date of the Joint Plan, Morgan Stanley will hold 37.1%, and investment companies managed by Capital Research will hold 31.2%, of the NTELOS common equity.

Under the terms of the New Credit Agreement, NTELOS' access to the Revolver would be reduced from \$100,000,000 to \$36,000,000. The three existing term loans would be replaced by three similar term loans under the new term loan facility ("New Term Loan Facility"). The three loans of the New Term Loan Facility will consist of \$48,698,553 of Tranche A (maturing July 25, 2007); \$96,666,628 of Tranche B (maturing July 25, 2008); and \$73,047,829 of Tranche C (maturing July 25, 2008). The Telephone Companies request authority to guarantee the Revolver and Tranches A, B, and C for a total of \$254,413,010 in guarantee authority.

NOW THE COMMISSION, upon consideration of the application as amended and supplemented, and having been advised by its Staff, is of the opinion and finds that approval of this application and petition will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and is in the public interest. We are, however, very concerned about the financial condition of NTELOS. We remain concerned about the long-term interests of the Telephone Companies' customers due to the continued dependence of the NTELOS wireless business upon these customers through long-term financial guarantees. These concerns are not isolated to the financial health of the Telephone Companies and the impact on their customers' rates. However, we note that the NTELOS Entities have committed, in a data response to our Staff, not to seek recovery through the rates of the Telephone Companies of the debt service obligations that may arise from the guarantees approved herein.

Our concerns also are related to the ability of the Telephone Companies to continue to provide local exchange telecommunications services at or above current service quality levels in light of the financial condition of NTELOS. As such, and in light of the cash consolidation arrangement, we note NTELOS is obligated to fund and finance capital improvements of the Telephone Companies to ensure that service quality levels are maintained or improved from their current levels. Therefore, as a condition of approval of the application, to ensure such funding we will require each of the Telephone Companies to file an annual report detailing their forecasted and actual capital expenditures and maintenance with the Division of Communications. The Telephone Companies are directed to work with the Staff to develop such reports. These reports will be required to be filed annually by the end of the first quarter of every year beginning in 2004 and continuing during the period the guarantees are in place. At a minimum, the reports 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 any proposed capital investment projects exceeding \$25,000 for the current year; and (4) any other necessary information requested by our Staff.

We expect that the Telephone Companies will ensure that all such necessary funds and other resources are expended so that service quality is maintained at or above existing levels to all their customers. NTELOS Telephone shall continue to report service quality data to the Staff as required by 20 VAC 5-400-80 or any relevant subsequent rule, and R&B shall report such information, during the period the guarantees are in place, as if it were subject to 20 VAC 5-400-80 or any relevant subsequent rule. Staff is directed to monitor closely the service quality levels of NTELOS Telephone and R&B during the period these guarantees are in place. We further instruct Staff promptly to advise the Commission if service quality results fall below acceptable levels at any time or if it believes that the actual or forecasted capital or maintenance expenditures are not sufficient to maintain adequate service quality to the Telephone Companies' customers.

In addition, we note that Section 8.02 of the New Credit Agreement parallels Section 8.02 of the prior Credit Agreement that we approved in Case Nos. PUF-2000-00022 and PUF-2001-00009, and Section 8.02 of DIP Financing agreement approved in Case No. PUC-2003-00038. As explained in our April 2003 Order, Section 8.02 does not limit our jurisdiction. The Order we issue today, as with the authorizations in Case Nos. PUF-2000-00022, PUF-2001-00009, and PUC-2003-00038, explicitly states that the authority granted by the Commission shall have no ratemaking implications. Accordingly, for both the instant and prior authorizations, the Commission has limited the authorization such that it in no manner affects our ability to regulate the Telephone Companies. For example, rates paid by the Telephone Companies' customers must reflect the just and reasonable costs necessary to provide public utility service. Other costs incurred by the Telephone Companies, whether such costs are attendant to the guarantees or otherwise, are not properly reflected in rates.

⁶ Application of NTELOS Inc., NTELOS Telephone Company, and Roanoke & Botetourt Telephone Company, For authority to guarantee obligations and execute security agreements, Order Granting Authority, Case No. PUC-2003-00038 (April 10, 2003) ("April 2003 Order").

⁷ Application of NTELOS Inc., Debtor-In-Possession, NTELOS Telephone Inc., Roanoke & Botetourt Telephone Company and Other Affiliates, For approval of amendments to credit agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia, Order Granting Authority, Case No. PUC-2003-00077 (June 19, 2003).

⁸ On August 5, 2003, NTELOS announced that its Joint Plan has been accepted by all classes entitled to vote on the Joint Plan. Four of the five classes unanimously accepted the Joint Plan. In the remaining class, consisting of general unsecured creditors, 94% in number and 96% in principal amount of the votes received accepted the Joint Plan. The final voting report was filed with the Bankruptcy Court earlier that same day.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Finally, we expect NTELOS to do everything in its power to pay down the New Term Loan Facility debt on which the Telephone Companies are acting as guarantor. At the latest, we expect NTELOS to be able to finance its wireless operations without guarantees by the time these term loans mature, or no later than July 25, 2008. We also will require NTELOS to make compliance filings on a semi-annual basis that will confirm that principal repayments have occurred as scheduled.

Accordingly, IT IS ORDERED THAT:

1) NTELOS Telephone Inc. and Roanoke & Botetourt Telephone Company are hereby authorized to provide guarantees for a maximum amount of \$254,413,010 as provided in the following contracts and arrangements: 1) the Credit and Guarantee Agreement; 2) Security Agreement on the personal property, including the cash consolidation arrangement; and 3) the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing.

2) NTELOS Telephone Inc. and Roanoke & Botetourt Telephone Company are hereby authorized to execute the following contracts and arrangements in the form filed with the Commission: 1) the Credit and Guarantee Agreement; 2) Security Agreement on the personal property, including the cash consolidation arrangement; and 3) the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing.

3) The guarantee authority for the New Term Loan Facility granted herein shall automatically decrease with the repayment of principal.

4) As a condition of our approval herein, the Telephone Companies shall not seek to recover in rates any expenses or debt service obligations related to the guarantees, contracts, and arrangements approved in this Order.

5) Our approval of the Credit and Guarantee Agreement; Security Agreement on the personal property, including the cash consolidation arrangement; and the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing shall expire upon the maturity of the New Term Loan Facility, but no later than July 25, 2008.

6) As a condition of our approval herein, the NTELOS Entities shall file an application with the Commission, prior to the expiration of the contracts and arrangements approved herein and no later than ninety (90) days before approval is necessary, for a new cash management system that ensures, at a minimum, the separation of regulated cash investment from non-regulated cash borrowings.

7) As a condition of our approval herein, if NTELOS intends to draw upon the Revolver, NTELOS shall file notice with the Commission's Division of Economics and Finance of such intentions at least thirty (30) days prior to such proposed advance. The notice shall contain the date of the proposed advance and include proforma financial statements demonstrating the need for the advance and a detailed description of when and how the advance will be repaid by NTELOS.

8) As a condition of our approval herein, NTELOS shall use the proceeds from the Convertible Note to retire all of the outstanding balance of DIP Financing and the outstanding balance of the Revolver.

9) Pursuant to § 56-88.1 of the Code, approval is hereby granted for NTELOS to cancel its pre-bankruptcy equity and issue new equity as more fully described in the application and petition, as amended and supplemented, thereby effecting a transfer of control of the Telephone Companies.

10) The authority granted herein shall have no implications for ratemaking purposes.

11) Any subsequent financing arrangements with affiliates or other affiliate agreements shall require separate authority, which shall not be implied by approval of the application herein.

12) Approval of the application shall not preclude the Commission from applying the provisions of § 56-78 of the Code hereafter.

13) Approval of the application is expressly conditioned upon the reserved power of the Commission to revise and amend the terms and conditions of each and every contract and arrangement approved by this Order if, when, and as necessary to protect and promote the public interest.

14) The Commission reserves the right to examine the books and records of any affiliate, whether or not such affiliate is regulated by this Commission.

15) Should either NTELOS Telephone or R&B seek rate relief while the guarantees are in place, it shall, at the time notice is mailed to customers, pursuant to § 56-532, file a report pursuant to § 56-249 of the Code. Such report shall include data detailed in 20 VAC 5-200-30 and shall be filed with the Commission's Division of Economics and Finance.

16) As a condition of our approval herein, the Telephone Companies shall file with the Commission's Division of Communications the service quality data and the report of their planned and prior year investment and maintenance activity as set out herein.

17) As a condition of our approval herein, on a semi-annual basis, NTELOS shall file with the Commission a copy of reports sent to its lenders relating to the repayment of principal as long as the Telephone Companies are acting as guarantors on any debt of NTELOS Inc.

18) Annually, no later than March 1 of each year, the Telephone Companies shall file an Annual Financing Plan with the Commission's Division of Economics and Finance. The filing shall fully conform to the Instructions for Filing Securities Applications dated June 30, 2000, also found at <http://www.state.va.us/scc/division/eaf/ioufin.pdf>.

19) The Telephone Companies shall file with the Commission a report of the action taken pursuant to the authority granted herein within thirty (30) days of the transfer of control taking place, and the report shall provide the date of such transfer of control.

20) This matter shall remain under the continued review, audit, and appropriate directive of the Commission.

**CASE NO. PUC-2003-00102
OCTOBER 14, 2003**

APPLICATION OF
THE CITY OF MANASSAS

For a certificate of public convenience and necessity to provide local exchange telecommunications services

FINAL ORDER

On June 10, 2003, the City of Manassas ("Manassas" or "Applicant"), filed an application for a certificate of public convenience and necessity with the State Corporation Commission ("Commission") to provide local exchange telecommunications services in the City of Manassas and the County of Prince William.

By Order for Notice and Comment dated June 27, 2003, the Commission directed the Applicant to provide notice to the public of its application and directed the Commission Staff to conduct an investigation and file a Staff Report.

On July 2, 2003, Verizon Virginia Inc. and Verizon South Inc. (jointly "Verizon") filed their Notice of Participation. On July 3, 2003, the Virginia Cable Telecommunications Association ("VCTA") filed a Notice of Participation.

On July 23, 2003, the Applicant filed proof of publication and proof of service as required by the June 27, 2003, Order.

On August 12, 2003, the VCTA filed Comments requesting that the Commission dismiss the application.¹ In its Comments, VCTA objects to granting a certificate to Manassas based upon the Applicant's Affidavit² and Applicant's response to interrogatories regarding its provision of Internet access services. VCTA complains that apparently Manassas does not consider Internet access services to be a telecommunications service under relevant Virginia Code sections. Therefore, according to VCTA, the Affidavit's assurances of competitive safeguards would not apply to the Applicant's intended provision of Internet access services. VCTA concludes that the application, therefore, fails to comply with the safeguards of subdivision (iv) of § 56-265.4:4 B 5.³

On August 28, 2003, the Staff filed its Report finding that Manassas' application was in compliance with 20 VAC 5-417-10 *et seq.*, the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers ("Local Rules"). The Staff Report notes that Manassas will initially be providing high speed broadband Internet access services.⁴ The Staff, based upon its review of Manassas' application, determined it would be appropriate to grant the Applicant a certificate to provide local exchange telecommunications services subject to the following condition: at such time as Manassas provides local exchange telecommunications services, it shall comply with all applicable requirements of new entrants and Municipal Local Exchange Carriers ("MLECs") in the Local Rules.⁵

Manassas filed its Response to the Staff Report and to VCTA's comments on September 5, 2003. According to its response, Manassas does not object to the condition contained in the Staff Report; however, it does take issue with VCTA's objection as to the sufficiency of the Affidavit. Manassas states that it has complied fully with the Local Rules promulgated by the Commission and that the VCTA has misread the statutory requirements with respect to the provision of Internet access services. Manassas claims that § 56-265.4:4 D provides that an MLEC that operates electric distribution facilities may provide Internet access services to its citizens, but it must first obtain an MLEC certificate. This, however, does not require Manassas to provide regulated local exchange telecommunications services to its citizens; only if it does so is it required to comply with the safeguard requirements promulgated by the General Assembly and the Commission.

NOW THE COMMISSION, having considered the application, Staff Report, and Comments, finds that the Applicant should be granted a certificate to provide local exchange telecommunications services.

Accordingly, IT IS ORDERED THAT:

(1) Manassas is hereby granted a certificate of public convenience and necessity, No. T-618, 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) Manassas shall provide tariffs to the Division of Communications that conform to all applicable Commission rules and regulations before it begins offering local exchange telecommunications services. Manassas shall serve upon the service list of this case a copy of those tariffs.

¹ VCTA's Comments were filed pursuant to leave granted to file out of time, Order Granting Motion, issued July 25, 2003.

² Exhibit "F" to the Application entitled, "Affidavit of Compliance with Competitive Safeguards", executed by the Manassas City Manager.

³ Va. Code § 56-265.4:4 B 5 states in pertinent part: "Upon the Commission's granting of a certificate to a city. . . . such. . . city. . . (i) shall be subject to regulation by the Commission for intrastate telecommunications services. . . . (iv) to ensure that there is no unreasonable advantage gained from a government agency's taxing authority and control of government-owned land, shall charge an amount for such services that (a) does not include any subsidies, unless approved by the Commission, and (b) takes into account, by imputation or allocation, equivalent charges for all taxes, pole rentals, rights of way, licenses, and similar costs incurred by for-profit providers." (emphasis added)

⁴ The Staff notes that the Federal Communications Commission ("FCC") has determined Internet access to be jurisdictionally interstate and, therefore, is not regulated by this Commission. Therefore, until Manassas offers jurisdictional local exchange telecommunications services, intrastate tariffs are not necessary.

⁵ As the Staff stated in prior Staff Reports for the certification of MLECs, the Staff believes the Local Rules address the requirements of § 56-265.4:4 regarding the certification and regulation of localities to provide local exchange telecommunications services.

(3) Manassas is hereby ordered, at such time as it provides local exchange telecommunications services, to comply with all applicable requirements of new entrants and MLECs in the Local Rules.

(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-2003-00104
JUNE 26, 2003

APPLICATION OF
MOUNTAIN COMMUNICATIONS OF VIRGINIA, LLC

For a certificate of public convenience and necessity to provide local exchange telecommunications services

ORDER

Before the State Corporation Commission ("Commission") is the request of Mountain Communications of Virginia, LLC ("Mountain" or "Company"), for waiver of the requirement that it file audited financial statements within one year of the effective date of its tariff.¹ As an alternative to filing audited statements, Mountain requests authority to file a performance bond in lieu thereof. For the reasons set out in this Order, the Commission will authorize the filing of a bond.

By Final Order of March 12, 2003, issued in Case No. PUC-2002-00223 ("Final Order"), the Commission granted the Company a certificate of public convenience and necessity, No. T-611, to provide local exchange telecommunications services. We also directed in the Final Order that Mountain provide a tariff to our Division of Communications and provide its audited financial statements to our Division of Economics and Finance within one year from the effective date of the initial tariff.

As shown in the records of the Division of Communications, Mountain filed a tariff, which became effective on April 10, 2003. On June 18, 2003, the Company filed with the Clerk of the Commission its request for a waiver of the requirement to file audited financial statements, which are due by May 10, 2004, as required by the Final Order.

The Commission has recently adopted the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, 20 VAC 5-417-10 et seq., to replace our earlier Rules Governing the Offering of Competitive Local Exchange Telephone Service, 20 VAC 5-400-180 et seq. See Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of regulations governing competitive local exchange carriers, localities as competitive local exchange carriers, and local inter-carrier matters, Case No. PUC-2002-00115, Order Adopting Rules of April 9, 2003. As provided by 20 VAC 5-417-20 G 1 b of the rules now in effect, an applicant for a certificate must provide "A continuous performance or surety bond in a minimum amount of \$50,000, in a form to be prescribed by the commission staff." Therefore, upon consideration of Mountain's request, the Commission will substitute the posting of a continuous performance bond of \$50,000 for the filing of audited financial statements required by the Final Order.

Accordingly, IT IS ORDERED THAT:

(1) Mountain's request for waiver of the requirement to file audited financial statements and, in the alternative, to file a continuous performance bond shall be docketed in Case No. PUC-2003-00104 and is hereby granted, consistent with our findings above.

(2) Mountain shall be relieved from complying with ordering paragraph (4) of the Final Order issued in Case No. PUC-2002-00223, which directed the filing of audited financial statements.

(3) All remaining requirements and obligations imposed on Mountain by the Final Order in Case No. PUC-2002-00223 shall otherwise remain in full force and effect.

(4) Mountain shall file with the Commission's Division of Economics and Finance a continuous performance or surety bond in the amount of \$50,000 within thirty (30) days from the date of this Order. Said bond shall be maintained until the Commission or its Staff determines that it is no longer necessary.

(5) Mountain shall notify the Division of Economics and Finance by letter thirty (30) days prior to each instance of cancellation or lapse of the bond prescribed in ordering paragraph (5) above and shall provide a replacement bond.

(6) Upon the filing of this Order, Case No. PUC-2003-00104 shall be removed from the Commission's docket and closed.

¹ Sections B 5 a and E 1 d of 20 VAC 5-400-180, Rules Governing the Offering of Competitive Local Exchange Telephone Service, required audited financial statements. These rules were in effect at the time of Mountain's certification.

**CASE NO. PUC-2003-00105
SEPTEMBER 17, 2003**

APPLICATION OF
NTELOS TELEPHONE INC.

For approval to enter into an amended affiliates agreement

ORDER GRANTING APPROVAL

On June 20, 2003, NTELOS Telephone Inc. ("NTELOS Telephone") filed an application with the State Corporation Commission ("Commission") under Chapter 4 of Title 56 of the Code of Virginia (the "Code") requesting approval to enter into an amended Affiliates Agreement.

NTELOS Telephone is a wholly owned subsidiary of NTELOS Inc. with its principal place of business in Waynesboro, Virginia. NTELOS Telephone is a Virginia public service company providing local exchange telecommunications services in Allegheny and Augusta Counties, the City of Covington, the Town of Clifton-Forge, and the City of Waynesboro. NTELOS Telephone provides local exchange telecommunications services to approximately 40,000 access lines.

NTELOS Telephone requests approval to update the CFW Telephone Company Affiliates Agreement for which the last amendment was approved in Case No. PUA-1995-00013. CFW Telephone Company officially became NTELOS Telephone by a name change authorized by the Commission in a Certificate of Amendment on December 6, 2000. The updated agreement filed with this application reflects the name change to NTELOS Telephone. The amended agreement also updates certain of the allocators and reflects NTELOS Inc.'s current subsidiaries (affiliates of NTELOS Telephone), some of which have been added since the 1995 approval. No other changes have been made to the agreement since the last amendment was approved by the Commission.

Pursuant to the Affiliates Agreement, NTELOS Telephone agrees to provide local exchange telecommunications services at tariffed rates to its non-regulated affiliates and to provide building space, facilities, and services to such affiliates at full cost. NTELOS Inc. and NTELOS Network Inc.¹ agree to provide facilities and services to NTELOS Telephone at full cost. Certain other non-regulated affiliates agree to provide services such as wireless and cable television at the fair market value.

NOW THE COMMISSION, upon consideration of the application and representations of NTELOS Telephone and having been advised by its Staff, is of the opinion and finds that the provision of local exchange telecommunications services by NTELOS Telephone to its non-regulated affiliates at tariffed rates is appropriate. However, other services provided by NTELOS Telephone to such affiliates are those for which a market, and therefore, a market value might exist. In such cases, NTELOS Telephone should ascertain whether a market exists and compare the cost of providing such services to its non-regulated affiliates and charge such affiliates the higher of cost or market. Certain services are provided by NTELOS Inc. and NTELOS Network Inc. to NTELOS Telephone at full cost. Pricing at cost is appropriate as long as such cost is lower than the market price for services for which a market exists. Where it is practicable to determine the non-regulated affiliates' cost of providing such services to NTELOS Telephone, NTELOS Telephone should make such determination of cost and compare such cost to fair market value. NTELOS Telephone should pay the lower of cost or fair market value. With such pricing restrictions, we believe that the amended Affiliates Agreement is in the public interest and, therefore, should be approved.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 56-77 of the Code, NTELOS Telephone is hereby granted approval of the amended Affiliates Agreement under the terms and conditions as described herein, subject to the above-referenced pricing restrictions.
- (2) Commission approval shall be required for any changes in the terms and conditions of the Affiliates Agreement from those contained herein.
- (3) The approval granted herein shall not be deemed to include any approvals other than for the specific services contained in the amended Affiliates Agreement.
- (4) The approval granted herein shall have no ratemaking implications.
- (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) NTELOS Telephone shall bear the burden of proving that the above-referenced pricing restrictions were followed.
- (7) The Commission reserves the authority to examine the books and records of any affiliate in connection with the authority granted herein whether or not the Commission otherwise regulates such affiliate.
- (8) As directed in Case No. PUC-2003-00100, the requirement that NTELOS Telephone shall file an application with the Commission, prior to the expiration of the contracts and arrangements approved in Case No. PUC-2003-00100 and no later than ninety (90) days before approval is necessary, for a new cash management system that ensures, at a minimum, the separation of regulated cash investment from non-regulated cash borrowings shall remain in effect.
- (9) The transactions covered by the amended Affiliates Agreement shall be included in NTELOS Telephone's Annual Report of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting by April 1 of each year, subject to extension by the Director of Public Utility Accounting.

¹ NTELOS Network Inc. provides interexchange telecommunications facilities to both interexchange and local carriers, competitive local exchange services, and Internet services predominately in the Shenandoah Valley and Central Virginia.

(10) In the event that any rate filings are not based on a calendar year, then NTELOS Telephone shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.

(11) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUC-2003-00106
SEPTEMBER 17, 2003**

APPLICATION OF
ROANOKE & BOTETOURT TELEPHONE INC.

For approval to enter into an amended affiliates agreement

ORDER GRANTING APPROVAL

On June 20, 2003, Roanoke & Botetourt Telephone Inc. ("R&B Telephone") filed an application with the State Corporation Commission ("Commission") under Chapter 4 of Title 56 of the Code of Virginia (the "Code") requesting approval to enter into an amended Affiliates Agreement.

R&B Telephone is a wholly owned subsidiary of NTELOS Inc. with its principal place of business in Waynesboro, Virginia. R&B Telephone is a Virginia public service company providing local exchange telecommunications services in Botetourt County, Virginia. R&B Telephone provides local exchange telecommunications services to approximately 12,000 access lines.

R&B Telephone requests approval to update the R&B Telephone Company Affiliates Agreement for which the last amendment was approved in Case No. PUA-1995-00041. The amended agreement reflects R&B Telephone as a subsidiary of NTELOS Inc., updates certain of the allocators, and reflects NTELOS Inc.'s current subsidiaries (affiliates of R&B Telephone), some of which have been added since the 1995 approval. No other changes have been made to the agreement since the last amendment was approved by the Commission.

Pursuant to the Affiliates Agreement, R&B Telephone agrees to provide local exchange telecommunications services at tariffed rates to its non-regulated affiliates and to provide building space, facilities, and services to such affiliates at full cost. NTELOS Inc. and R&B Communications, Inc.¹ agree to provide facilities and services to R&B Telephone at full cost. Certain other non-regulated affiliates agree to provide services such as wireless and cable television at the fair market value.

NOW THE COMMISSION, upon consideration of the application and representations of R&B Telephone and having been advised by its Staff, is of the opinion and finds that the provision of local exchange telecommunications services by R&B Telephone to its non-regulated affiliates at tariffed rates is appropriate. However, other services provided by R&B Telephone to such affiliates are those for which a market, and therefore, a market value might exist. In such cases, R&B Telephone should ascertain whether a market exists and compare the cost of providing such services to its non-regulated affiliates and charge such affiliates the higher of cost or market. Certain services are provided by NTELOS Inc. and R&B Communications, Inc., to R&B Telephone at full cost. Pricing at cost is appropriate as long as such cost is lower than the market price for services for which a market exists. Where it is practicable to determine the non-regulated affiliates' cost of providing such services to R&B Telephone, R&B Telephone should make such determination of cost and compare such cost to fair market value. R&B Telephone should pay the lower of cost or fair market value. With such pricing restrictions, we believe that the amended Affiliates Agreement is in the public interest and, therefore, should be approved.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, R&B Telephone is hereby granted approval of the amended Affiliates Agreement under the terms and conditions as described herein, subject to the above-referenced pricing restrictions.

(2) Commission approval shall be required for any changes in the terms and conditions of the Affiliates Agreement from those contained herein.

(3) The approval granted herein shall not be deemed to include any approvals other than for the specific services contained in the amended Affiliates Agreement.

(4) The approval granted herein shall have no ratemaking implications.

(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) R&B Telephone shall bear the burden of proving that the above-referenced pricing restrictions were followed.

(7) The Commission reserves the authority to examine the books and records of any affiliate in connection with the authority granted herein whether or not the Commission otherwise regulates such affiliate.

(8) As directed in Case No. PUC-2003-00100, the requirement that R&B Telephone shall file an application with the Commission, prior to the expiration of the contracts and arrangements approved in Case No. PUC-2003-00100 and no later than ninety (90) days before approval is necessary, for a new cash management system that ensures, at a minimum, the separation of regulated cash investment from non-regulated cash borrowings shall remain in effect.

¹ R&B Communications, Inc., owns the common stock of R&B Telephone, R&B Network Inc., The Beeper Company, and R&B Cable Inc. and provides Internet services and deregulated products and services primarily in the southern end of the Shenandoah Valley in Virginia.

(9) The transactions covered by the amended Affiliates Agreement shall be included in R&B Telephone's Annual Report of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting by April 1 of each year, subject to extension by the Director of Public Utility Accounting.

(10) In the event that any rate filings are not based on a calendar year, then R&B Telephone shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.

(11) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUC-2003-00109
SEPTEMBER 4, 2003**

PETITION OF
SUNESYS OF VIRGINIA, INC.

For approval of transfer of control

ORDER GRANTING APPROVAL

On July 8, 2003, Sunesys of Virginia, Inc. ("Sunesys VA" or "Petitioner"), filed a petition with the State Corporation Commission ("Commission") under Chapter 5 of Title 56 of the Code of Virginia ("Code") for approval for the transfer of ultimate control of Sunesys VA from Exelon Corporation ("Exelon") to Oaktree Capital Management, LLC ("OCM"). As stated in the petition, Sunesys VA currently is a wholly owned subsidiary of Sunesys, Inc., which itself is a wholly owned subsidiary of Infracource Incorporated ("Infracource"), whose ultimate corporate parent is Exelon Corporation ("Exelon").

Sunesys VA is a corporation organized and existing under the laws of the Commonwealth of Virginia with its principal office located in Warrington, Pennsylvania. Sunesys VA is certificated to provide local exchange telecommunications services pursuant to Final Order dated June 10, 2002, in Case No. PUC-2002-00017. Sunesys VA, however, has not begun to serve customers in Virginia and does not have an accepted tariff on file with the Commission.

Infracource is a corporation organized and existing under the laws of the State of Delaware with its principal office in Aston, Pennsylvania. Infracource is an electric, telecommunications, and gas utility engineering, construction, and maintenance company with a national scope. Infracource does not provide public utility services in Virginia and does not hold a certificate of public convenience and necessity ("CPCN").

Exelon, a Pennsylvania corporation, currently is the ultimate parent of Sunesys VA. Its principal office is located in Chicago, Illinois. Exelon does not provide public utility services and does not hold a CPCN in Virginia.

OCM Principal Opportunities Fund II, L.P. ("OCM Principal"), and OCM/GFI Power Opportunities Fund, L.P. ("OCM/GFI Power") (collectively, the "Funds"), are organized as Delaware limited partnerships. The principal offices of OCM/GFI Power and OCM Principal are located in Los Angeles, California. OCM Principal has hundreds, and OCM/GFI Power has dozens, of public and private investors, including corporate and public pension funds, cultural and charitable endowments or foundations, colleges, universities, and insurance companies. The Funds have invested in companies in the power and related industries. Their portfolios also include investments within the telecommunications industry, primarily in equipment manufacturing companies, foreign network service providers, and companies providing custom power supplies for telecommunications systems. Neither of the Funds, nor to their knowledge any of the entities in which they have invested, provides public utility services in Virginia or holds a CPCN.

Dearborn Holdings Corporation ("Holdings") is a Delaware corporation owned in equal 50% shares by the Funds, OCM/GFI Power and OCM Principal. Holdings does not provide public utility services and does not hold a CPCN in Virginia.

Dearborn Merger Sub, Inc. ("Merger Sub"), is a wholly owned subsidiary of Holdings and is a Delaware corporation. Merger Sub does not provide public utility services and does not hold a CPCN in Virginia. Merger Sub also will not be providing such services after the merger.

Oaktree Capital Management, LLC ("OCM"), is the sole General Partner of OCM Principal and one of two equal partners of OCM/GFI Power.¹ OCM is a California limited liability company with its principal office located in Los Angeles, California. OCM is registered as an investment advisor under the Investment Advisors Act of 1940 and manages approximately \$26 billion on behalf of various public and private investors. OCM does not provide public utility services and does not hold a CPCN in Virginia.

Pursuant to an Agreement and Plan of Merger dated as of June 17, 2003, Merger Sub will merge with and into Infracource with Infracource as the surviving entity. Merger Sub's corporate existence will then cease.

After consummation of the transaction, 100% of the stock of Infracource will be owned by Holdings, resulting in Infracource becoming a wholly owned subsidiary of Holdings, which is owned by the Funds, which in turn are managed by OCM as General Partner. As General Partner, OCM will hold ultimate control of Sunesys VA. The purchase price for Infracource, including Sunesys VA and the other subsidiaries, is approximately \$280 million, to be funded by a combination of debt and equity.

¹ GFI Ventures LLC, a California limited liability company, is the other equal General Partner in OCM/GFI Power. GFI Ventures LLC does not provide public utility services or hold a CPCN in Virginia.

The only change to Sunesys VA, the only entity certificated in Virginia involved in the proposed transaction, will be in its ultimate ownership and control. Sunesys VA represents that because it has not commenced operations in Virginia, the proposed transaction will not involve disruption, impairment, or other change in the entity providing services to customers, the facilities used to provide such services, or the rates, terms, and conditions of such services.

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 above-described transfer of control 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 90 of the Code, Sunesys of Virginia, Inc., is hereby granted approval for the transfer of ultimate control of Sunesys of Virginia, Inc., from Exelon Corporation to Oaktree Capital Management, LLC, as described herein.
- (2) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUC-2003-00112
SEPTEMBER 29, 2003**

JOINT PETITION OF
VERIZON ADVANCED DATA-VIRGINIA INC.
and
VERIZON VIRGINIA INC.

For approval for Verizon Advanced Data-Virginia Inc. to transfer its remaining assets to Verizon Virginia Inc

ORDER GRANTING APPROVAL

On July 16, 2003, Verizon Advanced Data-Virginia Inc. ("VADI-VA") and Verizon Virginia Inc. ("Verizon Virginia") (collectively the "Petitioners") filed a joint petition with the State Corporation Commission ("Commission") requesting approval, pursuant to the Utility Transfers Act, for VADI to transfer its remaining assets to Verizon Virginia.

VADI-VA is a Virginia public service company that holds certificates of public convenience and necessity to provide facilities-based and resold competitive local exchange and intraLATA interexchange telecommunications services in Virginia. VADI-VA owns the facilities used by Verizon Virginia to provide Digital Subscriber Line ("DSL") service. VADI-VA is a wholly owned subsidiary of Verizon Advanced Data Inc., which itself is a wholly owned subsidiary of Verizon Ventures III Inc. Verizon Virginia owns 35.81% of Verizon Ventures III Inc.

Verizon Virginia is a Virginia public service company that holds a certificate of public convenience and necessity to provide local exchange and interLATA interexchange telecommunications services within its certificated territory in Virginia. Verizon Virginia is a wholly owned subsidiary of Verizon Communications Inc.

Pursuant to the Federal Communications Commission's ("FCC") June 16, 2000, Order granting approval of the merger of Bell Atlantic Corporation and GTE Corporation ("*FCC Merger Order*"), Verizon¹ was required to provide certain broadband packet data services ("Advanced Services") through a structurally separate affiliate.²

In accordance with the *FCC Merger Order*, Verizon Virginia and Verizon South completed the required filings to withdraw their tariffs for Advanced Services, including Frame Relay, SMDS, and ATM. VADI-VA obtained the necessary certifications, filed its tariffs, and began to offer Advanced Services in Virginia. In order to protect customers, VADI-VA agreed that existing customers at the time of transfer would continue to receive intrastate Advanced Services under the same terms and conditions offered by Verizon Virginia and Verizon South, and contracts were assigned accordingly. This enabled Verizon Virginia and Verizon South to satisfy the *Federal Merger Order*³ requirement that Advanced Services be provided through a separate subsidiary.

When the federal court reversed the requirement that Advanced Services be provided through a structurally separate affiliate, Verizon decided to reintegrate its operations pursuant to the transitional requirements contained in the *Federal Merger Order*. The *Federal Merger Order* specifically provided for the return of Advanced Services assets to the incumbent local exchange carrier in the event the FCC's order was not sustained on appeal. The *Federal Merger Order* further provides that, subject to certain sunset provisions, Verizon does not have to provide Advanced Services through a separate entity. In

¹ "Verizon," as used herein refers jointly to VADI, Verizon Virginia, and Verizon South.

² The *FCC Merger Order* defines "Advanced Services" as follows:

For purposes of these Conditions, the term "Advanced Services" means intrastate or interstate wireline telecommunications services, such as ADSL, IDSL, xDSL, Frame Relay, and asynchronous transfer mode ('ATM') that rely on packetized technology and have the capability of supporting transmission speeds of at least 56 kilobits per seconds in both directions. This definition of Advanced Services does not include: 1) data services that are not primarily based on packetized technology, such as ISDN, as well as comparable dial-up services such as Internet Protocol Routing Service and CyberPOP, (2) x.25-based and .75-based packet technologies, or (3) technology, protocols or speeds used for the transmission of such services.

³ "*FCC Merger Order*" and "*Federal Merger Order*" are used herein interchangeably.

addition, the FCC agreed to allow Verizon to begin the transition immediately. The FCC "conclude[d] that permitting Verizon to reintegrate VADI prior to the completion of the automatic sunset period is in the public interest and furthers the goal of promoting deployment of advanced services."

The *Federal Merger Order* sets certain transitional obligations that Verizon must follow for 48 months after June 30, 2000, to assure appropriate operational parity. Verizon Virginia and Verizon South represent that they are following these required procedures.

Verizon Virginia and VADI-VA now request approval to transfer the remaining assets of VADI-VA to Verizon Virginia at the net book value of the assets at the time of transfer. In accordance with the Asset Transfer Agreement between Verizon Virginia and VADI-VA, the remaining assets of VADI-VA will be transferred to Verizon Virginia at the net book value of \$11,002,196.06, subject to a provision for true-up of the transferred assets and the associated transfer prices. These assets include line termination equipment, DSL switching equipment, and routers. VADI-VA, through its parent, Verizon Advanced Data Inc., and/or the parent of Verizon Advanced Data Inc., Verizon Ventures III Inc., shall at its election either distribute the assets as dividends or in redemption of the outstanding shares of Verizon Ventures III Inc. common stock held by Verizon Virginia. VADI-VA previously transferred the Advanced Services assets other than DSL assets to Verizon Virginia at net book value.

THE COMMISSION, upon consideration of the joint petition and representations of the Petitioners and having been advised by its Staff, is of the opinion and finds that the transfer of the remaining assets of VADI-VA to Verizon Virginia, as described herein, will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to §§ 56-88.1 and 56-90 of the Code of Virginia, approval is hereby granted for the transfer of the remaining Advanced Services assets of VADI-VA to Verizon Virginia under the terms and conditions and for the purposes as described herein.
- (2) The approval granted herein shall have no ratemaking implications.
- (3) Petitioners shall file a report of the action taken pursuant to the authority granted herein within thirty (30) days of the transfer taking place. This 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 a copy of the revised Schedule 1 of the Asset Transfer Agreement, if revisions to that schedule have been made since the petition was filed with the Commission.
- (4) Verizon Virginia shall include the transfer approved herein in its Annual Report of Affiliate Transactions submitted to the Director of Public Utility Accounting.
- (5) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUC-2003-00113
AUGUST 5, 2003**

APPLICATION OF
NETWORK ACCESS SOLUTIONS, LLC

For cancellation of certificates of public convenience and necessity

ORDER

By Order dated January 14, 1999, in Case No. PUC-1998-00122, the State Corporation Commission ("Commission") granted Network Access Solutions, LLC ("NAS" or the "Company"), Certificate Nos. T-429 and TT-59A to provide local exchange and interexchange telecommunications services in Virginia.

By letter application filed July 21, 2003, NAS requested that the Commission cancel its certificates.¹

NOW THE COMMISSION, having considered the matter, is of the opinion that NAS's certificates should be cancelled.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed and assigned Case No. PUC-2003-00113.
- (2) Certificate Nos. T-429 and TT-59A are hereby cancelled.
- (3) Any existing tariffs of the Company currently on file with the Commission's Division of Communications are hereby cancelled.
- (4) This matter is hereby dismissed.

¹ The letter application was filed by Network Access Solutions Corporation, but the Virginia-certificated entity is Network Access Solutions, LLC.

**CASE NO. PUC-2003-00117
AUGUST 1, 2003**

APPLICATION OF
QUANTREX COMMUNICATIONS, INC.

For cancellation of certificate of public convenience and necessity

ORDER

By Order dated May 13, 1999, in Case No. PUC-1999-00022, the State Corporation Commission ("Commission") granted Quantrex Communications, Inc. ("Quantrex" or the "Company"), Certificate No. T-444 to provide local exchange telecommunications services in Virginia.

By letter application dated July 28, 2003, Quantrex requested that the Commission cancel its certificate. Quantrex states that it "no longer provides telecommunications services to any end-users...."

NOW THE COMMISSION, having considered the matter, is of the opinion that Quantrex's certificate should be cancelled.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed and assigned Case No. PUC-2003-00117.
- (2) Certificate No. T-444 is hereby cancelled.
- (3) Any existing tariffs of the Company currently on file with the Commission's Division of Communications are hereby cancelled.
- (4) This matter is hereby dismissed.

**CASE NO. PUC-2003-00119
SEPTEMBER 16, 2003**

APPLICATION OF
C III COMMUNICATIONS OPERATIONS, LLC

To cancel existing certificates and reissue certificates reflecting new name

FINAL ORDER

By letter application filed August 4, 2003, C III Communications Operations, LLC ("C III" or the "Company"), informed the State Corporation Commission ("Commission") that it had changed its corporate name to Broadwing Communications, LLC ("Broadwing").¹

In its notice, C III recited that it had completed its name change by amending its State of Delaware certificate of formation on June 18, 2003, to reflect the name change and that it had filed the required documents to revise the Company name with the Clerk of the Commission. Therefore, C III requests the Commission make appropriate changes to its certificate of public convenience and necessity ("CPCN") to reflect its current name.

NOW UPON CONSIDERATION of the foregoing, the Commission is of the opinion and finds that CPCN No. TT-195A issued to C III should be reissued in the new corporate name, Broadwing Communications, LLC.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUC-2003-00119.
- (2) Certificate of public convenience and necessity No. TT-195A for interexchange telecommunications services is cancelled and shall be reissued as amended Certificate No. TT-195B in the name of Broadwing Communications, LLC.
- (3) Broadwing shall file revised tariffs no later than sixty (60) days from the date of this Order with the Commission's Division of Communications that conform with all applicable Commission rules and regulations and that use Broadwing's name rather than that of C III.
- (4) There being nothing further to be done in this matter, this cause 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 C III was granted certificate of public convenience and necessity No. TT-195A to provide interexchange telecommunications services on July 9, 2003, in Case No. PUC-2003-00046.

**CASE NO. PUC-2003-00120
AUGUST 11, 2003**

APPLICATION OF
VERIZON SOUTH INC.

To withdraw its request for exemption from physical collocation at its Dulles central office

ORDER GRANTING REQUEST

On November 2, 2000, in Case No. PUC-2000-00001, the State Corporation Commission ("Commission") granted Verizon South Inc. ("Verizon South") an exemption from the requirement to provide physical collocation at its Dulles central office.

On August 1, 2003, Verizon South filed a letter requesting withdrawal of its application for exemption from physical collocation for its Dulles central office. Verizon South stated in its request that the exemption is no longer necessary due to the availability of additional space.

NOW THE COMMISSION, having considered the request, finds that it should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) Verizon South's request for exemption from physical collocation for its Dulles central office is hereby withdrawn.
- (2) There being nothing further to be done herein, 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-2003-00130
NOVEMBER 18, 2003**

JOINT PETITION OF
CTC COMMUNICATIONS OF VIRGINIA, INC.
and
COLUMBIA VENTURES BROADBAND LLC

For authority to transfer control

ORDER GRANTING AUTHORITY

On September 2, 2003, Columbia Ventures Broadband LLC ("CV Broadband") and CTC Communications of Virginia, Inc. ("CTC Virginia"), (collectively the "Petitioners"), completed a joint petition filed with the State Corporation Commission ("Commission") on August 19, 2003, requesting authority, pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Code"), to consummate a series of transactions through which CV Broadband will acquire indirect control over CTC Virginia

CTC Virginia is a privately held Virginia corporation organized and existing under the laws of the Commonwealth of Virginia with its principal offices located in Waltham, Massachusetts. CTC Virginia is certificated to provide interexchange and local exchange telecommunications services in Virginia pursuant to Final Order dated October 27, 1998, in Case No. PUC-1998-00103. CTC Virginia provides interexchange and local exchange voice services, as well as data services, to business customers in Virginia. As of August 2003, CTC Virginia served 2,187 customers in Virginia. Since October 3, 2002, CTC Virginia has been operating under the United States Bankruptcy Code in a case pending in the United States Bankruptcy Court for the District of Delaware. CTC Virginia is a wholly owned subsidiary of CTC Communications Corp. ("CTC Communications"), a Massachusetts corporation. CTC Communications is wholly owned by CTC Communications Group, Inc. ("CTC Group"), a publicly held Delaware corporation with its principal offices located in Waltham, Massachusetts.

CV Broadband is a limited liability company organized and existing under the laws of the State of Washington. CV Broadband is a wholly owned subsidiary of Columbia Ventures Corporation ("CV Corp."), a Washington corporation with its principal offices located in Vancouver, Washington. CV Corp.'s various enterprises provide telecommunications services, which include fixed wireless, satellite, dark fiber and transoceanic fiber optic transmission.

The Petitioners request that the Commission grant authority to consummate a series of transactions through which CTC Virginia will emerge from bankruptcy. As a result of such transactions, CTC Virginia will become an indirect wholly owned subsidiary of CV Broadband and, therefore, an indirect wholly owned subsidiary of CV Broadband's parent, Columbia Ventures Corporation ("CV Corp.").

More specifically, the Petitioners propose a series of transactions whereby CV Broadband will acquire the common stock of CTC Group, as reorganized pursuant to Chapter 11 of the Bankruptcy Code. CTC Group, CV Corp., and CV Broadband entered into an investment agreement dated August 6, 2003 ("Agreement"). The Agreement provides that CTC Group will file and execute a Plan of Reorganization ("Plan"), whereby the outstanding stock of CTC Group will be cancelled, and debts and obligations of CTC Group, CTC Communications, and CTC Virginia to existing creditors will be treated and discharged under the Plan. CTC Group will issue new shares of common stock to CV Broadband in return for thirty-two million dollars (\$32 million). CTC Group will become a direct wholly owned subsidiary of CV Broadband, and CTC Virginia will become a wholly owned indirect subsidiary of CV Broadband.

Petitioners represent that the proposed transactions serve the public interest. The transactions will be completed at the holding company level, and CTC Virginia will continue to provide telecommunications services to customers in Virginia with no change in the rates, terms, or conditions of such

services. The transactions will be entirely transparent with respect to services provided to CTC Virginia's customers and are not expected to materially change CTC Virginia's current management team. The Petitioners further represent that CV Broadband holds the technical, financial, and managerial qualifications to acquire control of CTC Virginia.

THE COMMISSION, upon consideration of the joint petition and representations of the Petitioners and having been advised by its Staff, is of the opinion and finds that the above-described transfer of control 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 Petitioners are hereby granted authority to consummate the transactions as described herein to allow CV Broadband to acquire indirect control of CTC Virginia.
- (2) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUC-2003-00131
OCTOBER 16, 2003**

PETITION OF
DSLNET COMMUNICATIONS VA, INC,

For authority for minority transfer of control

ORDER GRANTING AUTHORITY

On August 21, 2003, DSLnet Communications VA, Inc. ("DSLnet-VA"), filed a petition with the State Corporation Commission ("Commission") requesting authority pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Code") to consummate a transaction through which Deutsche Bank AG London ("Deutsche Bank") may obtain a substantial indirect minority interest in DSL.net, Inc., and, therefore, DSLnet-VA.

DSLnet-VA is a corporation organized and existing under the laws of the Commonwealth of Virginia with its principal offices located in New Haven, Connecticut. DSLnet-VA is certificated to provide interexchange and local exchange telecommunications services in Virginia pursuant to Final Order dated July 28, 1999, in Case No. PUC-1999-00028. However, DSLnet-VA only provides digital subscriber line ("DSL") and other broadband services to approximately 2,650 customers in Virginia. DSLnet-VA is a wholly owned subsidiary of DSL.net, Inc., a publicly held Delaware corporation headquartered in New Haven, Connecticut.

DSL.net, Inc., is currently majority owned by VantagePoint Ventures Partners ("VPVP"), a collection of affiliated private investor funds. VPVP currently holds 65% majority interest in DSL.net, Inc.

Deutsche Bank is the London branch of Deutsche Bank AG and is registered as a foreign company in England and Wales. Deutsche Bank AG is incorporated as a German stock corporation with limited liability. Deutsche Bank AG is a widely held international service provider offering a broad range of banking, account-keeping, cash and securities investments, and asset management.

In the petition, DSLnet-VA requests approval to consummate a series of transactions through which Deutsche Bank may obtain a substantial indirect minority interest in DSL.net, Inc., and, therefore, DSLnet-VA. More specifically, DSLnet-VA requests approval for the proposed transactions that could result in Deutsche Bank acquiring up to 118 million shares of newly issued common stock in DSL.net, Inc. The transactions include debt issuance by DSL.net, Inc., as well as warrants, in the face amount of approximately \$30 million. If such warrants are exercised, Deutsche Bank could hold up to a 37% minority interest in DSL.net, Inc., and, therefore, DSLnet-VA. VPVP's interest in DSL.net, Inc., could be reduced below 50% as a result of the proposed transactions.

DSLnet-VA represents that the proposed transactions serve the public interest and will be completed at the holding company level. DSLnet-VA will continue to provide DSL and other broadband services to customers with no change in rates, terms, or conditions. DSLnet-VA further represents that the transactions will be entirely transparent with respect to services provided to its customers and are not expected to materially change DSLnet-VA's current management structure.

THE COMMISSION, upon consideration of the petition and representations of DSLnet-VA and having been advised by its Staff, is of the opinion and finds that the above-described transfer of control of DSLnet-VA will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to §§ 56-88.1 and -90 of the Code, DSLnet-VA is hereby granted authority to consummate the transactions as described herein, which may result in a transfer of control of DSLnet-VA to Deutsche Bank.
- (2) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUC-2003-00142
OCTOBER 16, 2003**

APPLICATION OF
VERIZON ADVANCED DATA - VIRGINIA INC.

For cancellation of certificates of public convenience and necessity

ORDER

By Order dated December 19, 2000, in Case No. PUC-2000-00181, the State Corporation Commission ("Commission") granted Verizon Advanced Data - Virginia Inc. ("VAD-VA" or the "Company") Certificate Nos. T-529 and TT-123A to provide local exchange and interexchange telecommunications services in Virginia.

By letter application filed August 26, 2003, VAD-VA requested that the Commission cancel its certificates.¹

NOW THE COMMISSION, having considered the matter, is of the opinion that VAD-VA's certificates should be cancelled.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed and assigned Case No. PUC-2003-00142.
- (2) Certificate Nos. T-529 and TT-123A are hereby cancelled.
- (3) The above-captioned matter is hereby dismissed.

¹ VAD-VA was granted authority to discontinue service and cancel its tariffs on January 28, 2002, in Case No. PUC-2001-00214.

**CASE NO. PUC-2003-00143
OCTOBER 16, 2003**

APPLICATION OF
METETHER COMMUNICATIONS OF VIRGINIA, INC.

For cancellation of certificates of public convenience and necessity

ORDER

By Order dated March 12, 2003, in Case No. PUC-2002-00149, the State Corporation Commission ("Commission") granted MetEther Communications of Virginia, Inc. ("MetEther" or the "Company"), Certificate No. TT-190A to provide interexchange telecommunications services in Virginia and Certificate No. T-607 to provide local exchange telecommunications services.

By letter application filed September 10, 2003, MetEther requested that the Commission cancel its certificates.

NOW THE COMMISSION, having considered the matter, is of the opinion that MetEther's certificates should be cancelled.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed and assigned Case No. PUC-2003-00143.
- (2) Certificate Nos. TT-190A and T-607 are hereby cancelled.
- (3) Any existing tariffs of the Company currently on file with the Commission's Division of Communications are hereby cancelled.
- (4) This matter is hereby dismissed.

CASE NO. PUC -2003-00145
OCTOBER 16, 2003

APPLICATION OF
VIRGINIA GLOBAL COMMUNICATIONS SYSTEMS, INC.

For suspension of requirement to file a continuous performance or surety bond

ORDER

On September 10, 2003, Virginia Global Communications Systems, Inc. ("Virginia Global" or "Company"), filed a letter requesting that the State Corporation Commission ("Commission") postpone the requirement that it file with the Commission's Division of Economics and Finance a continuous performance or surety bond in the amount of \$50,000. See Ordering Paragraph (5) of the Commission's May 19, 2003, Order in Case No. PUC-2000-00121.

The Company's letter explains that it has cancelled its Va. S.C.C. tariff No. 1, effective September 15, 2003. It asks that the bond requirement be postponed until such time as it has another tariff in effect and begins to market to the public. The Commission's Staff advises that this cancellation of the Company's tariff effectively prevents the Company from offering intrastate telecommunications services to the general public in Virginia. As revealed to Staff, the Company is left with only a single user of its DSL service,¹ its affiliate, Rockbridge Global Village, an Internet service provider.

The Commission considers the actions of Virginia Global as sufficient to protect the public from any of the financial harms that would typically be covered by a continuous performance or a surety bond. Until such time as Virginia Global files a new tariff that would permit it to offer intrastate telecommunications services to the public, only its affiliate, Rockbridge Global Village, is at risk for any failure or disruption in Virginia Global's DSL service. In compliance with the Rules Governing the Certification and Regulation of Competitive Local Exchange Customers, 20 VAC 5-417-80, we find that the requirement to furnish a continuous performance or surety bond can be suspended until Virginia Global seeks to offer intrastate telecommunications services to the public by filing a new tariff.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed and assigned Case No. PUC-2003-00145.
- (2) The requirement that Virginia Global file a continuous performance bond or a surety bond is suspended until Virginia Global seeks to offer intrastate telecommunications services to the general public by filing a new tariff.
- (3) This matter is closed, and the papers filed herein shall be placed in the file for ended causes.

¹ The FCC has determined DSL service to be jurisdictionally interstate.

CASE NO. PUC-2003-00146
NOVEMBER 3, 2003

APPLICATION OF
MFN OF VA, L.L.C.

To cancel existing certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services and to reissue certificates reflecting the corporate name change

FINAL ORDER

On June 26, 1998, the State Corporation Commission ("Commission") entered an Order in Case No. PUC-1998-00047, which granted MFN of VA, L.L.C. ("MFNVA" or the "Company"), a certificate of public convenience and necessary, No. TT-53A, to provide interexchange telecommunications services and a certificate of public convenience and necessity, No. T-413, to provide local exchange telecommunications services.

On September 16, 2003, the Company petitioned the Commission to amend its certificates to reflect a change of its corporate name to AboveNet of VA, L.L.C. Apparently, all other information regarding the Company remains unchanged.

In its Petition, the Company attached a copy of its Articles of Amendment that it had filed with the Commission on August 27, 2003, reflecting the change of its name from MFN of VA, L.L.C., to AboveNet of VA, L.L.C.

NOW, UPON CONSIDERATION of the foregoing, the Commission is of the opinion and finds that the certificates of public convenience and necessity, Nos. TT-53A and T-413, issued to MFN of VA, L.L.C., should be cancelled; and certificates of public convenience and necessity should be reissued to AboveNet of VA, L.L.C., reflecting the new name of that corporation.

Accordingly, IT IS THEREFORE ORDERED THAT:

- (1) This matter is hereby docketed and assigned Case No. PUC-2003-00146.
- (2) Certificate of public convenience and necessity, No. TT-53A, issued to MFN of VA, L.L.C., is hereby cancelled.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(3) Certificate of public convenience and necessity, No. TT-53B, is hereby issued to AboveNet of VA, L.L.C., authorizing it to provide interexchange telecommunications services.

(4) Certificate of public convenience and necessity, No. T-413, issued to MFN of VA, L.L.C., is hereby cancelled.

(5) Certificate of public convenience and necessity, No. T-413a, is hereby issued to AboveNet of VA, L.L.C., authorizing it to provide local exchange telecommunications services.

(6) AboveNet of VA, L.L.C., shall file revised tariffs no later than sixty (60) days from the date of this Order with the Commission's Division of Communications that conform with all applicable Commission rules and regulations and which use AboveNet of VA, L.L.C.'s name rather than that of MFN of VA, L.L.C.

(7) 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-2003-00148
OCTOBER 8, 2003**

APPLICATION OF
PRISM VIRGINIA OPERATIONS, LLC

For cancellation of certificates of public convenience and necessity

ORDER

By Order dated December 14, 1999, in Case No. PUC-1998-00142, the State Corporation Commission ("Commission") granted Prism Virginia Operations, LLC ("Prism") Certificate Nos. T-468 and TT-81A to provide local exchange and interexchange telecommunications services in Virginia.

By letter application filed September 29, 2003, Prism requested that the Commission cancel its certificates.

NOW THE COMMISSION, having considered the matter, is of the opinion that Prism's certificates should be cancelled.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed and assigned Case No. PUC-2003-00148.
- (2) Certificate Nos. T-468 and TT-81A are hereby cancelled.
- (3) The captioned matter is hereby dismissed.

**CASE NO. PUC-2003-00149
OCTOBER 22, 2003**

APPLICATION OF
U S WEST INTERPRISE AMERICA OF VIRGINIA, INC.

To cancel existing certificates and reissue certificates reflecting new name

FINAL ORDER

By letter application filed September 29, 2003, U S West Interprise America of Virginia, Inc. ("U S West" or the "Company"), informed the State Corporation Commission ("Commission") that it had changed its corporate name to Qwest Interprise America of Virginia, Inc.¹

In its notice, U S West recited that it had filed Articles of Amendment reflecting a change of corporate name on June 30, 2000. Although U S West failed to request the cancellation of its certificates of public convenience and necessity ("CPCNs") issued in its name and the reissuance of CPCNs reflecting its new name, we take notice that this should be done.

NOW UPON CONSIDERATION of the foregoing, the Commission is of the opinion and finds that CPCN Nos. T-464 and TT-79A, issued to U S West Interprise America of Virginia, Inc., should be cancelled, and CPCNs should be reissued in the new corporate name, Qwest Interprise America of Virginia, Inc.

¹ U S West was granted certificates of public convenience and necessity No. T-464 to provide local exchange telecommunications services and No. TT-79A to provide interexchange telecommunications services on October 14, 1999, in Case No. PUC-1999-00063. It should also be noted that while the Company's name filed with the Clerk of the Commission reflected "Interprise," the CPCNs were issued under the name U S West Interprise America of Virginia, Inc.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUC-2003-00149.
- (2) Certificate of public convenience and necessity No. T-464 for local exchange telecommunications services is cancelled and shall be reissued as amended Certificate No. T-464a in the name of Qwest Interprise America of Virginia, Inc.
- (3) Certificate of public convenience and necessity No. TT-79A for interexchange telecommunications services is cancelled and shall be reissued as amended Certificate No. TT-79B in the name of Qwest Interprise America of Virginia, Inc.
- (4) Qwest Interprise America of Virginia, Inc., shall file revised tariffs no later than sixty (60) days from the date of this Order with the Commission's Division of Communications that conform with all applicable Commission rules and regulations and which use Qwest Interprise America of Virginia, Inc.'s name rather than that of U S West Interprise America of Virginia, Inc.
- (5) There being nothing further to be done in this matter, this cause 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-2003-00150
NOVEMBER 3, 2003**

APPLICATION OF
BROADWING COMMUNICATIONS SERVICES OF VIRGINIA, INC.

For cancellation of its interexchange certificate of public convenience and necessity

ORDER

By Order dated March 3, 2000, in Case No. PUC-2000-00040, the State Corporation Commission ("Commission") granted Broadwing Communications Services of Virginia, Inc. ("Broadwing" or the "Company"), Certificate No. TT-70B to provide interexchange telecommunications services in Virginia.¹

By letter application filed October 3, 2003, Broadwing requested that the Commission cancel its certificate because of the transfer of substantially all of its assets and customers to C III Communications Operation, LLC ("C III"). C III was granted its interexchange certificate on July 9, 2003, and Broadwing will no longer provide telecommunications services to Virginia customers.

NOW THE COMMISSION, having considered the matter, is of the opinion that Broadwing's certificate should be cancelled.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed and assigned Case No. PUC-2003-00150.
- (2) Certificate No. TT-70B is hereby cancelled.
- (3) Any existing tariffs of the Company currently on file with the Commission's Division of Communications are hereby cancelled.
- (4) This matter is hereby dismissed.

¹ The original name on the certificate was IXC Communications Services of Virginia, Inc., issued July 16, 1999, in Case No. PUC-1999-00084.

**CASE NO. PUC-2003-00152
OCTOBER 17, 2003**

PETITION OF
XSPEDIUS MANAGEMENT CO. OF VIRGINIA, LLC

To substitute continuous performance or surety bond

ORDER GRANTING SUBSTITUTION OF BOND

On October 23, 2002, the State Corporation Commission ("Commission") issued a Final Order in Case No. PUC-2002-00122 ("Final Order"), which granted Xspedius Management Co. of Virginia, LLC ("Xspedius" or "Company"), a certificate of public convenience and necessity ("CPCN"), No. T-592, to provide local exchange telecommunications services and CPCN No. TT-182A to provide interexchange telecommunications services. Pursuant to the Final Order, Xspedius was ordered to:

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

notify the division of Economics and Finance thirty (30) days prior to the cancellation or lapse of its Bond and shall provide a replacement bond. This requirement shall be maintained until such time as the Staff or Commission determines it is no longer necessary.

(Final Order, Ordering Paragraph (6)).

On October 10, 2003, Xspedius, by counsel, filed in the above-captioned case a Motion to Reopen Proceeding and Substitute Bond ("Motion"). The Company reports that it has on file a \$50,000 Continuous License or Permit Bond ("Original Bond"). The Original Bond was issued by Greenwich Insurance Company, which served as a corporate surety on the Original Bond (Bond No. 45039987). The Company reports that it is no longer practical for Greenwich Insurance Company to serve as surety for Xspedius' Original Bond and that Xspedius has secured a replacement License or Permit Bond ("Replacement Bond")¹ with Travelers Casualty and Surety Company of America serving as its corporate surety (Bond No. 104133318). Xspedius requests leave to file the Replacement Bond in substitution and have the Original Bond revoked.

The Commission, having reviewed the Motion and examined the Replacement Bond, finds that the Motion should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) Case No. PUC-2002-00122 shall not be reopened, and this current matter shall be docketed and assigned Case No. PUC-2003-00152.
- (2) Xspedius is hereby granted leave to provide to the Commission's Division of Economics and Finance ("Division") the Replacement Bond, as evidenced in its Motion, in substitution of the Original Bond on file with the Division.
- (3) Upon Xspedius filing the Replacement Bond, the Company shall be authorized to revoke the Original Bond.
- (4) There being nothing further to come before the Commission, this case shall be dismissed and the papers filed herein placed in the file for ended causes.

¹ A copy of the Replacement Bond is attached to the Motion as Exhibit A.

**CASE NO. PUC-2003-00157
NOVEMBER 21, 2003**

APPLICATION OF
JONES TELECOMMUNICATIONS OF VIRGINIA, INC.

To cancel existing certificate of public convenience and necessity to provide local exchange telecommunications services and to reissue certificate reflecting the corporate name change

FINAL ORDER

On June 28, 1996, the State Corporation Commission ("Commission") entered an Order in Case No. PUC-1996-00003 that granted Jones Telecommunications of Virginia, Inc. ("Jones VA" or the "Company"), a certificate of public convenience and necessity, No. T-362, to provide local exchange telecommunications services subject to the restrictions set forth in the Commission's Rules Governing the Offering of Competitive Local Exchange Telephone Service (as codified in 20 VAC 5-400-180), § 56-265.4:4 of the Code of Virginia, and the provisions of the June 28, 1996, Order.¹

On October 23, 2003, Jones VA notified the Commission that it intends to effectuate its change of name to Comcast Phone of Northern Virginia, Inc. It noted that all other information regarding the Company remains unchanged.

In its notice, Jones VA stated that it had filed Articles of Amendment with the Commission to change its name from Jones Telecommunications of Virginia, Inc., to Comcast Phone of Northern Virginia, Inc., and that on September 16, 2003, the Commission issued a Certificate of Amendment changing its corporate name to Comcast Phone of Northern Virginia, Inc. Jones VA has requested the cancellation of the certificate issued in its name and the reissuance of a certificate reflecting the new name.

NOW, UPON CONSIDERATION of the foregoing, the Commission is of the opinion and finds that the certificate of public convenience and necessity, No. T-362, issued to Jones VA, should be cancelled; and a certificate of public convenience and necessity should be reissued to Comcast Phone of Northern Virginia, Inc., reflecting the new name of that corporation.

Accordingly, IT IS THEREFORE ORDERED THAT:

- (1) This matter is hereby docketed and assigned Case No. PUC-2003-00157.
- (2) Certificate of public convenience and necessity No. T-362, issued to Jones VA, is hereby cancelled.

¹ The application of Jones VA, filed with the Commission on October 23, 2003, incorrectly references Case No. PUC-2000-00294. When notified of this error, counsel for Jones VA indicated via e-mail that Jones VA's certificate of public convenience and necessity to provide local exchange telecommunications services was granted in Case No. PUC-1996-00003, not Case No. PUC-2000-00294. A copy of the e-mail is attached to the Memorandum of Completeness.

(3) Certificate of public convenience and necessity No. T-362a is hereby issued to Comcast Phone of Northern Virginia, Inc., authorizing it 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 (codified in 20 VAC 5-417-10 *et seq.*), § 56-265.4:4 of the Code of Virginia, and the provisions previously set out in the Commission's June 28, 1996, Final Order in Case No. PUC-1996-00003.

(4) Comcast Phone of Northern Virginia, Inc., shall file revised tariffs no later than sixty (60) days from the date of this Order with the Commission's Division of Communications that conform with all applicable Commission rules and regulations and which use Comcast Phone of Northern Virginia, Inc.'s name rather than that of Jones VA.

(5) There being nothing further to be done in this matter, this case shall be removed from the Commission's docket of active proceedings and the papers filed herein placed in the Commission's file for ended causes.

**CASE NO. PUC-2003-00159
DECEMBER 17, 2003**

JOINT PETITION OF
DOMINION RESOURCES, INC.,
DFV CAPITAL CORPORATION,
DT SERVICES, INC.,
and
BLUE RIDGE TELECOM TRUST

For approval to transfer membership interest

ORDER GRANTING APPROVAL

On October 22, 2003, Dominion Resources, Inc. ("Dominion"), DFV Capital Corporation ("DFVCC"), DT Services, Inc. ("DTSI"), and Blue Ridge Telecom Trust ("BRTT") (collectively the "Petitioners") filed a joint petition with the State Corporation Commission ("Commission") requesting approval, pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Code"), to consummate a series of transactions (the "Transactions") involving a transfer of membership interest through which control of Dominion Fiber Ventures, LLC ("DFVLLC"), and thereby Dominion Telecom, Inc. ("DTI"), will be transferred from BRTT to a Dominion subsidiary.

DTI is a Virginia public service corporation certificated to provide local exchange and intrastate interexchange telecommunications services throughout Virginia. DTI currently serves 13 retail and 31 wholesale customers from Northern Virginia to Norfolk DTI also provides interstate interexchange telecommunications services in other jurisdictions. DTI is an "exempt telecommunications company" for purposes of the Public Utility Holding Company Act of 1935 ("the 1935 Act"). DTI is a wholly owned direct subsidiary of DFVLLC.

DFVLLC is a limited liability company organized under the laws of the state of Delaware. DFVLLC is a partially owned direct subsidiary of DFVCC and DTSI, both of which are wholly owned direct subsidiaries of Dominion. DFVCC is a Delaware corporation with its office located in Richmond, Virginia. DTSI is a Virginia general business corporation and is considered to be an "exempt telecommunications company" for purposes of the 1935 Act with its office located in Glen Allen, Virginia.

Dominion is a privately held Virginia general business corporation and a registered holding company subject to regulation by the Securities and Exchange Commission pursuant to the 1935 Act.

BRTT is a Delaware statutory trust. The sole trustee of BRTT is Wilmington Trust Company. BRTT currently owns 100% of the Class A membership interest in DFVLLC.

On December 22, 2000, Dominion, DTI, DTSI, and DFVLLC filed a joint petition under the Utility Transfers Act requesting approval of a series of transactions that were part of a financing initiative under which control of DTI was transferred by Dominion, DTI's then current sole shareholder, to DFVLLC, an indirect subsidiary of Dominion. The Commission approved the transactions by Order Granting Approval dated February 15, 2001, in Case No. PUA-2000-00103.

The Petitioners request approval to consummate Transactions involving a transfer of membership interest through which control of DFVLLC will be transferred from BRTT to a Dominion subsidiary. More specifically, the Petitioners propose Transactions that would allow DFVCC or DTSI to acquire, in exchange for cash in the amount of BRTT's original investment, BRTT's Class A membership interest in DFVLLC, thereby giving Dominion indirect ownership of 100% of the membership interests in DFVLLC, and, therefore, DTI.

The purpose of the proposed Transactions is to allow Dominion to gain full control of DTI, which would then allow Dominion to negotiate and consummate the sale of DTI. The Petitioners represent that none of the Transactions will have an adverse impact on the provision of adequate service to the public at just and reasonable rates. Rates will not change, and the Transactions will be transparent to DTI's customers. The Petitioners further represent that the Transactions will not in any way diminish the financial, technical, and managerial fitness of DTI. The acquiring entity's source of funds for the acquisition will be external to DTI. There will be no change in DTI's daily operations. The Petitioners also represent that DTI will continue to abide by its approved tariffs and contracts, and it will continue to fulfill its obligations to customers and to all regulatory bodies.

THE COMMISSION, upon consideration of the joint petition and representations of the Petitioners and having been advised by its Staff, is of the opinion and finds that the above-described transfer of control will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to §§ 56-88.1 and 56-90 of the Code, the Petitioners are hereby granted authority to consummate the transactions as described herein to allow Dominion Resources, Inc., to acquire indirect control of Dominion Telecom, Inc.
- (2) The Petitioners shall submit a report of the action taken pursuant to the approval granted herein to the Commission's Director of Public Utility Accounting within thirty (30) days of consummation of Transactions, subject to administrative extension by the Director of Public Utility Accounting. Such report shall include the date Transactions took place.
- (3) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUC-2003-00165
DECEMBER 15, 2003**

PETITION OF
NTELOS INC.,
NTELOS TELEPHONE INC.,
and
NTELOS COMMUNICATIONS INC,

For authority to transfer common stock ownership and control

ORDER GRANTING AUTHORITY

On November 6, 2003, NTELOS Inc. ("NTELOS"), NTELOS Telephone Inc. ("NTELOS Telephone"), and NTELOS Communications Inc. ("NTELOS Communications") (collectively, the "Petitioners") completed a petition filed on October 29, 2003, pursuant to Chapter 5 of Title 86 of the Code of Virginia ("Code").¹ The Petitioners request authority to transfer the common stock ownership and control of NTELOS Telephone from NTELOS to NTELOS Communications. The Petitioners, along with other subsidiaries of NTELOS, emerged from bankruptcy on September 9, 2003. The purpose of the transfer is to minimize the post-bankruptcy effect of certain tax accounting requirements on NTELOS Telephone.

NTELOS is a Virginia corporation headquartered in Waynesboro, Virginia, and its subsidiaries provide integrated communications services in Virginia and five other states.

NTELOS Telephone is a Virginia public service company providing local exchange telecommunications services in Allegheny and Augusta Counties, the Town of Clifton Forge, and the Cities of Covington and Waynesboro. NTELOS Telephone provides local exchange telecommunications services to approximately 40,000 access lines and is a wholly owned subsidiary of NTELOS Inc.

NTELOS Communications is a Virginia corporation formed to hold several communications companies.²

On March 4, 2003, NTELOS and certain of its subsidiaries, including NTELOS Telephone and NTELOS Communications, filed in the Bankruptcy Court for the Eastern District of Virginia (the "Bankruptcy Court"), a petition under Chapter 11 of the Bankruptcy Code through which a reorganization of NTELOS could be accomplished. Following Commission approval of the restructuring of NTELOS by Order dated August 8, 2003, in Case No. PUC-2003-00100 and subsequent approval of its Joint Plan of Reorganization (the "Joint Plan") by the Bankruptcy Court, NTELOS and its subsidiaries, including NTELOS Telephone and NTELOS Communications, emerged from bankruptcy on September 9, 2003. The Joint Plan's terms accepted by the Bankruptcy Court allowed for, among other things, the cancellation of certain debt obligations resulting in the net discharge, for income tax purposes, of approximately \$183 million.

On August 29, 2003, the Internal Revenue Service ("IRS") issued new temporary regulations governing the impact of the discharge of debt in bankruptcy for a corporation that files a consolidated federal income tax return. The new regulations, which were issued without notice and without an opportunity to comment, alter the potential impact of the discharge of NTELOS' debt that occurred when NTELOS' Joint Plan became effective on September 9, 2003. Before the new regulations were issued, the discharge of NTELOS' debt would have had no impact on tax attributes, such as the income tax basis of assets, of NTELOS Telephone. However, the new regulations could cause a significant reduction in the income tax basis of NTELOS Telephone's assets. This reduction in basis would reduce tax deductions for depreciation, thus increasing NTELOS Telephone's taxable income over the remaining periods for depreciating those assets for federal income tax purposes. As a result, its income tax expense would increase substantially. Because income tax expense is a component of cost of service, NTELOS Telephone's cost of providing service also would increase. The Petitioners represent that if, however, NTELOS transfers ownership of the NTELOS Telephone stock to another wholly owned subsidiary, NTELOS Communications, before January 1, 2004, the adverse consequences to NTELOS Telephone can be avoided.

The Petitioners, therefore, request authority to transfer the common stock ownership and control of NTELOS Telephone from NTELOS to NTELOS Communications. The Petitioners state that NTELOS Communications would not have to reduce the tax basis of any of its assets because of its existing net operating losses. Therefore, the basis of the NTELOS Telephone stock and the basis of its assets would not be reduced. Accordingly, the

¹ Although the petition was filed pursuant to Chapter 5 of the Code, the transaction also represents an affiliate transaction that requires approval under Chapter 4 of the Code.

² NTELOS Communications Inc. was incorporated on June 23, 1988, as CFW Cellular Inc. On March 21, 1997, CFW Cellular Inc. filed Articles of Amendment with the Commission to change its name to CFW Wireless Inc. On December 6, 2000, CFW Wireless Inc. filed Articles of Amendment with the Commission to change its name to NTELOS Wireless Inc. On October 20, 2003, NTELOS Wireless Inc. filed Articles of Amendment with the Commission to change its name to NTELOS Communications Inc.

transfer of NTELOS Telephone stock should put NTELOS Telephone in the same tax position it would have occupied had the new regulations not been issued. Also, the debt discharge in the NTELOS bankruptcy would not have any impact on NTELOS Telephone's tax attributes or cost of service. By accomplishing the proposed transfer of stock ownership, the Petitioners estimate that NTELOS Telephone can avoid a tax cost of approximately \$6.2 million without any change in the rates, terms, and conditions of service to its customers.

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 transfer of the stock ownership of NTELOS Telephone from NTELOS to NTELOS Communications, as described herein, will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and is in the public interest and should, therefore, be authorized.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to §§ 56-77,56-88.1, and 56-90 of the Code of Virginia, authority is hereby granted for the transfer of the common stock ownership of NTELOS Telephone from NTELOS to NTELOS Communications as described herein.

(2) The authority granted herein shall have no ratemaking implications.

(3) The authority 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 authority to examine the books and records of any affiliate in connection with the authority granted herein whether or not the Commission otherwise regulates such affiliate.

(5) The authority granted herein shall not be deemed to include any authority other than that specifically granted in Ordering Paragraph (1) above.

(6) The Petitioners shall submit a report of the action taken pursuant to the authority granted herein to the Commission's Director of Public Utility Accounting within thirty (30) days of the transaction taking place, subject to administrative extension by the Director of Public Utility Accounting. The report shall provide the date the transfer took place.

(7) The transaction authorized herein shall be included in NTELOS Telephone's Annual Report of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting by April 1 of each year, subject to administrative extension by the Director of Public Utility Accounting.

(8) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then NTELOS Telephone shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.

(9) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUC-2003-00169
DECEMBER 23, 2003**

JOINT PETITION OF
PROGRESS TELECOM VIRGINIA, LLC,
PROGRESS TELECOM, LLC,
PROGRESS TELECOMMUNICATIONS CORPORATION,
CARONET, INC.,
EPIK COMMUNICATIONS, INCORPORATED,
and
ODYSSEY TELECORP, INC.

For approval of transfer of control of Progress Telecom Virginia, LLC, to Odyssey Telecorp, Inc.

ORDER GRANTING APPROVAL

On November 12, 2003, Progress Telecom Virginia, LLC ("PTC VA"), Progress Telecom, LLC ("PTC"), Progress Telecommunications Corporation ("Old PTC"), Caronet, Inc. ("Caronet"), EPIK Communications, Incorporated ("EPIK"), and Odyssey Telecorp, Inc. ("Odyssey") (collectively the "Petitioners"), completed a joint petition filed with the State Corporation Commission ("Commission") on November 5, 2003, requesting approval pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Code"), to consummate a series of transactions involving a transfer of membership interest through which control of PTC, and thereby PTC VA, will be transferred to Odyssey through its subsidiary, EPIK.

PTC VA is a limited liability company organized and existing under the laws of Virginia. PTC VA is certificated to provide local exchange and interexchange telecommunications services in Virginia pursuant to Case No. PUC-2002-00084 by Order dated July 16, 2002. PTC VA provides wireless infrastructure, collocation and dark fibers, and wholesale broadband telecommunications services to wireless and international telecommunications carriers, long distance companies, Internet service providers, enterprise customers, and competitive local exchange carriers ("CLECs"). PTC VA currently provides interstate telecommunications services to six customers in Virginia. PTC VA is a wholly owned direct subsidiary of PTC.

PTC is a partially owned direct subsidiary of Old PTC and Caronet, both of which are wholly owned indirect subsidiaries of Progress Energy, Inc. ("Progress").

EPIK is a corporation organized and existing under the laws in the state of Delaware and is a wholly owned subsidiary of Odyssey, a holding company. Both companies are located at 44 High Street, Suite 400, Palo Alto, California. EPIK is authorized to provide telecommunications services in the state of Georgia, and an affiliate of EPIK, EPIK Latin America, holds domestic and international telecommunications authorizations granted by the Federal Communications Commission. EPIK provides wireless infrastructure, collocation and dark fiber, and wholesale broadband telecommunications services to wireless and international telecommunications carriers, long distance companies, Internet service providers, enterprise customers, and CLECs. EPIK provides its telecommunications services by means of a high capacity fiber optic network primarily in the southeast United States.

On November 3, 2003, the Petitioners entered into an agreement, pursuant to which Old PTC, Caronet, and EPIK will contribute certain assets, including customer contracts and telecommunications facilities, to PTC in return for which PTC will issue membership interests. More specifically, Old PTC will hold 55% membership interest, Caronet will hold 5% membership interest, and EPIK will hold 40% membership interest in PTC. Additionally, Odyssey will acquire Caronet, including Caronet's 5% membership interest in PTC, from Progress Energy in return for cash. Upon consummation of the transactions, PTC, and therefore indirectly PTC VA, will be 55% owned by Old PTC and 45% owned by Odyssey through its new subsidiary, Caronet, and its existing subsidiary, EPIK.

The Petitioners represent that PTC VA will continue to possess the managerial, technical, and financial qualifications to provide telecommunications services in Virginia. Neither EPIK nor Odyssey will be directly involved in the daily operations of PTC VA. The Petitioners further represent that they do not expect any significant changes in PTC VA's current management structure, which will continue to oversee its daily operations.

THE COMMISSION, upon consideration of the joint petition and representations of the Petitioners and having been advised by its Staff, is of the opinion and finds that the above-described transfer of control 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 Petitioners are hereby granted approval to consummate the transactions as described herein to allow for the transfer of a 45% membership interest in PTC, thus indirectly in PTC VA, to Odyssey.
- (2) The Petitioners shall submit a report of the action taken pursuant to the approval granted herein to the Commission's Director of Public Utility Accounting within thirty (30) days of consummation of the transactions, subject to administrative extension by the Director of Public Utility Accounting. Such report shall include the date transactions took place.
- (3) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUC-2003-00179
DECEMBER 12, 2003**

APPLICATION OF
ONESTAR COMMUNICATIONS, LLC

For approval to discontinue local exchange telecommunications services in Virginia and cancel certificate of public convenience and necessity

**ORDER PERMITTING DISCONTINUANCE OF SERVICE AND CANCELLATION
OF ITS CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

On December 1, 2003, OneStar Communications, LLC ("OneStar" or the "Company"), filed an application with the State Corporation Commission ("Commission") requesting Commission approval to discontinue its provision of local exchange telecommunications services to customers in Virginia.¹ In its application, OneStar states that its decision to discontinue local exchange telecommunications services in Virginia is due to recent developments in its relationship with Verizon Virginia Inc., as well as in OneStar's business plans and strategies. OneStar has discontinued all local service sales efforts in Virginia and has notified its approximately 355 local service customers of its plans to discontinue service. Pursuant to the Commission's Rules Governing the Discontinuance of Local Exchange Telecommunications Services Provided by Competitive Local Exchange Carriers ("Rules"), 5 VAC 5-423-20, the Company sent a letter on November 12, 2003, to all of its customers informing them that it would no longer provide local telephone service to them as of December 12, 2003.² Pursuant to the Commission's Order in Case No. PUC-2003-00097, OneStar notified the Staff on December 8, 2003, that it continued to provide local exchange telecommunications services to approximately 211 customers in Virginia.

The Commission's primary concern with authorizing any discontinuance of telecommunications services is that adequate notice to customers be provided. The Commission's rules regarding discontinuance, 20 VAC 5-423-20, require, among other things, that an application provide at least 30 days' written notice of a proposed discontinuation of services. OneStar's application meets the requirements of the Commission's Rules.

NOW THE COMMISSION, being sufficiently advised, will grant the requested discontinuance of local exchange telecommunications services and cancellation of OneStar's CPCN to provide local exchange telecommunications services.

¹ OneStar holds a certificate of public convenience and necessity ("CPCN"), T-581, to provide local exchange telecommunications services in Virginia, which was granted in Case No. PUC-2001-00184. The Company has also notified the Staff that it does not wish to retain its local exchange CPCN.

² See related Case No. PUC-2003-00097, Verizon Virginia Inc. Notification of Planned Disconnection of OneStar Communications, LLC for Nonpayment of Charges. Pursuant to an Order Permitting Discontinuance issued November 7, 2003, OneStar provided its customers with 30 days' notice of discontinuance of service. OneStar filed the required Proof of Notice in that case on November 13, 2003.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed and assigned Case No. PUC-2003-00179.
- (2) OneStar is hereby granted authority to discontinue its provision of local exchange telecommunications services to its residential and business customers in Virginia, effective December 12, 2003.
- (3) OneStar's local exchange CPCN, T-581, is hereby cancelled as of December 13, 2003.
- (4) There being nothing further to come before the Commission in this matter, this case shall be closed, and the papers herein shall be placed in the file for ended causes.

The Commission issued 69 orders in 2003 approving interconnection agreements or amendments to agreements between telecommunications companies in the Commonwealth. The full text of these orders can be found on LexisNexis and on the Commission's website <http://www.state.va.us/scc>.

1. Case No. PUC-1997-00026, Application of Verizon Virginia Inc. and Washington/Baltimore Cellular Limited Partnership d/b/a Cingular Wireless, Order Approving Amendment dated February 25, 2003.
2. Case No. PUC-1997-00049, Application of Verizon Virginia Inc. and Richmond 20 MHz, LLC d/b/a NTELOS, Order Approving Amendment dated October 7, 2003.
3. Case No. PUC-1997-00054, Application of Verizon Virginia Inc. and United States Cellular Corporation, Order Approving Amendment dated March 7, 2003.
4. Case No. PUC-1997-00070, Application of Verizon Virginia Inc. and Virginia Cellular, LLC, Order Approving Amendment dated April 10, 2003.
5. Case No. PUC-1997-00160, Application of Verizon Virginia Inc. and Nextel Communications of The Mid-Atlantic, Inc., Order Approving Amendment dated April 22, 2003.
6. Case No. PUC-1998-00086, Application of Verizon Virginia Inc. and Virginia PCS Alliance, L.C., Order Approving Amendment dated February 25, 2003.
7. Case No. PUC-1998-00183, Application of Verizon Virginia Inc. and Triton PCS Operating Company, L.L.C., Order Approving Amendment dated March 7, 2003.
8. Case No. PUC-1999-00007, Application of Verizon Virginia Inc. and PaeTec Communications, Inc., Order Approving Amendment dated April 22, 2003.
9. Case No. PUC-1999-00038, Application of Verizon Virginia Inc. and Omnipoint Communications Cap Operations, LLC, Order Approving Amendment dated April 10, 2003.
10. Case No. PUC-1999-00097, Application of Verizon Virginia Inc. and CCCVAE, Inc., d/b/a CONNECT!, Order Approving Amendment dated March 27, 2003.
11. Case No. PUC-1999-00111, Application of Verizon Virginia Inc. and Allegiance Telecom of Virginia, Inc., Order Approving Amendment dated February 14, 2003.
12. Case No. PUC-2001-00024, Application of Verizon Virginia Inc. and Level 3 Communications, LLC, Order Approving Amendment dated May 29, 2003.
13. Case No. PUC-2001-00144, Application of Verizon Virginia Inc. and Jones Telecommunications of Virginia, Inc., Order Approving Amendment dated November 4, 2003.
14. Case No. PUC-2001-00209, Application of Verizon Virginia Inc. and Telephone Company of Central Florida, Inc., Order Approving Amendment dated March 4, 2003.
15. Case No. PUC-2001-00224, Application of Verizon Virginia Inc. and IDS Telecom LLC, Order Approving Amendment dated February 19, 2003.
16. Case No. PUC-2002-00049, Application of Verizon South Inc. and Allegiance Telecom of Virginia, Inc., Order Approving Amendment dated October 21, 2003.
17. Case No. PUC-2002-00221, Application of Verizon Virginia Inc. and Cox Virginia Telecom, Inc., Order Approving Amendment dated July 30, 2003.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

18. Case No. PUC-2002-00222, Application of Verizon Virginia Inc. and Comm South Companies of Virginia, Inc., Order Approving Agreement dated February 10, 2003.
19. Case No. PUC-2002-00225, Application of United Telephone-Southeast, Inc., and Central Telephone Company of Virginia and Sprint PCS, Order Approving Agreement dated February 12, 2003.
20. Case No. PUC-2002-00226, Application of Central Telephone Company of Virginia and Maxcess of Virginia, Inc., Order Approving Amendment dated January 24, 2003.
21. Case No. PUC-2002-00227, Application of Central Telephone Company of Virginia and United Telephone-Southeast, Inc. and MountaiNet Telephone Company, Order Approving Agreement dated February 6, 2003.
22. Case No. PUC-2002-00229, Application of United Telephone-Southeast, Inc. and Central Telephone Company of Virginia and Cat Communications International, Inc., Order Approving Agreement dated January 16, 2003.
23. Case No. PUC-2002-00232, Application of United Telephone-Southeast, Inc. and Central Telephone Company of Virginia and NA Communications, Inc., Order Approving Agreement dated February 14, 2003.
24. Case No. PUC-2003-00010, Application of Global NAPS South, Inc. and Verizon Virginia Inc., Order Approving Agreement dated December 2, 2003.
25. Case No. PUC-2003-00011, Application of Central Telephone Company of Virginia and United Telephone-Southeast, Inc. and TeleConex of Virginia, Inc., Order Approving Agreement dated March 7, 2003.
26. Case No. PUC-2003-00012, Application of Pembroke Telephone Cooperative and Cellco Partnership d/b/a Verizon Wireless, Order Approving Agreement dated March 7, 2003.
27. Case No. PUC-2003-00021, Application of United Telephone-Southeast, Inc. and Central Telephone Company of Virginia and NOW Communications, Inc., Order Approving Agreement dated March 26, 2003.
28. Case No. PUC-2003-00022, Application of United Telephone-Southeast, Inc. and Central Telephone Company of Virginia and Citizens Communications Corporation, Order Approving Agreement dated March 26, 2003.
29. Case No. PUC-2003-00023, Application of United Telephone-Southeast, Inc. and Central Telephone Company of Virginia and East Tennessee Network, LLC, Order Approving Agreement dated March 26, 2003.
30. Case No. PUC-2003-00024, Application of Central Telephone Company of Virginia and United Telephone-Southeast, Inc. and East Tennessee Network, LLC, Order Approving Agreement dated March 27, 2003.
31. Case No. PUC-2003-00032, Application of Central Telephone Company of Virginia and United Telephone-Southeast, Inc. and Citizens Communications Corporation, Order Approving Agreement dated March 31, 2003.
32. Case No. PUC-2003-00034, Application of Metro Teleconnect, Inc. and Verizon Virginia Inc., Order Approving Agreement dated May 8, 2003.
33. Case No. PUC-2003-00047, Application of United Telephone-Southeast, Inc. and Central Telephone Company of Virginia and The City of Bristol d/b/a Bristol Virginia Utilities Board, Order Approving Agreement dated May 29, 2003.
34. Case No. PUC-2003-00050, Application of United Telephone-Southeast, Inc. and Central Telephone Company of Virginia and US LEC of Virginia, L.L.C., Order Approving Amendment dated May 8, 2003.
35. Case No. PUC-2003-00066, Application of United Telephone-Southeast, Inc. and Central Telephone Company of Virginia and Virginia Global Communications Systems, Inc., Order Approving Agreement dated May 29, 2003.
36. Case No. PUC-2003-00070, Application of Verizon Virginia Inc. and Access Point of Virginia, Inc., Order Approving Agreement dated May 29, 2003.
37. Case No. PUC-2003-00072, Application of Verizon South Inc. and Bullseye Telecom of Virginia, LLC, Order Approving Agreement dated May 27, 2003.
38. Case No. PUC-2003-00073, Application of Verizon Virginia Inc. and Bullseye Telecom of Virginia, LLC, Order Approving Agreement dated May 27, 2003.
39. Case No. PUC-2003-00074, Application of United Telephone-Southeast, Inc. and Central Telephone Company of Virginia and Alticom of Virginia, Inc., Order Approving Agreement dated June 6, 2003.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

40. Case No. PUC-2003-00078, Application of Verizon South Inc. and CAT Communications International, Inc., Order Approving Agreement dated June 24, 2003.
41. Case No. PUC-2003-00079, Application of Verizon Virginia Inc. and CAT Communications International, Inc., Order Approving Agreement dated June 24, 2003.
42. Case No. PUC-2003-00080, Application of Verizon Virginia Inc. and NOW Communications of Virginia, Inc., Order Approving Agreement dated June 24, 2003.
43. Case No. PUC-2003-00081, Application of Verizon Virginia Inc. and VIC-RMTS-DC, L.L.C. d/b/a Verizon Avenue, Order Approving Agreement dated July 18, 2003.
44. Case No. PUC-2003-00082, Application of Cox Virginia Telcom, Inc., Order Approving Agreement dated July 15, 2003.
45. Case No. PUC-2003-00084, Application of Verizon Virginia Inc. and DSLnet Communications of VA, Inc., Order Approving Agreement dated May 27, 2003.
46. Case No. PUC-2003-00085, Application of Verizon Virginia Inc. and Lightwave Communications, LLC, Order Approving Agreement dated June 24, 2003.
47. Case No. PUC-2003-00086, Application of Verizon South Inc. and Global Telecom Brokers of Virginia, Inc., Order Approving Agreement dated June 6, 2003.
48. Case No. PUC-2003-00088, Application of Verizon Virginia Inc. and New Century Telcom, Inc. d/b/a CLM Telcom, Order Approving Agreement dated June 19, 2003.
49. Case No. PUC-2003-00089, Application of Verizon South Inc. and New Century Telcom, Inc. d/b/a CLM Telcom, Order Approving Agreement dated June 19, 2003.
50. Case No. PUC-2003-00101, Application of United Telephone-Southeast, Inc. and Central Telephone Company of Virginia and MetTel of VA, Inc., Order Approving Agreement dated July 11, 2003.
51. Case No. PUC-2003-00107, Application of United Telephone-Southeast, Inc. and Central Telephone Company of Virginia, Inc. and GCR Telecommunications, Inc., Order Approving Agreement dated September 25, 2003.
52. Case No. PUC-2003-00116, Application of Verizon South Inc. and Cypress Communications Holding Company of Virginia, Inc., Order Approving Amendment dated October 22, 2003.
53. Case No. PUC-2003-00121, Application of United Telephone-Southeast, Inc., and Central Telephone Company of Virginia and TCG Virginia, Inc., Order Approving Agreement dated September 9, 2003.
54. Case No. PUC-2003-00122, Application of United Telephone-Southeast, Inc. and Central Telephone Company of Virginia and AT&T Communications of Virginia, LLC, Order Approving Agreement dated October 22, 2003.
55. Case No. PUC-2003-00123, Application of United Telephone-Southeast, Inc. and Central Telephone Company of Virginia and Business Telecom of Virginia, Inc. d/b/a BTI, Order Approving Agreement dated November 7, 2003.
56. Case No. PUC-2003-00124, Application of Verizon Virginia Inc. and OpenBand of Virginia, LLC, Order Approving Agreement dated October 7, 2003.
57. Case No. PUC-2003-00125, Application of Verizon Virginia Inc. and Premiere Network Services of Virginia, Inc., Order Approving Agreement dated November 7, 2003.
58. Case No. PUC-2003-00128, Application of Verizon South Inc. and OpenBand of Virginia, LLC, Order Approving Agreement dated October 7, 2003.
59. Case No. PUC-2003-00129, Application of Verizon Virginia Inc. and Amerivision Communications, Inc. d/b/a Lifeline Communications, Order Approving Agreement dated November 7, 2003.
60. Case No. PUC-2003-00135, Application of Verizon Virginia Inc. and Cypress Communications Holding Company of Virginia, Inc., Order Approving Amendment dated October 7, 2003.
61. Case No. PUC-2003-00136, Application of Verizon South Inc. and Economic Computer Systems, Inc., Order Approving Agreement dated October 7, 2003.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

62. Case No. PUC-2003-00137, Application of Verizon Virginia Inc. and Economic Computer Systems, Inc., Order Approving Agreement dated October 7, 2003.
63. Case No. PUC-2003-00138, Application of Verizon Virginia Inc. and TalkingNets Holdings, LLC, Order Approving Agreement dated October 7, 2003.
64. Case No. PUC-2003-00144, Application of Central Telephone Company of Virginia and United Telephone-Southeast, Inc. and Cingular Wireless, L.L.C., Order Approving Agreement dated October 22, 2003.
65. Case No. PUC-2003-00147, Application of United Telephone-Southeast, Inc. and Central Telephone Company of Virginia and Metro Teleconnect, Inc., Order Approving Agreement dated December 2, 2003.
66. Case No. PUC-2003-00162, Application of Central Telephone Company of Virginia and United Telephone-Southeast, Inc. and American Fiber Network of Virginia, Inc., Order Approving Agreement dated December 2, 2003.
67. Case No. PUC-2003-00163, Application of Verizon South Inc. and VF Communications, Inc., Order Approving Agreement dated December 2, 2003.
68. Case No. PUC-2003-00164, Application of Verizon Virginia Inc. and VF Communications, Inc., Order Approving Agreement dated December 2, 2003.
69. Case No. PUC-2003-00172, Application of Central Telephone Company of Virginia and United Telephone-Southeast, Inc. and Ernest Communications of Virginia, Inc., Order Approving Agreement dated December 15, 2003.

DIVISION OF ENERGY REGULATION**CASE NO. PUE-1993-00065
JULY 25, 2003**COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

SHAWNEE LAND UTILITIES COMPANY, INC.

DISMISSAL ORDER

By Order dated December 12, 2000, in Case No. PUE-2000-00341, the Commission granted AquaSource Utility/SL, Inc., authority to purchase and Shawnee Land Utilities Company, Inc. ("Shawnee Land"), authority to sell the water utility assets of Shawnee Land. AquaSource Utility/SL is currently providing water service to the former customers of Shawnee Land pursuant to Certificate No. W-304 granted in the above-referenced proceeding.

NOW THE COMMISSION, having considered the matter, is of the opinion that this case should be dismissed from our docket of active cases.

Accordingly, IT IS ORDERED THAT this case is hereby dismissed from the Commission's docket of active cases and the papers placed in the file for ended causes.

**CASE NOS. PUE-1998-00628, PUE-1999-00002, PUE-2000-00567, and PUE-2001-00072
APRIL 7, 2003**COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

AUBON WATER COMPANY

**ORDER MAKING FINAL CERTAIN INTERIM RATES AND EMERGENCY
SURCHARGE AND CLOSING DOCKETS EXCEPT THE RECEIVERSHIP**

By Order entered on January 2, 2003, the State Corporation Commission ("Commission") consolidated docketed Case Nos. PUE-1998-00628,¹ PUE-1999-00002,² PUE-2000-00567,³ and PUE-2001-00072⁴ for the purpose of calling for reports by the appointed Receiver of Aubon Water Company ("Receiver") and the Commission's Staff on Aubon's operations and to conduct a hearing to determine when certain emergency rates implemented by the Receiver should be made permanent. The Commission directed the Receiver to file his report updating the Commission on all actions undertaken by the Receiver on Aubon's behalf. The Commission further directed the Staff to review the actions taken by the Receiver and investigate the need for the emergency rate relief previously granted to be made permanent. A hearing examiner was appointed to conduct further proceedings in these consolidated cases.

On February 5, 2003, a hearing was convened and the reports filed by the Receiver and Staff were accepted into evidence. Following the conclusion of the hearing, the Hearing Examiner issued separate Reports in all pending cases. No comments to any of the Reports have been received.

On February 14, 2003, separate Reports by Michael D. Thomas, Hearing Examiner, were filed in Case Nos. PUE-1998-00628 and PUE-1999-00002.

The Hearing Examiner noted from the reports received into evidence on February 5, 2003, that Staff and the parties recommended that Case No. PUE-1998-00628 be closed, as the water treatment facility required by the Commission's Settlement Order of December 16, 1998, had been built and was operational. The Hearing Examiner now recommends that the Commission enter an Order closing Case No. PUE-1998-00628. The Commission finds that the recommendation should be accepted and so ordered.

¹ In Case No. PUE-1998-00628, pursuant to Settlement Order of December 16, 1998, the Commission directed Aubon Water Company ("Aubon") to undertake certain actions to bring its waterworks into compliance with applicable Virginia Department of Health Regulations and to construct a water treatment facility to service the Long Island Estates subdivision ("Long Island Estates") located in Franklin County, Virginia.

² In Case No. PUE-1999-00002, pursuant to Final Order entered December 17, 1999, the Commission approved a rate increase for Aubon which included a component to fund the construction of the water treatment facility for Long Island Estates.

³ In Case No. PUE-2000-00567, on October 16, 2000, the Commission entered a Rule to Show Cause against Aubon as to why it should not be required to fund immediately the escrow account for the Long Island Estates water treatment facility as ordered in the Commission's Final Order of December 17, 1999, in Case No. PUE-1999-00002.

⁴ By Order entered March 1, 2001, the Commission found that Aubon had been grossly mismanaged and failed to comply with the previous Commission Orders and appointed a Receiver to assume control in this Case No. PUE-2001-00072 and manage the day-to-day operations and make reports to the Commission as ordered.

Aubon's general rates remain approved on an interim basis, as approved by Final Order entered December 17, 1999, in Case No. PUE-1999-00002.⁵ A condition for the general rate increase ordered on December 17, 1999, was that Aubon would maintain an escrow account to accumulate rate revenues to finance the Long Island Estates water treatment facility. By Order entered March 1, 2001, in Case No. PUE-2001-00072, the Commission found that Aubon had been grossly mismanaged and had failed to comply with the Commission's aforesaid Final Order in Case No. PUE-1999-00002 and appointed a Receiver to assume control of Aubon and manage the day-to-day operations of the Company. Thus, Case No. PUE-1999-00002 remained open while the Receiver attempted to fulfill the requirements and objectives of the Final Order in Case No. PUE-1999-00002, to bring a water treatment facility on line for Long Island Estates customers. The Hearing Examiner noted from the reports of the Receiver and Staff, accepted on February 5, 2003, that based upon the aforesaid completed financing and installation of the Long Island Estates treatment facility, Case No. PUE-1999-00002 should be closed and the interim rates made final. The Hearing Examiner recommends that the Commission enter an Order closing Aubon's general rate case in Case No. PUE-1999-00002, thus eliminating the outstanding requirement that the Company maintain a separate escrow account. The Commission finds that the recommendation of the Hearing Examiner should be accepted and it is so ordered.

On February 21, 2003, the Report of Michael D. Thomas, Hearing Examiner, was filed in Case No. PUE-2000-00567. The Hearing Examiner noted from the Staff Report received in evidence on February 5, 2003, that Staff recommended that the Stipulation on Recommended Case Settlement, filed September 13, 2000 ("Stipulation"), in Case No. PUE-2000-00567 be approved by the Commission and that this case be closed. The Hearing Examiner concluded that the Stipulation represented a reasonable means to settle the issue of the under-funded escrow account and recommends that the Commission enter an Order approving the Stipulation and closing Case No. PUE-2000-00567. The Commission now finds the recommendation of the Hearing Examiner should be accepted and it is so ordered.

There now remains open the Receivership docket in Case No. PUE-2001-00072.⁶ During the hearing convened on February 5, 2003, the Hearing Examiner heard testimony on the current condition of Aubon's water systems and called for the record made in the hearing to be supplemented with evidence of the Virginia Department of Health Groundwater Systems Sanitary Survey Reports ("VDH Reports") assessing the condition of Aubon Water Company's water systems. The Hearing Examiner also called for a supplemental Staff Report to be filed which would provide an agreed calculation of an increased surcharge for Long Island Estates customers to cover engineering expenses not financed by the loan that were identified by the Receiver and Staff in the hearing. On March 3, 2003, the VDH Reports and supplemental Staff Report were admitted into the record of Case No. PUE-2001-00072 as Exhibits 4 and 5 respectively.

On March 12, 2003, the Report of Michael D. Thomas, Hearing Examiner, was filed in Case No. PUE-2001-00072 ("Hearing Examiner Report"). The Hearing Examiner Report identifies four major issues which the Hearing Examiner considers remaining before the Commission: (1) whether to approve the Petrus Petition to acquire Aubon; (2) whether to approve the surcharge that was filed on an emergency basis; (3) whether to increase the surcharge for one year to pay off the amount owed to Spectrum for engineering services provided on the water treatment facility; and (4) whether to continue this case so that all matters related to the receivership estate may be heard in one case for matters of judicial economy. We will address the Hearing Examiner Report in that order.

The Hearing Examiner concludes from the Receiver's Report⁷ and Staff Report that, notwithstanding the interim general rate increase and emergency surcharge in effect, the Receiver still lacks sufficient revenue to operate Aubon's three water systems remaining after the sale of the Company's Franklin Heights system to the Town of Rocky Mount. The Hearing Examiner agrees with the Receiver (Petrus) that the Commission should continue to defer ruling on the Petrus Petition until the Receiver has obtained adequate rates to support Aubon's current operations. The Hearing Examiner recommends that ruling on the Petrus Petition be deferred and the Commission accepts this recommendation.

The Hearing Examiner recommends adoption of surcharges to Long Island Estates customers as calculated in his Report. The initial emergency surcharge for the Long Island Estates customers first approved by the Commission, derived from the Receiver's formula for monthly calculation based upon customers served, was \$12.34. The Hearing Examiner found that the customer notice given to the Long Island Estates customers informed that the "[s]urcharge may be adjusted per billing cycle using the above formula based on changes in the number of connected customers, or revisions to the construction costs."⁸ Subsequent revisions to the engineering design of the Long Island Estates water treatment plant (*i.e.*, increasing the filter size from a 30-inch filter to a 42-inch filter) which VDH required, meant that the total amount of the loan obtained rose from a projected \$93,671.00 to \$141,000.00. However, certain engineering design services performed by Spectrum to engineer the system were still not included in the increased loan amount of \$141,000.00, which the Hearing Examiner explained was not the fault of the Receiver.⁹ The Hearing Examiner found that Aubon is presently collecting a monthly surcharge of \$18.59 from its Long Island Estates customers, based upon the emergency surcharge formula approved. The Hearing Examiner recommends that this surcharge be increased by an additional \$6.58 per month (as calculated by Staff in Ex. 5) for a period of one year to fully pay Spectrum for design expenses that were excluded from the loan. Thereafter, the Hearing Examiner recommends that a monthly surcharge of \$18.59 be imposed on the Long Island Estates customers until the loan is paid off.

At the hearing on February 5, 2003, the Staff expressed concerns over the adequacy of notice given to support the Hearing Examiner's then-contemplated two-phase surcharge. The Hearing Examiner later reviewed the Notice of Surcharge given the Long Island Estates customers and concluded

⁵ Aubon's general rates are supplemented by an emergency rate surcharge to customers in Long Island Estates, approved May 10, 2002, Order Approving Emergency Rates, Case No. PUE-2001-00072.

⁶ In addition to the Commission's review of the receivership, there also remains pending in this docket Petrus Environmental Services' Petition to Acquire Aubon Water Company ("Petrus Petition"). The Receiver has requested that the Commission continue to hold the Petrus Petition under consideration until adequate rates are in place to support Aubon's operating expenses. (See Report of Michael D. Thomas, Hearing Examiner, Discussion at p. 7, filed March 12, 2003, Case No. PUE-2001-00072.)

⁷ See Financial Summary of the Receiver's Report.

⁸ Hearing Examiner Report at p. 8.

⁹ The debt to Spectrum that was not included in the loan dates back to when Mr. Boone, Aubon's President, operated the system. The Virginia Department of Health was prohibited from including these costs which were not competitively bid and thus could not be financed without violating applicable Federal bid procedures.

that it adequately informed these customers that they would be responsible for paying off the total cost of the water treatment facility. Specifically, the Hearing Examiner found that these customers were notified that the cost of the facility might increase because of required engineering changes.¹⁰

The Hearing Examiner determined the recommended one-year surcharge necessary to pay off Spectrum by crediting the accumulated surcharges previously collected (in the amount of \$5,391.63) against the amount outstanding owed to Spectrum in the sum of \$9,103.98 (including finance charges of \$849.23), leaving \$3,712.35 to be paid off in one year by the Long Island Estates customers. This amount is found by the Hearing Examiner to satisfy the unfinanced Spectrum debt and minimize further interest charges. The Hearing Examiner relied upon Staff's calculation (Ex. 5) of an additional monthly surcharge of \$6.58 for one year to achieve this result, which was made by Staff in response to instructions by the Hearing Examiner given at the hearing. Thus, the Hearing Examiner recommended that the Receiver be authorized to use the accumulated excess amounts collected since the surcharge was first placed into effect to reduce the outstanding debt owed to Spectrum. Secondly, the Hearing Examiner recommended that the Commission authorize a surcharge of \$25.17 for the period of April 1, 2003, through March 31, 2004, adjusted monthly for the number of customers actually served by the Long Island Estates water system. Thereafter, the Hearing Examiner recommended that the emergency surcharge be calculated by the formula previously approved (revised in the Hearing Examiner's Report to reflect monthly billing cycles) and assessed to the Long Island Estates customers until the loan is paid off.

The Commission finds that the Hearing Examiner was correct when he concluded that the Long Island Estates customers were adequately notified that the surcharge could change based on changes in the total cost of the project and the number of customers subject to the surcharge. Therefore, notice was given for the recovery in surcharge rates of both the financed portion of \$141,000 as well as engineering design of \$3,712.35, which was not included as part of the loan but is, nevertheless, a proper element of the cost of the project as the Hearing Examiner stated. The Commission finds, however, that the notice given by the Receiver did not indicate in any way that the 20-year period over which the costs would be recovered was subject to change as contemplated in the recommended two-phase recovery. Accordingly, the Commission finds that the unfinanced expense of \$3,712.35 should be added to the financed amount of \$141,000 to be recovered in a single surcharge. The surcharge should be collected from the Long Island Estates customers over the 20-year term of the loan, which is consistent with the customer notice given by the Receiver. Thus, the surcharge for the Long Island Estates customers is authorized at \$18.92, adjusted monthly for the number of customers actually served by the Long Island Estates water system.

Having determined that the complete costs of the Long Island Estates water treatment facility will be recovered through a single surcharge to the Long Island Estates customers over the 20-year term of the financing loan, we next address Staff's recommended accelerated depreciation rate to be applied to this treatment facility. Staff recommends that the Commission require the Long Island Estates treatment facility be depreciated at a rate of 5%, as opposed to the composite rate of 3% generally applied to all plant. This would match the 20-year period of the loan to properly reflect the capital recovery period. Otherwise, Staff notes that a longer depreciation period (*i.e.*, 3% rate) would result in all ratepayers funding more than the cost of the treatment plant. While the Receiver urged the Hearing Examiner at the hearing to apply the 3% depreciation rate to the treatment facility, we find no evidence or persuasive reasoning given in support of the Receiver's request. Accordingly, the Commission finds the depreciation rate for the Long Island Estates treatment facility should be booked at the annual rate of 5% as recommended by Staff.

Finally, the Hearing Examiner recommends that Case No. PUE-2001-00072 be continued to receive additional reporting by the Receiver as recommended by Staff and that the Commission make such reporting requirements an order of the Commission.¹¹ In the interest of judicial economy, the Hearing Examiner further recommends that the Receiver's next application for an increase in Aubon's rates be filed in Case No. PUE-2001-00072 and considered therein. The Commission finds that all recommendations by the Hearing Examiner should be accepted and approved.

Accordingly, IT IS ORDERED THAT:

(1) The Receiver shall apply the excess surcharge revenue collected since the emergency surcharge was placed into effect to reduce the outstanding debt owed to Spectrum, in the manner recommended by the Hearing Examiner.

(2) The Receiver is hereby authorized to impose a monthly surcharge upon Aubon's Long Island Estates customers, effective on and after April 1, 2003, in the amount of \$18.92, adjusted monthly for the number of customers actually served, until the loan from the Virginia Drinking Water State Revolving Fund Program for the Long Island Estates water treatment facility is paid off.

(3) The interim rates approved by the Commission by Final Order entered December 17, 1999, in Case No. PUE-1999-00002 are hereby made permanent, and the escrow account requirement ordered is hereby dismissed.

(4) The Receiver is hereby ordered to file a further report in Case No. PUE-2001-00072 setting forth the information called for in the Staff's recommendations and as recommended by the Hearing Examiner.

(5) The Receiver is hereby ordered to apply a 5% depreciation rate to the Long Island Estates treatment facility, consistent with the Staff's recommendation.

(6) The dockets in Case Nos. PUE-1998-00628, PUE-1999-00002, and PUE-2000-00567 are hereby closed and the papers placed in the files for ended causes.

(7) The Commission hereby retains jurisdiction of the receivership for Aubon Water Company through Case No. PUE-2001-00072. All further matters that may affect the receivership estate shall be addressed in this Case, which is continued until further order of the Commission.

¹⁰ Hearing Examiner Report, p. 9.

¹¹ See Hearing Examiner Report at pp. 5-6; Ex. 1, at 17; Ex. 2.

**CASE NO. PUE-1998-00813
JANUARY 30, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

Ex Parte: In the matter of considering an electricity retail access pilot program – Virginia Electric and Power Company

DISMISSAL ORDER

On April 28, 2000, the State Corporation Commission ("Commission") entered an order approving the application by Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power" or the "Company") for approval of an electric retail access pilot program ("Pilot Program"). The Commission directed the Pilot Program to begin September 1, 2000, and end when the participants are permitted to choose their competitive suppliers on a non-pilot basis.

On March 30, 2001, the Commission entered an order in Case No. PUE-2000-00740 adopting a schedule for transition to full retail choice for electric generation.¹ The Commission directed that Dominion Virginia Power begin a one-year phase-in beginning January 1, 2002, to be completed January 1, 2003.

NOW UPON CONSIDERATION that the date for phase-in of retail competition in the Company's service territory has passed, the Commission finds that Case No. PUE-1998-00813 should be dismissed from our docket of active proceedings. Participants in Dominion Virginia Power's Pilot Program may now choose their competitive suppliers on a non-pilot basis.

ACCORDINGLY, IT IS ORDERED THAT the captioned matter should be dismissed from the Commission's docket of active cases and the papers filed therein placed in the Commission's file for ended causes.

¹ Commonwealth of Virginia ex rel. State Corporation Commission, Ex Parte: In the matter concerning a draft plan for phase-in of retail electric competition, Case No. PUE-2000-00740, 2001 S.C.C. Ann. Rept. 495.

**CASE NO. PUE-1998-00814
JANUARY 30, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

Ex Parte: In the matter of considering an electricity retail access pilot program – American Electric Power - Virginia

DISMISSAL ORDER

On June 15, 2000, the State Corporation Commission ("Commission") entered an order approving the application by American Electric Power - Virginia ("AEP" or the "Company") for approval of an electric retail access pilot program ("Pilot Program"). The Commission directed the Pilot Program to begin October 1, 2000, and end when the participants are permitted to choose their competitive suppliers on a non-pilot basis.

On March 30, 2001, the Commission entered an order in Case No. PUE-2000-00740 adopting a schedule for transition to full retail choice for electric generation.¹ The Commission directed that AEP's service territory be fully opened to choice for retail generation services on and after January 1, 2002.

NOW UPON CONSIDERATION that the date for initiation of retail competition in the Company's service territory has passed, the Commission finds that Case No. PUE-1998-00814 should be dismissed from our docket of active proceedings. Participants in AEP's Pilot Program may now choose their competitive suppliers on a non-pilot basis.

ACCORDINGLY, IT IS ORDERED THAT the captioned matter should be dismissed from the Commission's docket of active cases and the papers filed therein placed in the Commission's file for ended causes.

¹ Commonwealth of Virginia ex rel. State Corporation Commission, Ex Parte: In the matter concerning a draft plan for phase-in of retail electric competition, Case No. PUE-2000-00740, 2001 S.C.C. Ann. Rept. 495.

**CASE NO. PUE-1999-00006
JULY 17, 2003**

COMMONWEALTH OF VIRGINIA, *ex rel*
STATE CORPORATION COMMISSION

v.

WEST ROCKINGHAM WATER COMPANY, INC.

DISMISSAL ORDER

In an Order dated September 23, 1999, in the above-captioned proceeding, the State Corporation Commission ("Commission") found that West Rockingham Water Company, Inc. (the "Company" or "West Rockingham"), failed to meet its obligations under § 56-265.13:4 of the Code of Virginia (the "Code") by failing to furnish reasonably adequate water services and facilities. The Commission directed the Company to correct such deficiencies, to provide a detailed plan of system improvements for the next five years, and to file certain progress reports on a continuing basis with the Commission's Staff.

Subsequently, by Order dated May 11, 2000, in Case No. PUA-2000-00026, the Commission, under §§ 56-89 and 56-90 of the Code, authorized West Rockingham to transfer its water utility assets to the County of Rockingham, Virginia. As the result of such transfer, the Commission, in an Order dated September 10, 2001, in Case No. PUE-2001-00474, cancelled Certificate No. W-282 authorizing West Rockingham to provide water services to the Lilly Gardens and Sunset Heights Subdivisions in Rockingham County, Virginia.

NOW THE COMMISSION, having considered the matter, is of the opinion that this case should be dismissed from our docket of active cases.

Accordingly, IT IS ORDERED THAT this case is hereby dismissed from the Commission's docket of active cases and the papers placed in the file for ended causes.

**CASE NO. PUE-1999-00255
JULY 28, 2003**

APPLICATION OF
PELHAM MANOR WATER SUPPLY COMPANY, INC.

To extend the time for filing plans directed in Case No. PUE960129

DISMISSAL ORDER

In Ordering Paragraph (6) of the Commission's Order dated November 19, 1998, in Case No. PUE-1996-00129, Pelham Manor Water Supply Company, Inc. ("Pelham Manor"), was directed to submit certain plans to the Commission's Division of Energy Regulation ("Division") detailing a proposed solution to maintain water system reliability. Subsequently, in an Order dated May 10, 1999, in the above-captioned proceeding, the Commission granted Pelham Manor's request for an extension of time, until June 1, 1999, to submit such plans to the Division.

Pursuant to a filing dated July 23, 2003, Staff states that the required plans have been submitted to the Division and that this proceeding should be closed.

NOW THE COMMISSION, having considered the matter, is of the opinion that this case should be dismissed from our docket of active cases.

Accordingly, IT IS ORDERED THAT this case is hereby dismissed from the Commission's docket of active cases and the papers placed in the file for ended causes.

**CASE NO. PUE-1999-00433
JULY 9, 2003**

APPLICATION OF
MEADOWOOD FARMS SERVICE CORPORATION

For a certificate of public convenience and necessity to provide sewerage service

DISMISSAL ORDER

By letter dated June 24, 2003, counsel for Meadowood Farms Service Corporation ("Meadowood Farms" or the "Company") advised the State Corporation Commission ("Commission") that the Company did not want to proceed with the above-captioned application. The Company also advised the Commission Staff by letter dated that same day that the property owned by Meadowood Farms was sold in October of 2001 and that there were no sewer facilities installed on such property prior to its sale.

NOW THE COMMISSION, having considered the matter, is of the opinion, that this case should be dismissed.

Accordingly, IT IS ORDERED THAT this case is hereby dismissed.

**CASE NO. PUE-2000-00088
JANUARY 9, 2003**

APPLICATION OF
RAPPAHANNOCK ELECTRIC COOPERATIVE

For Approval of an Electricity Retail Access Program

DISMISSAL ORDER

On July 28, 2000, the State Corporation Commission ("Commission") entered its Final Order on an application by Rappahannock Electric Cooperative ("Rappahannock" or the "Cooperative") for approval of a pilot retail access program for electricity ("Pilot Program") pursuant to §§ 56-234 and -577 C of the Code of Virginia. In Ordering Paragraph (2) of the Final Order, the Commission directed that the Cooperative's Pilot Program, as modified by the Stipulation entered into by the case participants, and as revised to comply with the Commission's interim rules for retail access, adopted in Case No. PUE-1998-00812¹ shall begin as soon as possible after September 1, 2000, but in no event later than January 1, 2001, and shall end when the participants are permitted to choose their competitive suppliers on a non-pilot basis. Ordering Paragraph (5) of the July 28, 2000, Order left the matter open for the receipt of reports from Rappahannock and to address other matters concerning the Pilot Program as they may arise.

On October 31, 2002, the Commission entered its Final Order in Case No. PUE-2002-00419.² This application addressed Rappahannock's tariffs and terms and conditions of service filed in anticipation of commencing retail access in the Cooperative's retail service territory effective January 1, 2003. Ordering Paragraph (3) of the October 31, 2002, Order directed that all terms and conditions and any rate schedules applicable to Rappahannock's Pilot Program be terminated.

NOW, UPON CONSIDERATION of the foregoing and consistent with the provisions of Ordering Paragraph (2) of the July 28, 2000, Final Order in Case No. PUE-2000-00088 and Ordering Paragraph (3) of the October 31, 2002, Final Order in Case No. PUE-2002-00419, the Commission finds that Case No. PUE-2000-00088 should be dismissed from our docket of active proceedings because the participants in Rappahannock's Pilot Program may now choose their competitive suppliers on a non-pilot basis and because the tariffs for the Pilot Program have been superseded by the Cooperative's permanent retail access tariffs.

Accordingly, IT IS ORDERED THAT the captioned matter should be dismissed from the Commission's docket of active cases and the papers filed therein placed in the Commission's file for ended causes.

¹ See Commonwealth of Virginia. At the relation of the State Corporation Commission, Ex Parte: In the matter of establishing interim rules for retail access pilot programs, Case No. PUE-1998-00812, 2000 S.C.C. Ann. Rep. at 392.

² See Application of Rappahannock Electric Cooperative, For review of tariffs and terms and conditions of service, Case No. PUE-2002-00419, Doc. No. 286825, slip op. at 7-8 (Oct. 31, 2002, Final Order).

**CASE NO. PUE-2000-00098
MARCH 18, 2003**

APPLICATION OF
ATMOS ENERGY CORPORATION d/b/a UNITED CITIES GAS COMPANY

For approval of the condemnation of an easement across the property and/or right-of-way at Norfolk Southern Railway Company

ORDER OF DISMISSAL

By way of background, in March 7, 2000, Atmos Energy Corporation d/b/a United Cities Gas Company ("United Cities" or "Company") filed an application with the State Corporation Commission ("Commission") pursuant to § 25-233 of the Code of Virginia ("Code"), for authority to initiate condemnation proceedings for the acquisition of an easement over property and/or right of way owned by Norfolk Southern Railway Company ("Norfolk Southern") in Dublin, Virginia. United Cities' application stated that the Company desired to install a four-inch reinforcement gas pipeline across Norfolk Southern's property and/or right-of-way. On March 23, 2000, the Commission issued an Order Directing Response, providing the parties an opportunity to file pleadings on the matter and requesting the parties to address the applicability of §§ 56-17 through 56-19 of the Code. Both parties filed their respective pleadings pursuant to the March 23, 2000 Order. Thereafter, Staff was advised that the parties were involved in negotiations, and thus, no further proceedings in this case were conducted on behalf of the Commission.

Then, on June 20, 2002, Norfolk Southern filed with the Commission a motion indicating that it had discovered that United Cities had constructed gas pipeline facilities under and through its property, and requesting the Commission to provide various types of relief for the alleged actions. On July 10, 2002, United Cities filed a Response and Motion to Dismiss. In its motion, United Cities stated that while the parties were in negotiations, during the spring of 2000, the pipeline subject to the original application was inadvertently installed and became operational, but, subsequently, the original line was abandoned and replaced.

On August 2, 2002, Norfolk Southern filed a Motion for Leave to File Reply to United Cities' Response arguing, inter alia, that United Cities had failed to notify Norfolk Southern of the installation and/or removal of either of the pipelines. Thereafter, the parties advised the Staff that they had recommenced negotiations, and continued negotiations for several months. On March 5, 2003, the parties filed with the Commission a Joint Motion To Dismiss ("Joint Motion") stating that all matters in controversy between the parties as stated in the original application and all subsequent pleadings had been settled, and requesting the Commission to dismiss the case.

NOW UPON CONSIDERATION of the foregoing, the Commission is of the opinion and finds that the parties' Joint Motion should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) The parties' Joint Motion to Dismiss is granted.
- (2) This case is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUE-2000-00468
OCTOBER 28, 2003**

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

v.
MICHAEL L. ATKINS T/A MIKE ATKINS EXCAVATING,
Defendant

FINAL ORDER

On July 22, 2003, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against Michael L. Atkins t/a Mike Atkins Excavating ("Defendant"). The Rule was issued upon consideration of the recommendation of the Underground Utility Damage Prevention Advisory Committee and of allegations by the Commission's Division of Utility and Railroad Safety ("Division") that on or about June 5, 2000, the Defendant damaged a twenty-five pair telephone service line operated by GTE South Incorporated ("GTE") while excavating at or near the intersection of Route 619 and Route 637 in King William County, Virginia. The Division further alleged that on this occasion the Defendant failed to notify the notification center for the area before beginning his excavation, in violation of § 56-265.17 A of the Underground Utility Damage Prevention Act ("Act"), Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia.

The Rule assigned the matter to a Hearing Examiner; scheduled an evidentiary hearing; ordered the Defendant to appear at the hearing and show cause why he should not be penalized for the alleged violations of the Act as set forth in the Rule; and ordered the Defendant to file a responsive pleading on or before August 22, 2003. The Rule further stated that the Defendant shall be in default if he fails to file either a timely responsive pleading, or if he files such pleading and fails to make an appearance at the hearing.

On September 4, 2003, the matter was heard by Hearing Examiner Michael D. Thomas. The defendant appeared pro se at the hearing. At the commencement of the hearing, counsel for the Division stated that the Defendant had not responded by the August 22, 2003, deadline imposed by the Rule, but that the Defendant had spoken to Division counsel on the telephone. Division counsel further stated that he would like to proceed with the hearing.¹ The only persons testifying at the hearing were Division witness Andrew Kvasnicka, who had prefiled direct testimony in this matter, and the Defendant.

Mr. Kvasnicka testified that GTE reported to the Division that the Defendant damaged a twenty-five pair telephone service line and a fifty pair telephone service line on June 5, 2000, at or near the intersection of Route 619 and Route 637, King William County, Virginia. He further testified that GTE indicated that the Defendant struck the line with a backhoe and that the Defendant did not have a valid Miss Utility ticket. He stated that the Division searched the Notification Center's database for a ticket for the Defendant and did not find a valid ticket.² Upon questioning from counsel, Mr. Kvasnicka described the Division's search of the Notification Center's database for ticket as including searches by the address for the incident and by the Defendant's name, and stated that the period of the database search covered the months of May and June 2000.³

The Defendant testified that he called Miss Utility from the office of Frog Hollow Sod Farm on a Thursday or Friday at the end of May; that he was provided a ticket number; that persons came out the following Monday and marked one line close to the highway; that he started work on the following Wednesday; that while operating a machine, he hit a line located about 30 feet from the line that was marked; that he called the telephone company after damaging the line; and that he talked to the telephone company personnel who came to the site to repair the line.⁴ He further testified that:

[T]hey had seen the marks to the power cable and made the statement to me that the -- NOCUTS -- I assume it was NOCUTS, I think it was that did the marking, came out and marked and made a mistake, and not following terminal to terminal, to see how many lines were in the box. And the first line he detected was the only one. And the first line he detected was the only one. So he assumed there was no more.⁵

The Defendant testified that, when asked for the ticket number, he looked for it at the office from where he called Miss Utility but could not find it. He further testified that the owners of the Frog Hollow Sod Farm and two employees were either in the office when he called Miss Utility or were working at the site when the line was marked.⁶

¹ Hearing Transcript at 3.

² Exhibit 2, Prefiled Testimony of Andrew Kvasnicka at 3-4.

³ Hearing Transcript at 5-6.

⁴ Id. at 9-10.

⁵ Id. at 10.

⁶ Id. at 10-11.

On cross-examination, the Defendant stated that he spoke to one of the persons who came to the field to mark the line. The Defendant testified that this person told him that he would not mark a private line that fed an irrigation system.⁷ On questioning from the Hearing Examiner, the Defendant stated that in his twenty-five years in business he has had no other incidents where he cut a utility line, and has never failed to call Miss Utility.⁸

On September 12, 2003, the Hearing Examiner issued his Report. In his Report, the Hearing Examiner found that the Division failed to prove by clear and convincing evidence that the Defendant violated the Act. The Hearing Examiner was troubled by the "Marks Outdated" statement in the Incident Report filed by GTE.⁹ To the Hearing Examiner, this statement indicates that at some point in time the telephone line was marked, and supports the Defendant's theory of the case that he did call Miss Utility but that the ticket was lost. Because the ticket was apparently lost, the Hearing Examiner states that he has no way of verifying whether the Defendant may have excavated outside the period that the ticket was valid. He recommends that the Commission direct the Defendant to maintain a Log Book in which he shall record information regarding calls to Miss Utility.

On October 3, 2003, counsel for the Division filed comments in which he urges this Commission to not adopt the Hearing Examiner's recommendation, and instead impose a civil penalty of \$2,500 and enjoin the Defendant from further violations of the Act. The Division asserts that the Hearing Examiner incorrectly interpreted the Incident Report's notation of "Marks Outdated," and that the notation should be construed as a contemporaneous reporting that the marks at the scene were too old. The Division contends that the Hearing Examiner erred in treating the Notification Center's records as being more fallible than the Defendant's memory of events that occurred three years earlier. The Division also opposes the Hearing Examiner's recommendation that the Defendant be required to maintain a log book. According to the Division, the manner that excavators keep track of their tickets is a matter of business discretion and should be left to the excavators. Finally, the Division expresses concern that the Hearing Examiner's findings, if adopted by this Commission, would allow an alleged violator of the Act to disregard the Act's enforcement process until the date of the hearing, at which time his assertions that he called Miss Utility, but lost all records of the call, could prevail.

NOW THE COMMISSION, having considered the Rule, the record, the Hearing Examiner's Report, the Division's pleadings, and the applicable law, finds as follows.

The Rule provides that the Defendant would be in default if he failed to file timely responsive pleadings or failed to make an appearance at the hearing, and that if he is in default, the Defendant may have entered against him a judgment by default imposing some or all of the proposed penalties. In this matter, the record shows that the Defendant did not file a responsive pleading to the Rule. At the hearing, Division counsel did not object to the Defendant's testifying, and the effect of the Defendant's failure to file timely responsive pleadings was not addressed.

Much of the Defendant's testimony regarding his alleged call to Miss Utility, his meeting with the locators at the site, and his meeting with telephone company personnel on the site after the line was cut, was not challenged or rebutted at the hearing. If the Defendant's disregard of the enforcement process, prior to his unexpected pro se appearance at the hearing, allowed the Defendant to surprise the Division, Division's counsel could have moved for a continuance to allow the presentation of any rebuttal evidence at a later date.

In his filed comments, Division counsel contends that the Hearing Examiner mischaracterized the "Marks Outdated" notation on GTE's Incident Report. While the argument may have merit, we find that the record in this case does not include evidence that shows that the Hearing Examiner's interpretation is unreasonable.

With respect to the issue raised in the Division's comments regarding the Defendant's confusion about the dates of events three years ago, we observe that the Defendant was not questioned about this matter at the hearing. It is difficult to reconcile the Defendant's testimony that the incident occurred on a Wednesday with the Division's statement that the date of the incident, June 5, 2000, was a Monday. However, the Hearing Examiner did not expressly find that every statement uttered by the Defendant was unimpeachable. Rather, he found that the Division failed to prove by clear and convincing evidence that the Defendant violated the Act. We adopt this finding.

We agree with the Division's comment that the Defendant should not be required to maintain a Miss Utility log book. We find that imposing such a record-keeping regimen on the Defendant, who has not been found to have violated the Act, is inappropriate. Therefore, we decline to adopt this recommendation of the Hearing Examiner. However, we admonish the Defendant and all other excavators to maintain records of their contacts with notification centers. The factual dispute involving whether the Defendant contacted Miss Utility prior to excavating may have been resolved much more easily had he Defendant kept written records.

Accordingly, IT IS ORDERED THAT:

(1) The finding of the Hearing Examiner that the Division failed to prove by clear and convincing evidence that the Defendant violated the Act is adopted.

(2) This matter is dismissed from the Commission docket of active cases, and the papers filed herein shall be placed in the Commission's file for ended causes.

⁷ Id. at 13.

⁸ Id. at 14.

⁹ Attachment 1 to Exhibit 2, Prefiled Testimony of Andrew Kvasnicka.

**CASE NO. PUE-2000-00477
MAY 27, 2003**

PETITION OF
TXU ENERGY SERVICES

For waiver of licensing requirements

DISMISSAL ORDER

On October 10, 2000, the State Corporation Commission ("Commission") entered an order granting a petition filed by TXU Energy Services ("TXU") requesting a waiver from compliance with the requirement in the Interim Rules Governing Electric and Natural Gas Retail Access Pilot Programs, 20 VAC 5-311-10 *et seq.* ("Interim Rules"), that any competitive service provider ("CSP") or aggregator participating in any natural gas retail access pilot programs previously approved by the Commission shall file an application for licensure as a CSP or aggregator.

As conditions of the granting of the petition, the Order required TXU to obtain a license should the contracts of its two customers, set to expire February 1, 2001, be renewed, or TXU provided services to new customers or to additional locations of current customers. If these conditions were not met, TXU was to file with the Commission notification that it had completed and terminated its service obligations.

A representative of TXU filed a letter on April 29, 2003, stating that TXU is not providing service in the Commonwealth.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion that this docket should be closed.

ACCORDINGLY, IT IS ORDERED THAT the captioned matter should be dismissed from the Commission's docket of active cases and the papers filed therein placed in the Commission's file for ended causes.

**CASE NO. PUE-2000-00551
FEBRUARY 5, 2003**

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

Ex Parte: In the matter concerning the application of Virginia Electric and Power Company d/b/a Dominion Virginia Power for approval of a plan to transfer functional and operational control of certain transmission facilities to a Regional Transmission Entity

DISMISSAL ORDER

On January 7, 2003, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power" or the "Company") filed with the State Corporation Commission ("Commission") a Motion to Dismiss its application for approval to transfer functional and operational control to a regional transmission entity ("RTE").

Sections 56-577 and 56-579 of the Virginia Electric Utility Restructuring Act (the "Restructuring Act"), Chapter 23 (§ 56-576 *et seq.*) of Title 56 of the Code of Virginia, require the Commonwealth's incumbent electric utilities to join or to establish RTEs by January 1, 2001, and to seek authorization from the Commission to transfer the management and control of their transmission assets to such RTEs.¹ Pursuant to the Restructuring Act, the Commission developed and established rules and regulations under which incumbent electric utilities owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth may transfer all or part of such control, ownership, or responsibility to an RTE, 20 VAC 5-320-10 *et seq.* (the "RTE Rules").²

On October 16, 2000, Dominion Virginia Power submitted its application pursuant to the RTE Rules in order to meet the statutory deadline set forth in the Restructuring Act. The Company requested approval of the transfer of functional and operational control of its transmission facilities located in

¹ Specifically, § 56-577 A of the Restructuring Act states in pertinent part that:

[O]n or before January 1, 2001, each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish a regional transmission entity, which entity may be an independent system operator, to which such utility shall transfer the management and control of its transmission system, subject to the provisions of § 56-579.

Section 56-579 A 1 of the Restructuring Act provides in pertinent part that:

[N]o such incumbent electric utility shall transfer to any person any ownership or control of, or any responsibility to operate, any portion of any transmission system located in the Commonwealth without obtaining the prior approval of the Commission, as hereinafter provided.

² Commonwealth of Virginia, *ex rel.* State Corporation Commission, *Ex Parte*: In the matter concerning participation of incumbent electric utilities in regional transmission entities, Case No. PUE-1999-00349, 2000 S.C.C. Ann. Rept. 430.

the Commonwealth to the proposed Alliance Regional Transmission Organization ("Alliance RTO"). The Alliance RTO was to be created pursuant to federal regulations issued by the Federal Energy Regulatory Commission (the "FERC").³

The history of this proceeding is extensive. Since Dominion Virginia Power's application was filed with the Commission, numerous significant events have occurred both at the state and federal level that have resulted in delays in the approval of the transfer of the Company's transmission system to an RTE. The FERC issued several rulings in the Alliance RTO proceedings. On July 27, 2001, the Commission issued an order suspending the procedural schedule originally established in this proceeding based on anticipated Alliance Companies' filings at the FERC related to the Alliance RTO proposal and in the interest of conserving legal and regulatory resources.⁴

After over two years of consideration, including an initial ruling conditionally approving the Alliance RTO, the FERC disapproved the Alliance RTO on December 20, 2001, and dismissed in whole the Alliance Companies' proposal.⁵ In light of this ruling, on January 29, 2002, the Commission issued an order denying a motion by Dominion Virginia Power to reestablish a procedural schedule in this docket.

On April 25, 2002, the FERC issued an order directing the Alliance Companies to make compliance filings identifying which RTO they planned to join, and stating whether their participation would be collective or individual. Dominion Virginia Power made its compliance filing on May 28, 2002. The Company stated that it had filed a statement with the FERC on March 5, 2002, indicating that it was continuing the process of consulting with the Commonwealth and the State of North Carolina to determine their support for Dominion Virginia Power joining the Alliance Companies within the Midwest Independent System Operator or other RTO efforts. In addition, Dominion Virginia Power stated that the Company also was actively working with PJM Interconnection, LLC ("PJM"), on an individual basis, as well as collectively with the Alliance Companies.

Subsequently, Dominion Virginia Power and PJM entered into a Memorandum of Understanding dated June 24, 2002 to establish PJM South. Thereafter, on October 1, 2002, the Company and PJM entered into an agreement to implement PJM South. Under that agreement, Dominion Virginia Power would: (i) become a member of PJM; (ii) transfer functional control of its transmission facilities to PJM for inclusion in a new PJM South Region; (iii) integrate its control area into the PJM Interchange Energy Market and certain other PJM markets; and (iv) otherwise facilitate the establishment and operation of PJM as the RTO and, to the extent the FERC's final Standard Market Design rulemaking⁶ requires, the Independent Transmission Provider with respect to Dominion Virginia Power's transmission facilities.

As indicated above, Dominion Virginia Power filed its Motion to Dismiss this proceeding on January 7, 2003. In support of its motion, the Company states that the Alliance RTO failed to meet the characteristics specified in FERC Order 2000, and that the Alliance RTO effort is no longer viable.

Pursuant to 5 VAC 5-20-110 of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*, interested parties were required to file any response to the Company's Motion to Dismiss on or before January 29, 2003. No responses were received.

NOW UPON CONSIDERATION of the matter, we are of the opinion and find that the motion to dismiss should be granted as described herein.

As Dominion Virginia Power's motion indicates, the Company's plans to participate in the Alliance RTO are not feasible. Therefore, the application for our approval to transfer functional and operational control of Dominion Virginia Power's transmission facilities to the Alliance RTO is no longer viable. Accordingly, we will dismiss the application currently filed in this docket, Case No. PUE-2000-00551. We will, however, order this docket to remain open for a future application by Dominion Virginia Power for approval of the Company's participation in an RTE. Dominion Virginia Power simultaneously shall serve upon each individual who has filed a notice of participation as a respondent in this proceeding a copy of any application made to the Commission, as well as all other materials filed in this docket.

ACCORDINGLY, IT IS ORDERED THAT:

- (1) The October 16, 2000, application filed by Dominion Virginia Power with the Commission for approval of the transfer functional and operational control of its transmission facilities located in the Commonwealth to the Alliance RTO is hereby dismissed.
- (2) This docket is to remain open for a future application by Dominion Virginia Power for approval of the Company's participation in an RTE.
- (3) Dominion Virginia Power shall serve upon each respondent a copy of its application and all other materials filed with the Commission in this proceeding.
- (4) This matter is continued generally.

³ See *Alliance Companies, et al.*, Docket Nos. ER99-3144-003, ER99-3144-004 and ER99-3144-005. The proposed Alliance RTO was to consist of the following member companies: American Electric Power Service Corporation on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company ("AEP"); Consumers Energy Company; The Dayton Power and Light Company ("Dayton Power"); The Detroit Edison Company, FirstEnergy Corp. on behalf of The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and the Toledo Edison Company; the Northern Indiana Public Service Company; and Dominion Virginia Power (collectively the "Alliance Companies"). The proposed Alliance RTO was to include incumbent electric utilities who provided service in the states of Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, Pennsylvania, North Carolina, Tennessee, Virginia, and West Virginia. Note that the phrases Regional Transmission Entity or RTE and Regional Transmission Organization or RTO may be used interchangeably.

⁴ This Order was in response to a Commission Staff motion and with the concurrence of Dominion Virginia Power.

⁵ See *Alliance Companies, et al.*, 97 FERC ¶ 61, 327 (2001). In its Order dismissing the Alliance application, in brief, the FERC found the proposed Alliance RTO lacked key requirements of FERC's Order 2000.

⁶ *Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design*, 67 Fed. Reg. 55,543 (to be codified at 40 C.F.R. pt. 35) (proposed Aug. 29, 2002).

**CASE NO. PUE-2001-00011
DECEMBER 24, 2003**

APPLICATION OF
APPALACHIAN POWER COMPANY d/b/a AMERICAN ELECTRIC POWER - VIRGINIA

For approval of a Functional Separation Plan under the Virginia Electric Utility Restructuring Act

ORDER GRANTING MOTION

On July 1, 2003, the Appalachian Power Company d/b/a American Electric Power –Virginia (hereafter "AEP-VA" or the "Company") filed with the Virginia State Corporation Commission (the "Commission") a Motion For Leave To Withdraw Request in this proceeding ("Motion"). In its Motion, AEP-VA requests to withdraw its request for legal separation at this time and the proceeding be closed without prejudice to any request for such legal separation that the Company might file by separate application in the future.¹

In its Motion, the Company notes that on June 18, 2002, the Commission granted, in part, a motion filed by the Company on April 30, 2003 that requested deferral of further proceedings in this case until no earlier than July 1, 2003. In that Order, the Commission directed AEP-VA to consult with the Commission Staff and other parties and to file a motion on July 1, 2003, proposing a schedule for further proceedings herein. The Company further states in its Motion that the principal issue outstanding in this proceeding is AEP-VA's proposal to transfer its generations assets to a separate affiliated legal entity and in light of developments in the industry since June 18, 2002, AEP-VA is not actively pursuing legal separation at this time. The Company seeks leave to withdraw, without prejudice, its current request for legal separation of the Company. The Company states that with the withdrawal of that request, this proceeding could be closed. The Company indicates that it consulted with the Staff, the Division of Consumer Counsel of the Virginia Attorney General's Office and the other parties. The Company further states as of the date of the filing, the Staff, the Division of Consumer Counsel, the Old Dominion Committee for Fair Utility Rates, the Town of Wytheville and VML/VACO APCO Steering Committee, the Blue Ridge Power Agency and the Virginia Cable Telecommunications Association advised that they had no objection to the Motion.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion that the Company's Motion should be granted.

ACCORDINGLY, IT IS ORDERED THAT:

(1) AEP-VA's Motion For Leave To Withdraw Request is hereby granted without prejudice.

(2) There being nothing further to done in this matter, this case is dismissed and shall be removed from the Commission's docket of active proceedings.

¹ On January 3, 2001, AEP-VA filed an application pursuant to Virginia Code § 56-590 B of the Virginia Electric Utility Restructuring Act ("Restructuring Act" or the "Act") and under §§ 56-88 through 56-92 of the Utility Transfers Act ("Transfers Act") seeking approval of a plan for the corporate separation of the Company's generation, transmission, and distribution functions (the "Plan").

**CASE NO. PUE-2001-00072
JANUARY 2, 2003**

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

v.
AUBON WATER COMPANY,
Defendant

**ORDER EXTENDING EMERGENCY RATES, DIRECTING
REPORTS BY RECEIVER AND STAFF, AND SETTING HEARING**

On May 10, 2002, the State Corporation Commission ("Commission") approved the application of Aubon Water Company ("Aubon") by its Receiver, David G. Petrus ("Receiver") for emergency rates, pursuant to Virginia Code § 56-245. The Commission further ordered the Staff to investigate the application and file a report on July 30, 2002, and directed Aubon to cooperate fully with the Staff investigation.

On July 31, 2002, the Commission granted Staff's Motion to Modify Procedure and vacated the filing date for Staff's Report, pending the closing of the loan to finance improvements for Aubon's Long Island Estates subdivision. The loan from the Virginia Drinking Water State Revolving Fund Program has now closed.

On December 4, 2002, the Receiver filed notice of surcharge adjustment for Long Island Estates water treatment filter upgrade. The Staff filed notice of acceptance of filing on a temporary basis on December 18, 2002.

The Receiver requested in his surcharge adjustment filing on December 4, 2002, that Case Nos. PUE-1998-00628 and PUE-1999-00002 be closed, due to completion of the Long Island Estates water treatment system in August 2002 and the loan closing.

The Commission finds that the Receiver should file a report in this case, consistent with the Commission's Order Extending Appointment of Receiver and Approving Amended Plan of Receivership, issued March 30, 2001, on or before January 16, 2003. The Receiver shall include in his report the information requested by Staff in the notice of acceptance of the surcharge for filing, which is repeated below:

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- (1) A complete accounting of the revenues collected via the Long Island Estates surcharge by month since its approval on May 10, 2002;
- (2) When will the first payment on the VDH loan be due and payable;
- (3) A description of all improvements and repairs made to Aubon's systems. Please provide the cost of each item and separate the information pertaining to the greens and filters project at Long Island Estates from other Aubon operations;
- (4) A description of any remaining repairs needed at any of Aubon's systems;
- (5) The status of Aubon's debts (include any outstanding amounts owed to Petrus Environmental Services for management services);
- (6) The status of the transfer of Franklin Heights to the Town of Rocky Mount (has the final transfer been made?); and
- (7) The status of the \$50,000 consideration to be paid by the Town of Rocky Mount for the Franklin Heights system (has any of this sum been paid?). What are your recommendations on how the \$50,000 should be expended? Is it likely that Aubon may receive additional compensation from the Town of Rocky Mount if all of the customers have not migrated off of Aubon's system by January 1, 2003?

The Commission further finds that Staff should complete its investigation and file its Staff Report or testimony regarding its investigation of the emergency rates approved on or before January 27, 2003. Staff may also address any and all matters included in the Receiver's report ordered herein.

A public hearing should be convened in this case on February 5, 2003, at 10:00 a.m., in the hearing rooms of the Commission, located at 1300 East Main Street, Richmond, Virginia, to consider reports of the Receiver and Staff and to consider making the emergency rates permanent.

Pursuant to 5 VAC 5-20-120, the Commission finds that Case No. PUE-2001-00072 should be assigned to a hearing examiner to conduct the hearing on February 5, 2005, and to conduct all further proceedings on behalf of the Commission in this case and in Case No. PUE-1998-00628, Case No. PUE-1999-00002, and PUE-2000-00567.

The Commission finds that a copy of this Order should be mailed directly by the Receiver to all customers served in the Long Island Estates subdivision, on or before January 16, 2003. The Receiver shall provide copies of the Receiver's report ordered herein to customers of the Long Island Estates subdivision upon request.

Copies of the Staff Report ordered herein are available for public inspection between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, in the Commission's Document Control Center located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia.

The Commission finds that the procedural schedule now established requires extension of the emergency rates presently approved on an interim basis. Pursuant to Virginia Code § 56-245, the Commission finds that the emergency rates approved in this case shall be extended until further order of the Commission but, in any event, no later than May 9, 2003.

Accordingly, IT IS ORDERED THAT:

- (1) The emergency rates approved on May 10, 2002, are hereby extended, pursuant to Virginia Code § 56-245, until further order of the Commission but, in any event, no later than May 9, 2003.
- (2) The Receiver is hereby ordered to file his Report to the Commission no later than January 16, 2003, consistent with the findings above.
- (3) The Staff is hereby directed to conclude its investigation and to file its Report or testimony on or before January 27, 2003, consistent with the findings above.
- (4) A public hearing will be convened on February 5, 2003, at 10:00 a.m. in the Hearing Rooms of the Commission located on the second floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive the Report of the Staff investigation and the Report of the Receiver and to consider making the emergency rates permanent.
- (5) The Commission hereby assigns to a hearing examiner Case Nos. PUE-2001-00072, PUE-1998-00628, PUE-1999-00002, and PUE-2000-00567, pursuant to 5 VAC 5-20-120 and consistent with the findings above.
- (6) The Receiver is ordered to give notice of the hearing on the Reports of the Receiver and Staff and on the emergency rates, to be convened on February 5, 2003, at 10:00 a.m., by mailing by U.S. mail, first class, postage prepaid, a copy of this Order to all customers served in the Long Island Estates subdivision, consistent with the findings above. The Receiver is directed to file proof of notice given on or before January 16, 2003.

**CASE NO. PUE-2001-00154
JUNE 12, 2003**APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY D/B/A DOMINION VIRGINIA POWER

For a certificate of public convenience and necessity for facilities in Loudoun County: Beaumeade-Beco 230 kV Transmission Line and Beaumeade-Greenway 230 kV Transmission Line

FINAL ORDER

On March 15, 2001, as revised on March 23, 2001, and amended on July 16, 2001, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Virginia Power" or "Company") filed an application for approval and certification of electric facilities in eastern Loudoun County. The Company sought approval and certification, pursuant to §§ 56-265.2, 56-46.1, and related provisions of Title 56 of the Code of Virginia ("Code"), to construct and operate two single-circuit 230 kV transmission lines, which are herein referenced as the Beco Line and the Greenway Line. Virginia Power plans to build two new substations – a Beco Substation and a Greenway Substation. The proposed transmission lines will connect each substation to the existing Beaumeade Substation.

On June 27, 2002, the Commission issued an Order Granting Approval and Remanding for Further Proceedings ("Order Granting Approval"). The Order Granting Approval, among other things, authorized Virginia Power to construct and operate the Beco Line and the Greenway Line as provided for in such order and granted Virginia Power's application for a certificate of public convenience and necessity to construct the Beco and Greenway Lines, subject to specific conditions as set forth in the Order Granting Approval.

In addition, the Order Granting Approval addressed the two options recommended by Hearing Examiner Alexander F. Skirpan, Jr., for placing transmission facilities for the Greenway Line along a 0.6 mile portion of the Washington and Old Dominion Trail ("W&OD Trail"): (1) utilizing a looping structure for the Greenway Line; or (2) placing facilities south of the existing transmission lines that currently are on the W&OD Trail. The Northern Virginia Regional Park Authority ("Park Authority") supported both of these alternatives. Virginia Power opposed these options and, subsequent to the Examiner's recommendation, offered a third alternative that would place the four new poles needed for this 0.6 mile portion of the line approximately twenty feet inside the northern boundary of the Company's existing right-of-way along the W&OD Trail. The Order Granting Approval rejected the looping option for the Greenway Line and remanded this case to the Hearing Examiner for further proceedings limited to the specific placement of transmission facilities along the W&OD Trail.

On September 5 and 18, 2002, the Hearing Examiner issued rulings on remand that provided for the filing of comments, prepared testimony, and exhibits and for an evidentiary hearing. The Examiner expanded the service list in this case to include all property owners near the section of the W&OD Trail that is at issue on remand. On October 15, 2002, a public hearing was convened for receiving evidence in this case on remand. Guy T. Tripp, III, Esquire, appeared on behalf of Virginia Power. Charles L. Shumate, Esquire, appeared on behalf of the City of Fairfax ("City"). Cliona Mary Robb, Esquire, appeared on behalf of the Park Authority. Wayne N. Smith, Esquire, appeared on behalf of the Commission's Staff. Virginia Power, the Park Authority, and the City filed post-hearing briefs.

On January 10, 2003, the Hearing Examiner entered a Report on Remand in which the Examiner analyzed the evidence and issues in the remand proceeding. The Examiner recommended that the four new transmission poles for this portion of the Greenway Line be collocated with the existing distribution line south of the W&OD Trail ("southern route"). On January 31, 2003, Virginia Power, the Park Authority, and the City filed comments on the Examiner's Report on Remand. The Park Authority and the City support the Examiner's recommendation and urge the Commission's adoption thereof. Virginia Power opposes the Examiner's recommendation and requests that the Commission approve placement of the poles north of the W&OD Trail ("northern route"). In addition, if the Commission adopts the Examiner's recommendation, the Company requests the Commission to make clear that collocation of the distribution line onto the new transmission poles will not be required.

On February 11, 2003, the Park Authority filed a Motion for Leave to File Additional Comments ("Motion"), and its Additional Comments. On February 14, 2003, the City filed a response in support of the Motion. On February 20, 2003, Virginia Power filed a response to the Motion requesting that, if the Commission grants the Motion, the Company be granted 21 days to respond to the Park Authority's Additional Comments. By order dated March 5, 2003, the Commission granted the Motion, accepted the Park Authority's Additional Comments, and permitted Virginia Power to file any response to the Additional Comments by March 26, 2003. On March 26, 2003, the Company filed its response to the Additional Comments.

On June 5, 2003, Virginia Power filed a Motion for Extension of Time for Completion of Construction. The Order Granting Authority required, as a condition of the certificate, that the Greenway and Beco Lines be constructed and in-service by January 1, 2006. The Order Granting Authority also granted Virginia Power leave to apply for an extension for good cause shown. The Company stated that about one year has passed since the Commission issued the Order Granting Authority and set the January 1, 2006, deadline. Virginia Power is concerned that sufficient time may not be available for engineering and constructing the line as finally approved. Therefore, the Company requests that the Commission extend the January 1, 2006, deadline by an amount of time approximately equal to the time interval between the Order Granting Authority and the final order in this proceeding.

NOW THE COMMISSION, having considered the record, the pleadings, the Hearing Examiner's Report on Remand, the comments and responses filed in response thereto, and the applicable law, is of the opinion and finds that the four new transmission poles along the W&OD Trail should follow the northern route proposed by Virginia Power, subject to the conditions discussed herein.

The Examiner explained that the issue on remand involves a choice between two options for placement of four transmission poles in or along 0.6 mile of the W&OD Trail. The first option, or northern route, is advocated by Virginia Power and would locate the transmission poles a little over twenty feet inside the northern boundary of the W&OD Trail. The second option, or southern route, is advocated by the Park Authority and the City and would locate the transmission poles in the distribution right-of-way just south of the W&OD Trail. The Company proposes to use an existing right-of-way for the northern route, the use of which the Park Authority and the City maintain would have greater environmental impacts than the southern route. The Examiner also noted that certain businesses located south of the W&OD Trail filed comments in opposition to the southern route, which they assert would have a detrimental impact on their businesses.

Although we will not discuss here all of the concerns expressed by each party regarding the proposed routes, we have reviewed the proposals and have considered and weighed the relevant factors raised in this proceeding. We have considered and weighed the factors set forth in §§ 56-265.2 A and 56-46.1 of the Code, factors that are, to a large extent, interrelated and overlapping. We have fully considered the adverse impact of the northern route, including its impact on the W&OD Trail and the City's water pipeline. We have considered each statutory criterion on an individual basis and as part of the whole, in light of all the relevant statutory criteria and with regard to other concerns raised by the participants. We find that the northern route, subject to the conditions required herein, satisfies §§ 56-265.2 A and 56-46.1 of the Code and best meets the Company's need to maintain adequate safety and reliability of service.

The northern route will be located on an existing easement, which Virginia Power preserved to build transmission and distribution lines when the Park Authority originally acquired land for the W&OD Trail from the Company. Virginia Power asserts that placement of four poles along the northern route will not prevent the Park Authority from continuing its current use of the W&OD corridor or from developing new uses that it has the legal right to conduct. We agree with the Examiner that the existence of this easement does not prohibit the Commission from evaluating other routes. The southern route, however, will require the purchase of an additional right-of-way. Although the Park Authority argued that the additional right-of-way should not require considerable expense due to the existing distribution line along the southern route, Virginia Power estimates that an additional right-of-way of 40 to 50 feet would be required at a cost of \$3.0 to \$3.5 million. In addition, existing businesses south of the W&OD Trail likely will be negatively impacted by the additional right-of-way obtained by the Company and the construction of the new transmission line therein.

The City has a twenty-foot easement along the northern boundary of the W&OD Trail; the City's water pipeline is located within this easement. The City asserts that the foundation for the transmission facilities along the northern route will be placed within a foot of this easement and, thus, the risk of damage to the City's water main will be lessened if the southern route is chosen. Earlier in this proceeding, however, the City entered into a letter agreement with Virginia Power that establishes procedures the parties will follow to protect the water pipeline. As a condition of the certificate granted in this case and as requested by the City, the Order Granting Approval requires Virginia Power to comply with such letter agreement. In addition, when the City obtained its easement for the water main from the Company, Virginia Power preserved the right for its electric lines and supports to overhang the City's easement, to install its facilities across the easement, and to use the easement for any purpose that does not interfere with or endanger the water pipeline. The transmission poles will not be placed within the City's easement. Furthermore, the Company recently installed 1.35 miles of new and rebuilt transmission line along the W&OD corridor with no impact on the City's water pipeline.

The Park Authority asserts that the Company should be able to leave the distribution line in place and collocate the new transmission line along the southern route while keeping the existing distribution circuits energized. Virginia Power argues, however, that it would be impractical to collocate the new transmission line with the existing distribution line along the southern route.¹ The Company states that installing a distribution line on a transmission structure creates concerns about lightning protection and maintenance and operational issues. Virginia Power also established that safety risks, construction problems, and maintenance difficulties would arise if the new four-pole section of the transmission line were constructed over the distribution line. The Company testified that the presence of a currently existing transmission line along the southern route, and the mechanics of attempting to spread all of the distribution conductors during construction of the new transmission line, would be extremely difficult, would create serious safety concerns, and would put life at risk. Moreover, the excavating equipment possibly could come in contact with the energized distribution line, and there are risks that the new transmission line may sag down into the energized distribution line while installing the new transmission conductors.

Accordingly, Virginia Power states that an attempt to erect the four new transmission poles while the distribution line is energized is unacceptably hazardous. The Company would de-energize the existing distribution line before constructing a new transmission line along the southern route. This would require the creation of new distribution facilities for use during the construction of the transmission line, and the Company estimates that this new distribution line would cost \$300,000 to \$400,000. In addition, if the transmission and distribution lines are collocated along the southern route, the new distribution facilities utilized during the construction of the transmission line would then be dismantled.

We recognize that these new transmission facilities will impact the W&OD Trail.² The new transmission line, whether placed on the northern or southern route, will be visible to users of the W&OD Trail. If placed on the northern route, the Examiner stated that the line would create something of a tunneling effect for users of this 0.6 mile portion of the trail. If collocated on the southern route, the transmission poles would be about 130 feet in height, as opposed to 110 feet along the northern route. The Examiner found that due to the temporary nature of the construction activities, the impact of construction-related disruptions to the W&OD Trail attendant to the northern route should be accorded relatively little weight. Neither route would require relocation of the paved path on the W&OD Trail. The northern route would necessitate relocation of the gravel path, which is used as a bridal trail; the Company would bear the expense of shifting the gravel path a few feet to avoid three new poles that would be in, or partially in, the gravel path. The Examiner concluded, however, that the gravel path would continue to be useable as a bridal trail after such relocation.

The northern route requires removal of the northern buffer along the impacted portion of the W&OD Trail. The Examiner concluded that elimination of the northern buffer will significantly and adversely impact this section of the trail. The Examiner found that the northern buffer provides substantial screening, virtually cutting off any view of the trail to the north, and that elimination of the buffer would expose this portion of the trail to any development that may take place to the north. Virginia Power stated that it would plant new screening on the property immediately north of the W&OD corridor, and that the owner of such property is receptive to such proposal. As a condition of the certificate granted in this proceeding, the Company must plant a new buffer immediately north of the W&OD Trail that screens this portion of the trail from view to the north. As a further condition of the certificate, prior to commencing any construction on this 0.6 mile portion of the Greenway Line, the Company must submit to the Director of the Commission's Division of Energy Regulation a detailed plan for erecting the new buffer that screens this portion of the trail from view to the north, along with verification that the Company has obtained any legal rights needed to implement such plan, and receive written acceptance of such submittal from the Division of Energy Regulation.

¹ The Company also asserts that the Commission lacks the authority to require collocation of the transmission and distribution lines along the southern route. We reject this contention. The Commission, *inter alia*, has the authority to establish conditions as may be desirable or necessary to minimize adverse environmental impact when approving the construction of transmission facilities. See Va. Code § 56-46.1.

² As a condition of the certificate granted in this case and as requested by the Park Authority, the Order Granting Approval requires Virginia Power to confer with the Park Authority to minimize the impact of the transmission lines and requires that any unresolved matters between these parties shall be referred to the Director of the Commission's Division of Energy Regulation.

Finally, we deny Virginia Power's Motion for Extension of Time for Completion of Construction. Although the Company states it is "concerned that sufficient time may not be available" to complete construction by January 1, 2006, Virginia Power has not established that it will be unable to meet the January 1, 2006, deadline. Pursuant to the Order Granting Authority, the Company may apply in the future for an extension for good cause shown.

Accordingly, IT IS ORDERED THAT:

(1) Virginia Power is authorized to construct and operate transmission facilities for the Greenway Line along the W&OD Trail as provided for in this Order.

(2) Within thirty (30) days from the date of this Order, Virginia Power shall file with the Commission's Division of Energy Regulation two copies of an appropriate map or other document showing the location of facilities along the W&OD Trail as approved in this Order.

(3) As a condition of the certificate granted in this case, the Company will plant a new buffer immediately north of the W&OD Trail that screens this portion of the trail from view to the north.

(4) As a condition of the certificate granted in this case, prior to commencing any construction of the Greenway Line along the W&OD Trail, the Company will submit to the Director of the Commission's Division of Energy Regulation a detailed plan for erecting a new buffer that screens this portion of the W&OD Trail from view to the north, along with verification that the Company has obtained any legal rights needed to implement such plan, and receive written acceptance of such submittal from the Division of Energy Regulation.

(5) Virginia Power shall bear the expense of shifting the gravel path along the W&OD Trail such that the path will continue to be useable as a bridal trail after relocation.

(6) Virginia Power's Motion for Extension of Time for Completion of Construction is denied.

(7) This case shall be dismissed and removed from the list of pending cases.

CASE NO. PUE-2001-00169
APRIL 29, 2003

APPLICATION OF
CINCAP-MARTINSVILLE, LLC

For a certificate of public convenience and necessity for electric generation facilities in the City of Martinsville

DISMISSAL ORDER

Before the Commission in this proceeding is the Report of Deborah V. Ellenberg, Chief Hearing Examiner of April 15, 2003. As stated by Hearing Examiner Ellenberg, CinCap-Martinsville, LLC, had moved to dismiss its application, and she recommended that the Commission grant the motion.

The Commission will adopt the recommendation in the Report.

Accordingly, IT IS ORDERED that Case No. PUE-2002-00165 be dismissed from the Commission's docket and that the case be closed in the records maintained by the Clerk of the Commission.

CASE NO. PUE-2001-00200
FEBRUARY 21, 2003

APPLICATION OF
DALE SERVICE CORPORATION

For a general increase in rates

FINAL ORDER

On April 6, 2001, Dale Service Corporation ("Dale Service" or "Company") completed its application for a general increase in rates for services. Those rates, due to become effective September 1, 2001, were designed to produce additional annual operating revenues of \$4,356,888.

The Company represented that the additional annual operating revenues were necessary to cover increased operating expenses, debt service, and other costs associated with the debt related to upgrading its wastewater treatment facilities in order to meet the wastewater effluent limits in its wastewater discharge permits issued by the Virginia Department of Environmental Quality.

On April 12, 2001, Dale Service filed a Petition for Waiver of Rate Case Filing Requirements ("Petition") in which it requested that the Commission waive its Rules Governing Utility Rate Increase Applications¹ that require the filing of "jurisdictional" schedules.

¹ 20 VAC 5-200-30 *et seq.*

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

On June 27, 2001, after discussions with the Staff of the State Corporation Commission ("Staff"), Dale Service filed its Amended Application in which it requested a phase-in of the proposed increased rates. Specifically, Dale Service asked for a Phase 1 increase of \$1,835,433 to be effective, subject to refund, as of October 1, 2001, and for a Phase 2 increase of no more than \$2,521,455 to be effective, subject to refund, as of October 1, 2002. For Phase 1, Dale Service proposed to increase current quarterly rates of \$40.80 for residential customers and \$51.00 for commercial units to \$63.00 and \$80.00, respectively.

On July 12, 2001, the Commission issued an Order for Notice and Hearing. In this order, the Commission directed the Company to give notice of its application; established a local public hearing on September 24, 2001, for Phase 1; set the public evidentiary hearing for September 18, 2002, for Phase 2; authorized Phase 1 rates to become effective, subject to refund, on or after October 1, 2001; authorized Phase 2 rates to become effective, subject to refund, on or after October 1, 2002; adopted a procedural schedule for the case; and assigned the matter to a Hearing Examiner.

On July 24, 2001, the Commission issued an Amending Order, in which it directed that the public hearing scheduled for September 24, 2001, convene at both 2:00 p.m. and 7:00 p.m. in the Board Chambers Room of the James J. McCoart Administration Building, 1 County Complex Court, Prince William, Virginia 22192.

On August 1, 2001, Dale Service filed a Motion to Amend Order for Notice and Hearing. In its Motion, the Company requested that the Commission extend the date by which its newspaper publication must be completed from July 27, 2001, to August 3, 2001. A Hearing Examiner's Ruling dated August 2, 2001, granted Dale Service's Motion.

On September 24, 2001, local public hearings were held as scheduled in the Board Chambers Room of the James J. McCoart Administration Building, Prince William, Virginia. Six public witnesses appeared during the 2:00 p.m. hearing, and two public witnesses presented testimony during the 7:00 p.m. hearing.

On June 5, 2002, Dale Service filed a Motion for Leave to file Corrected Supplemental Application and Testimony. In its Corrected Supplemental Application, the Company requested confirmation of the procedural schedule set forth in Order for Notice and Hearing, and asked to be directed to publish notice of the Phase 2 rates, which it now requested to be set at \$86.75 per quarter for residential service and \$113.00 per quarter for commercial units. A Hearing Examiner's Ruling dated June 5, 2002 granted the Company's Motion. Additional notice was directed in a Hearing Examiner's Ruling dated August 29, 2002.

On September 18, 2002, the evidentiary hearing was convened as scheduled. Richard D. Gary, Esquire, and Renata M. Manzo, Esquire, appeared on behalf of Dale Service. Joseph W. Lee, III, Esquire, represented the Staff. One public witness appeared at the evidentiary hearing. A Stipulation, executed by the Company and Staff and designed to resolve all of the issues in this case, was presented at the hearing.²

On December 11, 2002, Hearing Examiner Alexander F. Skirpan, Jr. issued his Report recommending that the Commission adopt the findings in his Report, grant Dale Service an increase in gross annual revenues of \$3,501,934, and dismiss this case from the Commission's docket of active cases. In his Report, the Hearing Examiner made the following findings:

- (1) The use of a test year ending December 31, 2000, is proper in this proceeding;
- (2) Dale Service's Phase 1 operating revenues, after all adjustments, were \$3,437,612;
- (3) Dale Service's Phase 1 operating expenses, after all adjustments, were \$3,264,093;
- (4) Dale Service's Phase 1 net operating revenues, and adjusted net operating income, after all adjustments were \$173,519 and \$171,219, respectively;
- (5) Dale Service's current rates produce a return on Phase 1 adjusted rate base of 0.92%, a DSC ratio of 0.18, and a return on common equity of -23.18%;
- (6) Dale Service's Phase 1 adjusted rate base is \$18,628,487;
- (7) Based on the Stipulation, Dale Service requires \$1,835,433 in additional gross annual revenues to earn a reasonable return on rate base. Thus, Dale Service's proposed Phase 1 rates are just and reasonable and should be made permanent for the Phase 1 rate period of October 1, 2001, through September 30, 2002;
- (8) Dale Service's Phase 2 operating revenues, after all adjustments, were \$3,474,142;
- (9) Dale Service's Phase 2 operating expenses, after all adjustments, were \$3,885,069;
- (10) Dale Service's Phase 2 net operating revenues, and adjusted net operating income, after all adjustments were (\$410,928) and (\$413,505), respectively;
- (11) Dale Service's current rates produce a return on Phase 2 adjusted rate base of -2.19%, a DSC ratio of 0.23, and a return on common equity of -37.25%;
- (12) Dale Service's Phase 2 adjusted rate base is \$18,905,199;

² Stipulation is provided as Attachment A.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(13) Based on the Stipulation, Dale Service requires \$3,501,934 in additional gross annual revenues to earn a reasonable return on rate base. Thus, the Phase 2 rates provided in the Stipulation are just and reasonable and should be made permanent for the Phase 2 rate period beginning October 1, 2002;

(14) Dale Service should be required to refund, with interest, all revenues collected under its interim Phase 2 rates in excess of the amounts found just and reasonable herein;

(15) Dale Service should be required to file AIFs with the Commission with its AIF for 2002 due no later than May 1, 2003. Dale Service should be required to include a DSC calculation, fully adjusted, on a basis consistent with that utilized by the Staff in this proceeding and shall assume 400 new service connections, until otherwise agreed upon by the Company and Staff;

(16) If Dale Service's AIF calculates a DSC that exceeds 1.20, or if the Commission later adjusts Dale Service's AIF to produce a DSC above 1.20, Dale Service should be required to reduce its rates going forward as of the next quarterly billing to produce a 1.20 DCS;

(17) Dale Service should be required to implement a \$1,800.00 capacity charge per new connection and treat such amounts as revenue. If in any test year Dale Service receives more than 400 capacity charges, Dale Service should be required to impute interest income on the capacity charges in excess of 400 as a going-forward adjustment to test year results, and not include such excess capacity charges as revenue for ratemaking purposes;

(18) Dale Services should be required to revise its tariff to include the rules and regulations set forth in Attachment B to the Stipulation, and maintain its books in accordance with the Uniform System of Accounts for Class C water utilities;

(19) Dale Service should apply a 5% depreciation rate to the portion of the new facilities supported by its bonds and shall apply a 3% composite rate to all other depreciable plant, CIAC, and any replacement plant; and

(20) Dale Service should be required to report promptly to the Commission the receipt of any additional grants related to the new facilities installed to comply with new environmental regulations and initiate discussions with the Staff as to the ratemaking effect of such grants.

NOW THE COMMISSION, having considered the record, the Stipulation, and the Hearing Examiner's Report, is of the opinion and finds that the Hearing Examiner's findings and recommendations should be approved. We will approve the proposed revenue increase, rates, refunds, and proposals set forth in the Stipulation and Attachment A attached hereto. Since the Company billed rates lower than the noticed amount and has implemented the rates contained in the Stipulation, there should be no refunds.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations set forth in the December 11, 2002, Hearing Examiner's Report are hereby adopted.
- (2) The Stipulation ("Attachment A") referenced herein is adopted and its terms are incorporated herein by its attachment hereto.
- (3) Within 30 days of this Order and no less than once every 3 years, Dale Service shall give notice to its Commercial customers according to the format in Attachment B of this Order.
- (4) Dale Service shall be granted an increase in gross annual revenues of \$3,501,934.
- (5) This case is hereby dismissed from the Commission's docket of active cases.

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

**CASE NO. PUE-2001-00200
MARCH 3, 2003**

APPLICATION OF
DALE SERVICE CORPORATION

For a general increase in rates

AMENDING ORDER

On February 21, 2003, the Commission issued its Final Order in the above-captioned case. The Commission established in Ordering paragraph two (2) that: "The Stipulation ('Attachment A') referenced herein is adopted and its terms are incorporated herein by its attachment hereto." The Commission established in Ordering paragraph three (3) that: "Within 30 days of this Order and no less than once every 3 years, Dale Service shall give notice to its Commercial customers according to the format in Attachment B of this Order." Due to a clerical error, the foregoing attachments were inadvertently left off of the Commission's February 21, 2003, Final Order in the above-captioned case.

NOW THE COMMISSION finds that this omission should be corrected.

Accordingly, IT IS THEREFORE ORDERED THAT:

- (1) The February 21, 2003, Final Order shall be revised to include Attachment A and Attachment B.
- (2) All other provisions of the Commission's Final Order of February 21, 2003 shall remain in effect.

**CASE NO. PUE-2001-00298
JULY 11, 2003**

AT THE RELATION OF THE
STATE CORPORATION COMMISSION

Ex Parte: In the matter of establishing rules and regulations pursuant to the Virginia Electric Utility Restructuring Act for competitive metering services

ORDER ADOPTING RULES

Pursuant to the provisions of the Virginia Electric Utility Restructuring Act, § 56-576 *et seq.* ("Act") of the Code of Virginia, specifically, § 56-581.1, and the Commission's December 10, 2002, Order issued in this docket, the Staff filed a report on February 25, 2003 ("Report"), with the State Corporation Commission ("Commission") presenting proposed rules for competitive electricity metering relating to financial ownership of electricity meters for large commercial and large industrial customers.

In its Report, Staff states that the proposed rules specifically require the local distribution company to provide the choice of meter ownership to large industrial and large commercial customers. Staff indicates that the rules address the definition of "large" customers, meter criteria, local distribution company responsibilities, meter access, and how the local distribution company shall respond to requests for meter ownership. Staff indicates that the proposed rules on customer meter ownership follow rules previously adopted to implement competitive metering services on January 1, 2003, by providing for meter functionality choices and data access choices, including access to meter data on a near real-time, on-command basis. Staff states in its Report that any additional elements of metering services would remain the responsibility of the local distribution company until such time as the Commission determines the competitive provision of such services to be in the public interest, in accordance with the nine statutory implementation criteria set forth in Va. Code § 56-581.1 E. Staff further states that in developing the proposed electricity metering rules for its Report, the Staff relied primarily on the guidelines of the Commission's Order of December 10, 2002, as well as input from the competitive metering work group during meetings on July 31, 2002, and February 12, 2003. Staff recommends in its Report that the rules should be adopted and effective no sooner than six months after the final rules are published in the Virginia Register, in order that the affected local distribution companies have sufficient time to address the impacts on billing and meter tracking systems and to develop their tariffs for 2004.

On March 3, 2003, the Commission issued an Order Inviting Comments ("Order") providing interested parties an opportunity to comment and/or request a hearing on Staff's proposed competitive metering rules.

Comments on the Staff Report and proposed competitive metering rules were filed by New Era Energy, Inc. ("New Era"), Appalachian Power Company d/b/a American Electric Power-Virginia ("AEP"), Allegheny Power ("AP"), and Dominion Virginia Power ("DVP"). None of the parties requested a hearing on, or proposed revisions to, the proposed rules.

Some parties filed comments on issues not related to the proposed rules. New Era restated its belief that it would be appropriate for the Commission to conduct a study of price-signaling technologies. New Era clarified that its recommendation did not include a study of cost effectiveness of demand control. New Era states that the objective of the proposed study was far narrower than interpreted by Staff; the objective of the study was to explore whether it might be feasible to adopt one or more standards and/or to consider how to support the emergence of real-time signaling. New Era further recommended in its comments that the Commission request the appropriate authority and funding authorization to take a pro-active position toward promoting the emergence of cost-effective energy management in Virginia.

In its comments, among other things, DVP stated that the study of voluntary pilot programs for residential and small commercial customers should be deferred to such time as the LTF requests the Commission to convene a work group to study this and other energy management options.

As we have noted in previous orders, it is apparent that the market for competitive metering services is in the early stages of development. We directed the Staff to prepare proposed rules for meter ownership by large industrial and large commercial customers, as we found that to be the next appropriate step to take in the development of competitive metering services. The parties who filed comments on Staff's proposed rules did not recommend any revisions to the rules as written. Accordingly, we adopt in full Staff's proposed rules on customer meter ownership by large industrial and large commercial customers.

In its comments, New Era reiterates its request for the Commission to conduct a study of price-signaling technologies, and initiate funding efforts to do so. While we continue to believe that access to timely meter data may boost the development of the competitive generation market, we believe, however, at this time, that the competitive market should drive these technologies. We note, as well, that in the 2003 General Assembly session, the LTF deferred action on a proposal to study short-term and long-term approaches to encourage voluntary and cost-effective energy management options to Virginia consumers.

We have previously directed the competitive metering work group to continue to meet to address additional implementation efforts. The development of the competitive metering market is intrinsically tied to advancements in metering technologies. In that regard, we have directed the Staff to study expanded or voluntary Time-Of-Use programs. We believe that the Staff with the assistance of the working group should continue these efforts, and that these efforts should be expanded to include looking at new meter technology. Such investigation could include examining the types of meters the

utilities use. We want to seek to ensure that the technologies being used do not block the use of price signals or retard the development of a competitive metering market. We will direct the Staff and the work group to investigate these issues, and the Staff to file a report on or before May 1, 2004, providing the results of its investigation.

We take note of Staff's recommendation, which was supported by DVP in its comments,¹ that the rules should be adopted and effective no sooner than six months after the final rules are published in the Virginia Register, to provide the utilities sufficient time to address the impacts on billing and meter tracking systems and to develop their tariffs for 2004. We find, however, that if we provide timely service of this Order and the adopted rules on all affected utilities, those utilities should have sufficient time for system impacts to be addressed in order that the rules may become effective on January 1, 2004.

Accordingly, IT IS ORDERED THAT:

(1) Regulations for competitive metering services are hereby adopted as set forth in Sections F through H, 20 VAC 5-312-20, of Attachment A to this Order.

(2) On or before August 30, 2003, each investor-owned distribution electric utility in Virginia shall file tariffs for competitive metering services reflecting the adopted regulations.

(3) A copy of this Order and the rules adopted herein shall be forwarded promptly for publication in the Virginia Register of Regulations. The rules shall be effective as of January 1, 2004.

(4) The Commission Staff shall proceed with the assistance of the work group to address those issues identified in this Order, issues we have identified in previous orders, as well as issues that arise during the efforts of the work group.

(5) On or before May 1, 2004, the Commission Staff shall file a report providing the results of its investigation of additional implementation efforts, including those issues identified in this Order.

(6) This matter shall be continued for further proceedings consistent with this Order.

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.

¹ DVP Comments at 5.

**CASE NO. PUE-2001-00300
AUGUST 26, 2003**

APPLICATION OF
HENRY COUNTY POWER, LLC

For a certificate of public convenience and necessity for electric generation facilities in Henry County, Virginia

DISMISSAL ORDER

On May 10, 2001, as supplemented July 5, 2001, Henry County Power, LLC ("Henry County Power" or the "Company") filed an application for a certificate of public convenience and necessity for a new generating facility to be located in Henry County, Virginia. A hearing on the application was held on December 19, 2001.

By Ruling dated June 13, 2002, all proceedings in the case were suspended, at the request of the Company, to allow it to review the project and its ability to compete effectively in the wholesale power markets.

On July 31, 2003, the Company, by counsel, filed a Motion to Withdraw Application and Terminate Proceeding. The Company states that it will no longer pursue the proposed power generation project that is the subject of this proceeding. Company requests leave to withdraw the application, and asks that this proceeding be terminated.

On August 1, 2003, the Hearing Examiner filed his Report finding that the Company's Motion should be granted and recommending that the Commission enter an order dismissing this matter. No objections or comments to the Hearing Examiner's Report have been filed. The Commission concurs with the recommendation of the Hearing Examiner.

Accordingly, IT IS ORDERED THAT this case is hereby dismissed from the Commission's docket of active cases and the papers shall be placed in the file for ended causes.

**CASE NO. PUE-2001-00306
SEPTEMBER 23, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of considering requirements relating to wires charges pursuant to the Virginia Electric Utility Restructuring Act

FINAL ORDER

On November 19, 2001, the State Corporation Commission ("Commission") entered an Order ("November 19, 2001, Order") in this docket establishing generation market price methodologies for purposes of establishing wires charges for Dominion Virginia Power ("DVP" or the "Company"), and Appalachian Power Company, d/b/a American Electric Power ("AEP-VA"). Subsequently, on May 24, 2002, the Commission also entered an order establishing wires charge methodologies for Virginia electric distribution cooperatives¹ ("Cooperatives").

The November 19, 2001, Order, *inter alia*, directed in Ordering Paragraph five (5) thereof, that incumbent electric utilities seeking to impose wires charges in calendar year 2003 and beyond make annual filings by July 1 of each year for any proposed revisions in their fuel factor, "and corresponding changes in capped rates, and for market price proposals." Ordering Paragraph six (6) of that Order kept this docket open for consideration of other matters concerning market price determinations and wires charges, as they may arise.

On July 1, 2003, DVP filed its Application to Revise Its Market Prices for Generation and Resulting Wires Charges for Calendar Year 2004 and to Revise Its Competitive Service Provider Coordination Tariff ("Application"). Attached to its Application as Appendices 1 through 12 are schedules and workpapers reflecting the illustrative calculations of DVP's market prices and wires charges for 2004 based on the current market as assessed during the May 12 through May 23, 2003 time period. According to the Company, the illustrative calculations are based on ten days selected by DVP. DVP states that its Appendices and workpapers reflect that the wires charges were determined using the same methodology that the Commission approved for the Company for 2002 and 2003 in this docket.

In its Application, DVP also proposes certain revisions to its Competitive Service Provider ("CSP") Coordination Tariff, and requests that they become effective on January 1, 2004. The Company proposes four changes to its CSP Coordination Tariff in order to minimize the risks associated with inclusion of a capacity adder, which was permitted by the Commission in its October 11, 2002, Final Order in this docket.² The proposed changes are as follows: (1) In Section 6.8 – Coordination of Customer Activities, the Company proposes the following changes: (a) deleting the phrase, "on a best efforts basis,"; (b) changing the notice requirement from "at least 30 calendar days advanced notice" to "at least 60 calendar days written advanced notice"; and (c) adding the following new sentence: "With regard to termination of service, a large volume of customer activity shall be defined as loads greater than or equal to 10 MW returned to capped rate service during a 30-day period"; and (2) In Section 8.2 – Events of Non-Compliance, the Company proposes to add the following new subsection: "8.2.10 CSP's failure to provide 60 days written advance notice of a large volume of customer terminations as defined in Subsection 6.6 and Subsection 6.8."

Also on July 1, 2003, AEP-VA filed a letter with the Commission advising that it had decided not to request wires charges for any of its customers during calendar year 2004, and stating that no change in its tariffs is necessary because the current applicable tariffs reflect wires charges set at zero for all customers. In addition to its letter, AEP-VA submitted a Report on 2004 Wires Charges, both for informational purposes to maintain continuity with previous years' reports and to show the basis for its decision not to seek wires charges during 2004. In its letter, AEP-VA states that it recognizes that there is an outstanding issue regarding the appropriate transmission expense adjustment to use in calculating any wires charges it seeks to impose in future calendar years. Given its decision not to seek to impose wires charges in 2004, AEP-VA states that it was not necessary for it to prepare the information related to transmission expense adjustments set forth on page 13 of the October 11, 2002, Final Order in this docket. AEP-VA commits to providing that information, subject to any modifications that the Commission may order as a result of changed circumstances (as envisioned in the Commission's November 11, 2002, Order on Reconsideration in this case), in the first required July 1 report it files in the future that seeks to impose wires charges during the following calendar year. AEP-VA further states that it reserves the right to propose a transmission expense adjustment methodology that reflects the circumstances in effect at that time.

The Cooperatives also filed comments in this proceeding on July 1, 2003. In its comments, the Cooperatives state that they continue to support the general methodology by which changes in their wholesale power and fuel costs, and corresponding change in their capped rates, can be recognized and calculated monthly, and also continue to support the Commission's method of establishing market prices based on forward price data from relevant trading hubs and data collected through on-line exchanges. The Cooperatives further state that each cooperative either has or will file specific adjusted price and wire charge information at least 150 days prior to commencing retail choice in its respective service territory.

On July 24, 2003, the Commission issued an Order setting a procedural schedule and hearing date for the determination of market prices in conjunction with the establishment of wires charges for incumbent electric utilities in calendar year 2004. The Virginia Independent Power Producers, Inc., Strategic Energy, LLC, and the Division of Consumer Counsel of the Office of the Attorney General filed notices of participation as respondents in the case. No respondents filed any testimony.

¹ 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, Inc., Northern Virginia Electric Cooperative, Powell Valley Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative, Inc.

² Although the Commission's October 11, 2002, Final Order permitted DVP's inclusion of a capacity adder in its proposed market prices for generation, the Commission declined to adopt the Company's proposed tariff changes.

On August 20, 2003, the Staff filed its testimony in this proceeding. The Staff recommended no changes in the methodologies employed by DVP and AEP-VA beyond those required for AEP-VA by the Commission's October 11, 2002, Final Order. The Staff found DVP's proposed tariff revisions to be reasonable, and noted that DVP did not propose a deficiency charge for non-compliant CSPs, as it did in last year's proceeding. Further, Staff notes its continued objection to DVP's potential recovery of any lost revenues resulting from implementation of the capacity adder through the fuel factor, but states that DVP's current proposal makes no mention of such an intention. Therefore, Staff assumes that DVP does not propose to recover any lost revenues due to implementation of the capacity adder through a subsequent fuel factor proceeding. Finally, the Staff concluded that the use of published price indices obtained from Platt's in the Commission's approved market price determination methodology is appropriate.

DVP did not file any rebuttal testimony in this proceeding.

The hearing to receive evidence on the market price determination issues was convened at the Commission on September 10, 2003. Appearances were made by counsel for the Commission's Staff, DVP, AEP-VA, the Cooperatives, and the Division of Consumer Counsel. All material contained in both DVP's Application and the Staff's testimony were stipulated by the parties, and no witnesses testified.

NOW THE COMMISSION, upon consideration of the record and the applicable statutes and rules, is of the opinion and finds that the wires charge proposal of DVP should be adopted for the 2004 calendar year, and the Company's proposed tariff revisions should be accepted. We also find that AEP-VA shall provide the detailed transmission expense information required by our October 11, 2002, Final Order in this docket if it wishes to collect wires charges in 2005.

We note that in its testimony, the Staff interpreted DVP's Application and interrogatory response to exclude any proposal to recover lost revenues due to the capacity adder through the fuel factor. DVP did not rebut this assumption by the Staff. We therefore conclude that DVP does not disagree with the Staff's conclusions on this point. We will prohibit utilizing the fuel factor to recover any lost revenues that may accrue under the tariff provisions approved in this proceeding. Accordingly, we will prohibit DVP from seeking recovery of any such lost revenues due to non-compliance of a CSP in a future fuel factor proceeding; DVP must instead rely on its approved tariff provisions to ensure adequate recovery.

Finally, we will not designate in this Order the ten days on which the base forward market information will be collected. In order to have the benefit of the most current data, we will designate the ten days in the order regarding DVP's fuel factor application, Case No. PUE-2003-00285.

Accordingly, IT IS ORDERED THAT:

(1) The generation market price methodologies for purposes of establishing wires charges for DVP for 2002 established in our November 19, 2001, Order, as further modified by our October 11, 2002, Final Order, are hereby approved for calendar year 2004, and DVP's proposed revisions to its CSP Coordination Tariff are hereby accepted.

(2) Incumbent electric utilities seeking to impose a wires charge in calendar year 2005 and beyond shall make annual filings by July 1 of each year for any proposed revisions in their fuel factor and corresponding changes in capped rates, and for market price proposals.

(3) This docket shall remain open for the receipt of reports to be filed herein and for consideration of other matters concerning market price determination and wires charges, as they may arise.

**CASE NO. PUE-2001-00307
APRIL 2, 2003**

APPLICATION OF
VIRGINIA NATURAL GAS, INC.

For an Annual Informational Filing

**ORDER ACCEPTING AGREEMENT
AND DISMISSING PROCEEDING**

On May 24, 2001, Virginia Natural Gas, Inc. ("VNG" or the "Company") filed a Motion requesting that it be permitted to change the test year for its Annual Informational Filing ("AIF") for 2001. In support of its request, VNG stated that it had been purchased by AGL Resources Inc. ("AGL" or "AGLR") on October 1, 2000, and that AGL conducted its business on a fiscal year ending September 30. VNG averred that it had modified its business and accounting policies and practices to be consistent with those of its new corporate parent and requested permission to file its AIF for twelve months ending September 30, 2001. It requested permission to file its AIF for the period ending September 30, 2001, with the Company filing no later than January 28, 2002. The Company represented that modification of its AIF reporting requirement to a test year ending September 30, 2001, and every September 30, thereafter would not result in any significant changes in the data reported.

On July 5, 2001, the Commission docketed VNG's request and granted VNG's motion. The Commission also directed the Company to file its AIF for the twelve months ending September 30, 2001, by no later than January 28, 2002, or no more than 120 days after the close of its modified test year.

On January 28, 2002, VNG filed its AIF for the twelve months ending September 30, 2001, with the Commission. In a letter filed with its AIF, VNG requested a waiver of the portion of 20 VAC 5-200-30 A 9 and 20 VAC 5-200-30 B2 of the Commission's Rules Governing Utility Rate Increase Applications and Annual Informational Filings ("Rules") requiring VNG to submit ratemaking adjustments in Schedules 12 and 17 of its AIF to reflect an amortization of costs incurred by AGLR, as part of the total costs of acquiring VNG. The Company acknowledged that a grant of its waiver request did not imply Commission endorsement of the ratemaking adjustments proposed by the Company.

On February 7, 2002, the Commission entered an Order granting a waiver of Rules 20 VAC 5-200-30 A 9 and 20 VAC 5-200-30 B2 for this case alone. The Commission stated that the waiver it granted did not constitute the acceptance or adoption of any of VNG's adjustments to its cost of service.

On October 31, 2002, the Commission Staff filed its Report in this proceeding. That Report included a financial and accounting analysis. In its financial analysis, the Staff noted that the Company proposed to use a hypothetical Consolidated Natural Gas ("CNG") capital structure, based on an average of the dollar amount of each component of CNG's capital structure from 1997 through 2000. The resulting capitalization ratios were then applied to the total dollar amount of AGL's test year capitalization. Thereafter, AGL's total capitalization was apportioned in a manner reflecting CNG's average capitalization from 1997 through 2000. This capital structure produced an overall cost of capital of 8.91%, based on the 10.9% midpoint of the authorized return on equity range.

Staff also reported that in the Joint Agreement adopted in the Commission's Order approving AGL's acquisition of VNG,¹ AGL and VNG represented that the proposed acquisition would not materially impact the cost of total capitalization used for ratemaking purposes for VNG. AGL and VNG further agreed that if adverse impacts to the cost of capital did occur, AGL and VNG would not seek to recover any of the resulting cost of capital increases from VNG's ratepayers. In its July 28, 2000 Final Order approving AGL's acquisition of VNG, the Commission directed that the acquisition be subject to the terms and conditions of the Joint Agreement. Acquisition Case, 2000 S.C.C. Ann. Rep. at 218.

The Staff also noted that in the Commission's Order Approving Experiment entered in Case No. PUE-2002-00237, the Commission lowered the bottom of VNG's return on equity range by 40 basis points for future AIF filings, resulting in a new range of 10.0% to 11.4%.² Further, in the September 27, 2002 Order Approving Experiment, the Commission accepted the provision of VNG's offer of settlement wherein VNG agreed not to file a base rate case or any non-gas revenue neutral rate design proposals applicable to residential and general service classes before July 1, 2004, except under the emergency conditions set forth in § 56-245 of the Code of Virginia. In consideration of the Commission's September 27, 2002 Order in Case No. PUE-2002-00237, Staff recommended that the hypothetical CNG capital structure employed in Exhibit 2-A of the Report and by the Company in its AIF be used until the issues of capital structure and return on equity could be addressed in VNG's next rate case.

In the accounting analysis portion of its Report, Staff described the differences between its accounting adjustments and those included by VNG in its cost of service. Staff's analysis focused on VNG's proposals to adjust cost of service to reflect the acquisition of VNG by AGLR. According to Staff, VNG deferred transition costs in the amount of \$20,663,948, that it sought to amortize over three years. These transition costs included charges such as capitalized software, employee severances, AGL costs of acquisition, and gross receipts taxes. The Company's adjustment to amortization expense amounted to \$6,587,667 on a jurisdictional basis.

The Staff also observed that in Case No. PUA-1999-00020, the Dominion Resources, Inc. ("DRI") and CNG Petition for merger, DRI and CNG submitted a stipulation that was adopted by the Commission.³ The Staff reported that in Paragraph 4 of the Stipulation, VNG waived its right to recover from its jurisdictional customers any costs directly or indirectly related to the disposition of VNG. Paragraph 5 of the Stipulation required VNG to inform any purchaser of VNG of the provisions of Paragraph 4. Based upon the terms of the Stipulation accepted in Case No. PUA-1999-00020, the Staff proposed to eliminate transition costs from VNG's cost of service.

Additionally, Staff asserted that severance and capitalized software costs have been recovered. Staff maintained that it has been Commission policy that transition costs be matched with related savings, such as those from reduced payroll, benefits, and payroll taxes. According to Staff, the Company's cumulative savings in payroll, benefits and payroll taxes in the test year and pro forma year were over \$13.2 million and were in excess of the deferred severance and computer software costs of \$11.5 million. Staff maintained that since the severance and computer software costs had been recovered, it was inappropriate to seek continued amortization of these costs through deferred transition costs.

Staff also maintained that gross receipts taxes of \$1.1 million that were charged to the acquisition adjustment had also been recovered. It explained that rates paid by the consumers through December 31, 2000, included gross receipts tax expense incurred by the Company. Effective January 1, 2001, gross receipts taxes were eliminated and state income taxes were initiated. Staff reasoned that since consumers have effectively reimbursed the Company for its gross receipt tax expense, it is inappropriate to charge the acquisition adjustment for this amount.

VNG also proposed to recover amortization costs related to the acquisition adjustment, and that the acquisition adjustment be amortized over 39 years. The acquisition adjustment amounts to \$156,101,656.

Staff recommended that before the Commission determines whether the amortization of an acquisition adjustment should be reflected in VNG's rates, it should be assured that there were permanent savings that exceed total merger-related costs and that a net benefit accrued to the ratepayer. Staff concluded that the costs related to the acquisition outweighed the benefits to the ratepayers, citing the lost benefit of a reduction to rate base generated by accumulated deferred income taxes ("ADIT")⁴ as well as the tax credit amortization generated by the deferred investment tax credit, and the increase in intercompany billings since VNG's acquisition by AGLR.

Staff therefore eliminated the per book amount of the acquisition adjustment of \$3,725,991 on a jurisdictional basis and advised that if the amortization of the acquisition adjustment and related ADIT were included in cost of service and rate base, return on equity would be depressed by 103 basis points.

¹ See Joint Petition of Dominion Resources, Inc., Consolidated Natural Gas Company, and AGL Resources Inc., For approval of a stock purchase agreement under Chapter 5 of Title 56 of the Code of Virginia, Case No. PUA-2000-00054, 2000 S.C.C. Ann. Rep. 217, 218 (hereafter "Acquisition Case").

² Application of Virginia Natural Gas, Inc., for approval of a weather normalization adjustment rider, Case No. PUE-2002-00237, Doc. Con. Cen. No. 020930311, slip op. at 11 (Sept. 27, 2002 Order Approving Experiment).

³ Joint Petition of Dominion Resources, Inc., and Consolidated Natural Gas Company, For approval of agreement and plan of merger under Chapter 5 of Title 56 of the Code of Virginia, Case No. PUA-1999-00020, 1999 S.C.C. Ann. Rep. 169, 173.

⁴ Staff explained that AGLR elected to treat the VNG acquisition under § 338 of the Internal Revenue Code; i.e., for tax purposes, VNG was effectively a new corporation as of AGLR's purchase date with no tax liability, and its assets were treated as newly purchased. Therefore, the net balance of ADIT and deferred investment tax credits of approximately \$46 million (on a jurisdictional basis) was adjusted to zero at the time of the acquisition.

Finally, the Staff analyzed the Company's regulatory asset related to the implementation of Other Pension Employee Benefits ("OPEB") and determined that VNG's actual earnings resulted in a 7.81% return on equity on a regulatory basis, a return below the bottom of the Company's authorized return on equity range. Staff concluded that the Company had not recovered charges relating to regulatory assets beyond the authorized level of amortization reflected in rates and that no further action as to the Company's base rates or regulatory assets were required in this proceeding.

On November 25, 2002, VNG, by counsel, filed the "Response of Virginia Natural Gas, Inc. to Staff Report Dated October 31, 2002" ("Response"). In its Response, VNG addressed the accounting treatment of the acquisition adjustment, the related analysis of merger costs versus merger savings, and the accounting treatment of merger transition costs. VNG recommended revisions to the Staff's adjustments to recognize that inflation accounts for a portion of the increase in intercompany billings and to recognize that in addition to operation and maintenance reductions, savings have occurred in the form of reductions to capitalized costs. VNG calculated a net cost of the acquisition to be \$0.8 million rather than Staff's net cost of \$1.5 million.

VNG requested that the Commission allow the Company to include the amortization of the acquisition adjustment in its current and future AIFs until the Commission considers the adjustment in a general rate case. With regard to the treatment of merger transition costs, VNG asserted that it should be permitted to recover \$11.5 million of deferred severance and computer software costs. It argues that since Staff's earnings test shows that VNG realized a 7.81% test year return on equity that is below the bottom of the Company's return on equity range, VNG failed to recover sufficient revenue during the test year to offset deferred acquisition transition costs. It maintains that Staff's exclusion of the amortization of the merger transition costs is not consistent with the fact that VNG's current rates include recovery of these employee salaries, payroll and benefits. It maintained that VNG should be allowed to continue its three year amortization of these costs and include the amortization in current and future AIFs. It stated that if the Commission did not accept VNG's position based on its Response that VNG be given an opportunity to be heard on these matters.

On December 11, 2002, the Staff filed its Reply wherein the Staff urged the Commission to adopt the Staff's recommendations in its October 31, 2002 Report, including the Staff's recommendations that a final determination regarding VNG's recovery of amortization costs related to VNG's acquisition by AGLR as a result of AGLR's purchase of VNG stock from CNG, be determined in the context of a rate case after the Commission has assured itself there are permanent savings that exceed total merger-related costs. Staff maintained, among other things, that no hearing on the application was necessary since the Staff was not recommending any change in the Company's rates.

Additionally, Staff asserted that it was improper to include an inflationary factor in the calculation of additional intercompany billings incurred by VNG from AGLR, as compared with VNG's former parent CNG. It asserted there were other countervailing factors at work besides inflation. Staff explained that it did not reflect a reduction to capitalized amounts resulting from employees whose employment by VNG was terminated ("severed") because capitalized costs would continue to accrue and the work performed by employees who had been severed would continue to be performed by outside contractors or through increased overtime work performed by VNG's remaining employees.

Staff observed that the balance used by VNG on Schedule 3, line 2 of its Response was static, and maintained that this balance could be expected to grow prospectively. Further, when calculating the change in ADIT prospectively, any ADIT relating to the step up in basis resulting from the merger must be excluded since the acquisition adjustment has been excluded from rate base.

With regard to the Company's assertion that its transition costs have not been recovered because its earnings test indicates that the Company has underearned, Staff noted that earnings tests are used to determine whether a regulatory asset should be established or if there has been accelerated recovery of a regulatory asset. The Staff maintained that the issue of matching severance costs and associated payroll and other savings is distinct from issues relating to an earnings test, citing a case where the Commission matched severance costs and savings outside of rather than as part of an earnings test. Staff contended that the cumulative savings from reduced payroll benefits and payroll exceeded the severance and software costs and therefore should be deemed recovered.

On March 12, 2003, VNG filed the "Amended Response of Virginia Natural Gas, Inc. to Staff Report Dated October 31, 2002" ("Amended Response"). In its Amended Response, VNG noted that after discussions with Staff, the Company had re-evaluated the proper accounting treatment of the acquisition adjustment and proper methodology for measuring merger costs and savings. The Amended Response represents that the Company and Staff agreed to an alternative methodology to measure the operating and maintenance ("O&M") savings and the plant reductions related to the Company's acquisition by AGL. The O&M methodology is set out on Appendix A to the Amended Response. Appendix B to the Amended Response sets forth the methodology for calculating rate base reductions and includes plant net of accumulated depreciation less the effects of the acquisition premium and ADIT. Appendix C provides a summary of merger savings for 2001, using an arithmetic average growth rate.

With respect to the purchase premium, VNG represented that it and Staff agree for AIF purposes to continue the amortization of the purchase premium associated with VNG's acquisition by AGLR over a 39-year period and associated transition costs, *i.e.*, employee severance and capitalized software costs, over a three year period. VNG stated that it did not propose any amortization of acquisition transaction costs, *e.g.*, consulting and advisory services, legal, accounting and banking fees and outstanding gross receipts taxes. VNG proposes to calculate the merger costs and savings and proposes to include those calculations in the filed AIF workpapers. In the event that in a future rate case, the Commission allows rate recovery of a portion of the purchase premium in recognition of the acquisition savings, VNG would follow the accounting guidelines provided by FAS 71 and 142.

VNG expressly acknowledged that its proposed accounting for AIF purposes did not bind the Commission, Staff, or any other party in future rate cases from considering other methods to measure savings or costs and did not obligate any of the foregoing to accept the methodology proposed in the Response. The Company recognized that the Staff may evaluate the Company's methodology on an ongoing basis and acknowledged that the Staff reserved the right to recommend a different methodology in AIFs or in other future proceedings. VNG also stated that the recovery of an acquisition adjustment would be "subject to a future rate proceeding."

NOW THE COMMISSION, upon consideration of the Company's application, and the pleadings hereto, is of the opinion and finds that the Company should use the hypothetical CNG capital structure set out in Exhibit 2-A of the Staff Report until the issues of capital structure and return on equity can be addressed in VNG's next rate case; that the methodology set out in the Appendices to the Amended Response to measure merger costs and savings and to account for VNG's acquisition premium for AIF purposes is hereby adopted; that in accordance with the representations of the Amended Response, the methodology accepted herein does not bind the Staff, any party or this Commission in future proceedings when considering the issue of measuring merger costs and savings and the issue of an acquisition adjustment; that by accepting the proposed accounting for AIF purposes, the Commission has not decided the issues of VNG's entitlement to and recovery of an acquisition adjustment; that those issues should be reserved for decision in a rate proceeding; and that this case should be dismissed from Commission's docket of active proceedings.

Accordingly, IT IS ORDERED THAT:

(1) In accordance with Staff's recommendations, VNG shall continue to use the hypothetical CNG capital structure described in Exhibit 2-A of the Staff Report until the issues of capital structure and return on equity are addressed in VNG's next rate proceeding.

(2) The methodology to measure costs and savings and to account for VNG's acquisition premium as described in the Appendices to the March 12, 2003 Amended Response is hereby accepted for this and subsequent AIFs filed by the Company with the Commission. Acceptance of this methodology does not obligate the Commission, Staff, or others who are not participating in this case to accept this methodology, and instead, represents how VNG may present its measurement of costs and savings and account for an acquisition premium when filing its AIFs.

(3) The acceptance of this methodology for purposes of presentation in an AIF does not constitute approval of VNG's acquisition adjustment or recovery thereof in rates. These issues shall be addressed in VNG's next rate proceeding.

(4) There being nothing further to be done herein, this case shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be placed in the Commission's files for ended causes.

**CASE NO. PUE-2001-00357
JANUARY 14, 2003**

APPLICATION OF
VIRGINIA GAS DISTRIBUTION COMPANY

For an Annual Informational Filing

**ORDER ADOPTING RECOMMENDATIONS
AND DISMISSING PROCEEDING**

On January 22, 2002, Virginia Gas Distribution Company ("VGDC" or the "Company"), by counsel, filed a motion with the State Corporation Commission ("Commission") to request additional time in which to file its Annual Informational Filing ("AIF") for 2001. In that motion, VGDC noted that the Commission had previously granted an extension for the Company to file its AIF for 2001, but asserted that it required a further extension to May 31, 2002, to gather the appropriate information for filing this AIF.

In its January 25, 2002 Order Granting Further Extension, among other things, the Commission directed VGDC to file its 2001 AIF using the test period January 1, 2001, through September 30, 2001, for all of its AIF schedules with the exception of Schedules 9, 10, and 12, no later than May 31, 2002. The Company was also directed to file by May 31, 2002, Schedules 9, 10, and 12, using the twelve months ending September 30, 2001, as the test period for these Schedules.

On May 3, 2002, the Company, by counsel, filed a motion requesting a waiver of Rule 20 VAC 5-200-30 A 9, requiring the filing of Schedules 9 through 14, and that part of Schedule 21 (Workpapers for Earnings Test and Ratemaking Adjustments) related to the foregoing Schedules. In support of its motion, VGDC stated that Schedules 9 through 14 address the Company's earnings test and regulatory assets and that the Company had no regulatory assets or capitalized interest subject to the earnings test required by these Schedules.

On May 10, 2002, the Commission granted a waiver of Rule 20 VAC 5-200-30 A 9 and directed that VGDC could omit Schedules 9 through 14, and that portion of Schedule 21, relating to the omitted schedules, from its AIF for the test year ending September 30, 2001.

On June 7, 2002, VGDC, by counsel, filed a motion requesting that its 2001 AIF delivered to the Commission on June 5, 2002, be accepted out of time. The Company explained that it was unable to file its AIF on May 31, 2002, because of extenuating family circumstances experienced by its regulatory compliance officer.

On June 14, 2002, the Commission granted VGDC's motion and accepted the Company's 2001 AIF out of time, subject to a review of the documents accompanying the application for completeness in accordance with the requirements of the Commission's Rules Governing Utility Rate Increase Applications and Annual Informational Filings ("Rate Case Rules"). The Company's application was determined to be complete on June 11, 2002.

On November 22, 2002, the Staff filed its audit report in the captioned matter, which included a financial and accounting analysis. In its report, Staff noted that it had used an 11.5% cost of equity in VGDC's capital structure since the Company does not have an authorized point or range for its return on equity. Staff explained that the lack of actual operating data made it necessary for the Company to base its application for a certificate of public convenience and necessity, docketed as Case No. PUE-1993-00013, on the rates derived from its estimate of revenues and costs.

Staff reported that VGDC filed an application for its first rate increase in August 1999, in Case No. PUE-1999-00531. VGDC elected not to seek an authorized return on equity which would have supported a higher rate increase than it requested in its application. The February 22, 2000 Order entered in Case No. PUE-1999-00531 permitted VGDC's proposed rate increase to take effect on January 23, 2000, under the terms of the Joint Stipulation reached between the Company and Staff. The Joint Stipulation specifically provided that no authorized return on equity range would be identified as part of that case.

In its report, the Staff supported the use of NUI Corporation's ("NUI's") capital structure for purposes of the captioned AIF. NUI was the company that acquired Virginia Gas Company ("VGC"), VGDC's former parent, and VGDC. Staff explained that it generally supports the use of the capital structure of the entity that raises debt capital in capital markets because the entity raising capital is subject to market constraints and scrutiny. With NUI's acquisition of VGC and VGDC, NUI became the entity that supplied capital to VGDC. Staff therefore used NUI's ratemaking capital structure for its report and determined that the consolidated NUI ratemaking capital structure has an equity ratio of 36.973% and produces a cost of capital of 7.69% for the test

year. For comparative purposes, the Staff noted that the consolidated NUI ratemaking capital structure was not significantly different from the consolidated VGC capital structure, which had an equity ratio of 35.54% and produced an overall cost of capital of 7.557%. Staff further commented that VGDC should file Schedules 1, 2, and 3, in any future AIF consistent with the Commission's Rate Case Rules by including information for the test year and four prior fiscal years.

In its accounting analysis, Staff reported that it had corrected several of VGDC's accounting adjustments. Staff noted that the Commission had issued an Order, docketed as Case No. PUA-2001-00041, on September 6, 2002, approving a comprehensive affiliates agreement between VGDC, VGC, Virginia Gas Storage Company ("VGSC") and Virginia Gas Pipeline Company. During the test year, the costs associated with that agreement were not distributed. Since the Commission's September 6, 2002 Order was issued at the end of the Company's pro forma year, Staff did not make any adjustments to the Company's cost of service for these expenses. Staff recommended that the Company reflect adjustments to the cost of service and rate base that incorporate the distribution of costs specified in the September 6, 2002 Order entered in Case No. PUA-2001-00041, in its next AIF or rate application.

Staff also proposed that the Company be required to write off capitalized interest booked in excess of the methodology agreed upon by Staff and Company in Case No. PUE-1998-00325. This methodology addressed the treatment of capitalized interest in rate base. Staff and Company had agreed, consistent with that methodology, that any interest capitalized on the Company's books in excess of the agreed upon methodology would be removed from rate base. Staff recommended that the Commission authorize the Company to write off excess capitalized interest from the books that the Company maintains for regulatory purposes.

By letter filed January 7, 2003, VGDC, by counsel, advised that it did not desire to respond to the Staff report.

NOW UPON consideration of the Company's application, the Staff report, and the applicable statutes, the Commission is of the opinion and finds that the Staff's recommendations found in its November 22, 2002 report should be adopted, and that this application should be dismissed from the Commission's docket of active proceedings.

Accordingly, IT IS ORDERED THAT:

- (1) Consistent with the findings made herein, the recommendations set out in the Staff's November 22, 2002 report are hereby adopted.
- (2) VGDC shall file Schedules 1, 2, and 3 in any future AIF consistent with the Commission's Rate Case Rules by including information for the test year and the four prior fiscal years.
- (3) The Company shall write off interest capitalized in excess of the amounts of interest capitalized in the Company's rate base in accordance with the agreed upon methodology delineated in Case No. PUE-1998-00325 from the books that the Company maintains for regulatory purposes.
- (4) VGDC shall reflect adjustments to its cost of service and rate base that incorporate the distribution of costs specified in the September 6, 2002 Order entered in Case No. PUA-2001-00041, in the Company's next AIF or rate application.
- (5) There being nothing further to be done in this proceeding, this application 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. PUE-2001-00358
JANUARY 16, 2003**

APPLICATION OF
VIRGINIA GAS STORAGE COMPANY

For an Annual Informational Filing

**ORDER ADOPTING RECOMMENDATIONS
AND DISMISSING PROCEEDINGS**

In its January 28, 2002, Order, the State Corporation Commission ("Commission") directed Virginia Gas Storage Company ("VGSC" or the "Company") to file its 2001 Annual Informational Filing ("AIF") by no later than May 31, 2002. In the same Order, the Commission authorized VGSC to use the test period January 1, 2001, through September 30, 2001, for all of its AIF Schedules with the exception of Schedules 9, 10, and 12. The Commission directed the Company to file Schedules 9, 10, and 12, using the twelve months ending September 30, 2001, as the test year for these Schedules, by no later than May 31, 2002.

On May 10, 2002, the Commission granted VGSC's request for a waiver of the portions 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") requiring the filing of Schedules 9 through 14, and the part of Schedule 21 (Workpapers for Earnings Test and Ratemaking Adjustments) relating to the omitted Schedules.

On June 7, 2002, VGSC, by counsel, filed a motion requesting that its AIF delivered to the Commission on June 5, 2002, be accepted out of time. VGSC advised that it was unable to file its AIF on May 31, 2002, because of the extenuating family circumstances experienced by its regulatory compliance officer. VGSC represented in its motion that the Staff did not oppose the Company's request.

On June 14, 2002, the Commission issued its Order and granted VGSC's request to receive the Company's AIF out of time, subject to a further determination concerning the completeness of the documents accompanying VGSC's AIF.

The Company's application was determined to be complete on July 11, 2002.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

On December 11, 2002, the Staff filed its Report on the captioned application. This Report included a financial and accounting analysis. Staff noted in its Report that it employed a 11.5% return on equity for illustrative purposes. It explained that in VGSC's application for a certificate of public convenience and necessity for a storage facility, the Company was not a going concern. Because actual operating data was not available, the Company's application was based on rates derived from estimates of revenues and costs. VGSC received authority from the Commission to provide gas storage service on the basis of the rates filed in its certificate application rather than on a specified return on equity range.

The Staff also explained that it used the consolidated capital structure of NUI Corporation ("NUI") in its Report because NUI is the ultimate source of any market capital available to VGSC. The Staff commented that it generally supports the use of the capital structure of the entity that raises capital on behalf of a utility company's operations. Prior to NUI's acquisition of Virginia Gas Company ("VGC") and VGSC, VGC was the entity whose capital structure Staff used for ratemaking purposes. After NUI's acquisition of VGC and VGSC, NUI became the entity that accessed capital markets to supply capital to VGSC. Consistent with the change in ownership and the Staff's general position regarding capital structures, Staff used NUI's consolidated capital structure for purposes of the Report. NUI's consolidated ratemaking capital structure has an equity ratio of 38.59% and produces a cost of capital of 7.69% for the test year. Staff reported that NUI's capital structure was not significantly different from the consolidated VGC capital structure, which has an equity ratio of 36.88% and produces an overall cost of capital of 7.56%. Staff requested that VGSC file Schedules 1, 2, and 3, required by the Rules Case Rules in any future AIF in accordance with the Rate Case Rules by including information for the test year and the four prior fiscal years for VGSC and NUI.

In its accounting analysis, the Staff observed there was a disparity between VGSC's filed nine-month total company return on common equity of 6.58% and VGSC's filed jurisdictional return on common equity of 17.78%. That disparity prompted Staff to examine the Company's jurisdictional allocation methodology, as well as VGSC's pricing for service closely. According to Staff, VGSC has always allocated expenses and rate base on contracted volumes, implying that the level of contracted therms is what drives the Company's expenses. To investigate the issue further, Staff recommended that the Commission direct VGSC to conduct a full review of its jurisdictional methodology and to report its findings in the Company's next AIF filing.

Staff noted that VGSC has received approval from the Commission in Case No. PUA-2001-00041, regarding the allocation of common costs and facilities among VGSC's affiliates. With the allocation of the operation and maintenance and facility-related expenses, VGSC's fully adjusted return on common equity would have been 14.20%, based on nine months of earnings. Since the approval of the affiliate application occurred on September 6, 2002, in the last month of the pro forma period examined by Staff, the Staff made no test period ratemaking adjustment to allocate costs among VGSC and its affiliates. Staff further explained that no costs originating at NUI have been allocated to its regulated subsidiaries and, at the time Staff concluded its Report, there was no affiliate agreement on file with the Commission concerning allocations of common costs from NUI to the regulated subsidiaries. Thus, no allocations from NUI were considered in Staff's accounting analysis.

Additionally, Staff reported that Atmos Energy Corporation ("Atmos") currently has a contract with VGSC for 180,000 therms of gas storage at the Company's Early Grove Storage Facility. Atmos and its affiliate, Woodward Marketing, L.L.C. ("Woodward"), have received approval from the Commission to take gas storage services for Atmos through Virginia Gas Pipeline Company's ("VGPC's") Saltville Storage Facility effective May 1, 2003. This arrangement would replace the current storage agreement for Atmos that uses VGSC's Early Grove Storage Facility. Staff commented that these circumstances could affect VGSC's earnings. Staff, therefore, recommended that VGSC be directed to report to Staff on the status of Atmos' storage arrangements as well as the impact of those arrangements on VGSC's cost of service as part of the Company's next AIF or rate proceeding.

Staff concluded that the results of the nine-month test period ending September 30, 2001, were not directly comparable to the prior twelve-month periods ending December 31, analyzed by Staff. Because of a number of unresolved circumstances, e.g., the change in the Atmos contract for storage, the Staff proposed that no action be taken regarding VGSC's rates until after consideration of the Company's next AIF.

On January 7, 2003, VGSC, by counsel, filed a letter advising that VGSC did not intend to file a response to the Staff's December 11, 2002, Report.

NOW UPON CONSIDERATION of the Company's application, the December 11, 2002, Staff Report, and the applicable statutes, the Commission is of the opinion and finds that the Staff's recommendations found in the December 11, 2002, Staff Report should be adopted and that the captioned application should be dismissed from the Commission's docket of active proceedings.

Accordingly, IT IS ORDERED THAT:

- (1) Consistent with the findings made herein, the recommendations set out in the Staff's December 11, 2002, Report are hereby adopted.
- (2) VGSC shall file Schedules 1, 2, and 3, in any future AIF consistent with the Commission's Rate Case Rules by including information for the test year and the four prior fiscal years.
- (3) VGSC shall report to the Staff on the status of its provision of storage services to Atmos and the impact of Atmos' receipt of storage services from the Saltville Storage Facility rather than VGSC's Early Grove Facility on VGSC's cost of service in the Company's next AIF or rate proceeding.
- (4) With regard to VGSC's jurisdictional allocation methodology and storage pricing methodology, VGSC shall conduct a full review of its jurisdictional allocation methodology and report the results of such review in the Company's next AIF.
- (5) There being nothing further to be done in this proceeding, this application shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein placed in the Commission's files for ended causes.

**CASE NO. PUE-2001-00359
JANUARY 15, 2003**

APPLICATION OF
VIRGINIA GAS PIPELINE COMPANY

For an Annual Informational Filing

**ORDER ADOPTING RECOMMENDATIONS
AND DISMISSING PROCEEDING**

On January 22, 2002, Virginia Gas Pipeline Company ("VGPC" or the "Company"), by counsel, filed a motion with the State Corporation Commission ("Commission") to request additional time in which to file its Annual Informational Filing ("AIF") containing financial and operating data for 2001. In its motion, VGPC noted that the Commission has previously granted the Company an extension for its AIF in the Commission's July 12, 2001, Order entered herein. The Company asserted that it required a further extension beyond February 27, 2002, to May 31, 2002, to gather the appropriate information for filing its AIF.

On January 28, 2002, the Commission entered an Order wherein, among other things, it granted VGPC's request for an extension of time, and directed the Commission to file its 2001 AIF using the test period January 1, 2001, through September 2001, for all of its AIF Schedules, with the exception of Schedules 9, 10, and 12, by no later than May 31, 2002. As to Schedules 9, 10, and 12, the Commission directed the Company to file these Schedules using the twelve months ending September 30, 2001, as the test year for these Schedules.

On June 5, 2002, VGPC delivered its AIF for the year 2001. On June 7, 2002, VGPC, by counsel, filed a motion requesting that its filing be received out of time. To support its request, the Company alleged that it was unable to file its 2001 AIF on May 31, 2002, because of extenuating family circumstances experienced by its regulatory compliance officer.

On June 14, 2002, the Commission issued its Order and granted VGPC's request to receive the Company's AIF out of time subject to a further determination concerning the completeness of the documents accompanying the AIF, and subject further to VGPC completing Schedules 9, 10, and 12, by providing data for the twelve months ending September 30, 2001.

The Company's application was determined to be complete on July 17, 2002. This application included financial and operating data for the twelve months ended September 30, 2001, for Schedules 9, 10, and 12. The remaining Schedules were provided for the nine months ended September 30, 2001.

On December 11, 2002, the Staff filed its Report on the captioned application. Staff noted in its Report that it employed a 13.5% return on equity for illustrative purposes only. It explained that in VGPC's application for certificates of public convenience and necessity for the Company's storage and pipeline facilities, the Company assumed a cost of equity of 13.5%.

The Staff used the consolidated capital structure of NUI Corporation ("NUI") in its Report because NUI is the ultimate source of market capital available to VGPC. Prior to NUI's acquisition of Virginia Gas Company ("VGC"), VGPC's parent, and VGPC, VGC was the entity whose capital structure Staff used for ratemaking purposes. After NUI's acquisition of VGC and VGPC, NUI became the entity that accessed capital markets to supply capital to VGPC. Consistent with the change in ownership and Staff's general position regarding capital structures, Staff used NUI's consolidated capital structure for purposes of its Report. This capital structure has an equity ratio of 38.59% and produces a cost of capital of 7.69% for the test year.

Staff reported that NUI's capital structure was not significantly different from the consolidated VGC capital structure, which has an equity ratio of 36.88% and produces an overall cost of capital of 7.58%. Staff requested that, in its next AIF, the Company file Schedules 1, 2, and 3, required by the Rules Governing Utility Rate Increase Applications and Annual Informational Filings, 20 VAC 5-200-30 *et seq.*, adopted in Case No. PUE-1999-00054 ("Rate Case Rules"), by including information for the test year and the four prior fiscal years for VGPC and NUI.

In its accounting analysis, the Staff noted that it had reached an agreement that had been accepted by the Commission in Case No. PUE-1998-00627 regarding the treatment of capitalized interest. Based on Staff's analysis of the Company's earnings for the test year, the Company had not recovered its interest costs. Staff used the agreed upon methodology from Case No. PUE-1998-00627 to calculate a jurisdictional amount of capitalized interest to be removed from rate base. In its adjustment, VGPC removed \$647,471 of cumulative jurisdictional capitalized interest from rate base, using the agreed upon methodology versus Staff's adjustment of \$647,605. According to Staff, the difference between the Company's and Staff's adjustments was created by VGPC's use of incorrect plant and construction work in progress allocation factors.

Staff also commented that the agreed upon treatment regarding capitalized interest is an exception to the Commission's long standing approach regarding capitalized interest. Staff acknowledged that there may come a time when it may no longer be appropriate to capitalize VGPC's interest. It observed that inclusion of capitalized interest in VGPC's rates should continue to be scrutinized in VGPC's next AIF or rate case, and that the Company should reflect capitalized interest at a level consistent with the use of the agreed upon methodology in its future filings.

As to the Company's earnings test, the Staff noted that VGPC is not earning above the 13.50% return on equity benchmark that Staff has used in prior AIFs. Additionally, Staff did not recommend any write-off of the Company's regulatory assets related to Segment 5 of the Company's P-25 Pipeline.

Further, Staff noted that on September 6, 2002, the Commission issued an Order Granting Approval in Case No. PUA-2001-00041 dealing with approval of a comprehensive affiliate agreement among VGPC, VGC, Virginia Gas Storage Company ("VGSC") and Virginia Gas Distribution Company. Since the Order Granting Approval was issued at the end of the Company's pro forma year, Staff did not make any adjustments to cost of service for the expenses related to the approval of the agreement. Staff recommended that in the Company's next AIF for the test year ended September 30, 2002, the Company should reflect adjustments to VGPC's cost of service and rate base that incorporate the distribution of costs specified in the September 6, 2002, Order.

Staff's Report also noted that on August 30, 2002, VGPC, Saltville Gas Storage Company, L.L.C., NUI Saltville Storage, Inc., and VGC filed an application with the Commission pursuant to Chapters 4 and 5 of Title 56 of the Code of Virginia. This application requested authority for the companies to transfer and receive certain assets from both regulated and non-regulated affiliated entities of VGPC and for a reduction in service territory.

On November 22, 2002, the Commission issued its Order Granting Authority in the application docketed as Case No. PUE-2002-00458. The Commission instructed the Staff to address the transfer process for the subject real property and assets in the Company's next rate proceeding. Staff noted its intent to address these issues in the first AIF or rate case following the transfer of the assets and recommended that VGPC include with its next AIF or rate application all journal entries made to reflect the transfer of assets and real property, as well as the justification supporting the transfer price of the assets transferred in that case.

Finally, Staff also recommended that the Company capitalize property taxes on amounts relating to its property under construction.

In a letter filed with the Commission on January 7, 2003, the Company, by counsel, advised that VGPC did not intend to file a response to the December 11, 2002, Staff Report.

NOW UPON CONSIDERATION of VGPC's application, the Staff Report, and the applicable statutes, the Commission is of the opinion and finds that the Staff's recommendations found in the December 11, 2002, Report should be adopted, and this application should be dismissed from the Commission's docket of active proceedings.

Accordingly, IT IS ORDERED THAT:

- (1) Consistent with the findings made herein, the recommendations set out in the Staff's December 11, 2002, Report are hereby adopted.
- (2) VGPC shall file Schedules 1, 2, and 3, in any future AIF consistent with the Commission's Rate Case Rules by including information for the test year and the four prior fiscal years.
- (3) VGPC shall reflect adjustments to cost of service and rate base in its subsequent AIFs or its next rate application that incorporate the distribution of costs specified in the Commission's September 6, 2002, Order Granting Approval, entered in Case No. PUA-2001-00041.
- (4) Consistent with the Staff's recommendation, the Company shall include with its next AIF or rate application all journal entries made to reflect the transfer of assets and real property addressed in Case No. PUE-2002-00458, together with the justification of the transfer price.
- (5) The Company shall reflect capitalized interest at a level that is consistent with the use of the agreed upon methodology for capitalized interest reached in Case No. PUE-1998-00627 in future AIFs.
- (6) VGPC shall capitalize property taxes on amounts relating to property under construction, consistent with the recommendations in the accounting analysis in the December 11, 2002, Staff Report.
- (7) There being nothing further to be done in this proceeding, this application shall be dismissed from the Commission's docket of active proceedings and the papers filed herein placed in the Commission's files for ended causes.

**CASE NO. PUE-2001-00427
JULY 16, 2003**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
ROANOKE GAS COMPANY,
Defendant

ORDER VACATING DIRECTIVE TO PAY THE BALANCE OF PENALTY AND DISMISSING PROCEEDING

On July 8, 2002, the State Corporation Commission ("Commission") entered an Order of Settlement that required Roanoke Gas Company ("Roanoke" or the "Company") to take certain remedial actions and pay a fine of \$85,800. The sum of \$5,800 was tendered contemporaneously with the entry of the Order. The Order provided that the remaining \$80,000 may be suspended and vacated, provided the Company timely undertook the actions required by the Order and filed timely certifications for the remedial actions outlined in the Order.

On December 31, 2002, the Commission granted Roanoke's request for an extension of time in which to take over the operation and maintenance of six natural gas master meter systems served by Roanoke, and extended the time in which the Company had to provide an affidavit certifying that the Company had taken over the operation and maintenance of the master meter systems.

On July 14, 2003, the Commission Staff filed a Motion that advised that the Company had complied with the requirements of the July 8, 2002, Order of Settlement, as revised by the Commission's December 31, 2002, Order on Motion. The Staff requested that the Commission vacate its directive requiring the Company to pay the remaining \$80,000 penalty, and asked that the Commission dismiss the case from the docket of active proceedings. Staff advised that Roanoke concurred with the Staff's requests.

NOW, UPON CONSIDERATION of the foregoing, the Commission is of the opinion and finds that the Staff's July 14, 2003, Motion should be granted; that the requirement that Roanoke pay the remaining \$80,000 penalty should be vacated; and that this matter should be dismissed from the Commission's docket of active proceedings.

Accordingly, IT IS ORDERED THAT:

(1) The Staff's July 14, 2003, Motion is hereby granted.

(2) The requirement that Roanoke Gas Company pay the \$80,000 penalty provided for in Ordering Paragraph (5) of the July 8, 2002, Order of Settlement is hereby vacated.

(3) This case is hereby dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be made a part of the Commission's files for ended causes.

**CASE NO. PUE-2001-00429
JANUARY 9, 2003**

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

FINAL ORDER

On August 15, 2001, Tenaska Virginia II Partners, L.P. ("Tenaska II" or the "Company") filed an application with the State Corporation Commission ("Commission") for a certificate of public convenience and necessity pursuant to § 56-265.2 of the Code of Virginia (the "Code") to construct and operate a 900 MW natural gas-fired, combined cycle generating facility in Buckingham County, Virginia (the "Facility"). Tenaska II requested an exemption from the provisions of Chapter 10 of the Code, §§ 56-232 *et seq.* The Company also requested interim authority under § 56-234.3 of the Code to allow it to make financial expenditures and undertake preliminary construction work.

On September 13, 2001, the Commission entered an order scheduling a public hearing in this matter. The Commission required Tenaska II to provide public notice of its application, provided interested persons with an opportunity to participate in the matter, established a procedural schedule, and assigned a Hearing Examiner to conduct further proceedings.

On October 3, 2001, Columbia Gas of Virginia, Inc. ("Columbia Gas"), filed a notice of participation as a respondent.

Interested parties, including local businesses and federal, state, and local officials, filed comments in support of the Facility by the November 1, 2001, deadline.

The Department of Environmental Quality ("DEQ") coordinated an environmental review of the application by DEQ and other interested state agencies, the regional planning commission, and Buckingham County, Virginia. DEQ prepared a report on the potential impacts from construction and operation of the Facility, as well as recommendations for minimizing those impacts, which was filed on November 19, 2001 ("DEQ Report").

On November 26, 2001, the Commission Staff ("Staff") filed direct testimony regarding its analysis of Tenaska II's application. The DEQ Report was attached to this testimony.

Tenaska II filed rebuttal testimony on December 3, 2001.

The Company, Staff, and Columbia Gas entered into a stipulation regarding the supply of natural gas to the Facility ("Stipulation"). The Stipulation was filed on December 6, 2001.

An evidentiary hearing was held on December 10, 2001, before Hearing Examiner Howard P. Anderson, Jr. Richard D. Gary, Esquire, John M. Holloway, III, Esquire, and Angie Jenkins, Esquire, appeared on behalf of Tenaska II. Tenaska II presented the testimony of T. R. Ownby, Project Manager for Tenaska II, and Dr. Greg Kunkel, Manager of Environmental Affairs for Tenaska, Inc. Katharine A. Hart, Esquire, and C. Meade Browder, Jr., Esquire, appeared on behalf of Staff. Staff presented the testimony of Mark K. Carsley and Lawrence T. Oliver of the Division of Economics and Finance, and Marc A. Tufaro, of the Division of Energy Regulation. M. Renae Carter, Esquire, appeared on behalf of Columbia Gas. Three public witnesses testified at the hearing in support of the Facility. At the conclusion of the hearing, the Hearing Examiner directed the Company and Staff to file post-hearing briefs on the issue of water discharge. These briefs were filed on January 31, 2002.

On March 26, 2002, the Hearing Examiner issued a ruling reopening this proceeding to receive additional evidence regarding the environment.¹ The Hearing Examiner requested additional evidence regarding three issues: (1) the cumulative impact of existing and proposed electric generating facilities on air quality in Buckingham County and surrounding counties; (2) the environmental impact of the lateral natural gas pipeline that will connect the Facility with the interstate gas pipeline of Transcontinental Gas Pipeline Corporation; and (3) the effects on transmission reliability of interconnecting the Facility to Dominion Virginia Power's transmission grid.

¹ In Application of Tenaska Virginia Partners, L.P. 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, Order (January 16, 2002) ("Tenaska"), a majority of the Commission remanded that case for further proceedings and recommendations with respect to consideration of the environment, specifically the cumulative impact of proposed facilities on existing air quality.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

On April 25, 2002, Tenaska II filed supplemental testimony and exhibits on the issues identified by the Hearing Examiner. Staff filed its additional testimony and exhibits on May 9, 2002. Columbia Gas indicated in a letter filed on May 21, 2002, that it would not be participating in the receipt of additional evidence, but that Columbia Gas continued to support the adoption of the Stipulation.

A hearing was held on May 28, 2002, with Richard D. Gary, Esquire, John M. Holloway, III, Esquire, and Kevin Finto, Esquire, appearing on behalf of Tenaska II and Katharine A. Hart, Esquire, appearing on behalf of Staff. Tenaska II presented the testimony of Scott Helyer, Director of Transmission for Tenaska, Inc., and Dr. Kunkel. Staff did not present any witnesses.

On July 12, 2002, Tenaska II submitted a brief addressing the evidence presented at the May 28, 2002, hearing.

On September 10, 2002, the Hearing Examiner entered a Report summarizing the record and analyzing the evidence and issues in this proceeding. The Report makes the following findings:

- (1) The [Facility] will have no material adverse effect upon the rates paid by customers of any regulated utility in the Commonwealth;
- (2) The [Facility] will have no adverse effect upon the reliability of electric service provided by any regulated public utility;
- (3) The current level of air quality in Buckingham County is good, and is in attainment of all National Ambient Air Quality Standards;
- (4) The cumulative impact air analysis is reasonable;
- (5) The cumulative impact air analysis adequately demonstrates that the emissions, when combined with the emissions from other existing or proposed facilities, will have no material adverse effect on air quality in Buckingham County and the surrounding area;
- (6) The [Facility] will not adversely impact any private residences;
- (7) The [Facility] is not contrary to the public interest;
- (8) The [Facility] should enhance competition at the wholesale level;
- (9) Tenaska II should be directed to file with the Commission any tolling agreements pertaining to the [Facility];
- (10) The evidence supports a finding that the [Facility] will provide a positive economic benefit to Buckingham County and the Commonwealth;
- (11) The Commission should grant Tenaska II a certificate of public convenience and necessity to construct and operate the [Facility] conditioned upon receipt of all permits required to construct and operate the [Facility];
- (12) The certificate of public convenience and necessity issued to Tenaska II should contain a provision that it will expire two years from the date issued, if construction on the [Facility] has not commenced;
- (13) Tenaska II should be directed to report to the Commission any changes in its business plan; and
- (14) The Stipulation between Staff, Tenaska II, and Columbia Gas should be approved.

Therefore, the Hearing Examiner recommended that the Commission adopt the findings contained in his Report and grant Tenaska II a certificate of public convenience and necessity pursuant to § 56-580 D of the Code to construct and operate the Facility.²

In response to a Staff request, on November 21, 2002, DEQ filed a letter pursuant to § 10.1-1186.2:1 of the Code ("DEQ Letter"). Among other things, this Code section requires that, prior to the close of the Commission's record on an application for certification of an electric generating facility pursuant to § 56-580 of the Code, the DEQ shall provide the Commission with certain information about environmental issues identified during the review process. The DEQ Letter indicated, among other things, that all environmental issues identified during the DEQ's review process were addressed in the DEQ Report previously filed.

NOW THE COMMISSION, having considered the record, the pleadings, the Hearing Examiner's Report, and the applicable law, is of the opinion and finds that a certificate of public convenience and necessity to construct and operate the Facility should be granted to Tenaska II.

² On September 19, 2002, Tenaska II filed a letter making a factual correction to the Hearing Examiner's Report that does not affect the Hearing Examiner's recommendations. The Company otherwise did not object to the Hearing Examiner's Report.

As we have indicated in previous orders,³ the Code establishes six general areas of analysis applicable to electric generating plant applications: (1) reliability;⁴ (2) competition;⁵ (3) rates;⁶ (4) environment;⁷ (5) economic development;⁸ and (6) public interest.⁹ We have evaluated the Facility according to these six areas.

We find that the Facility will have no material adverse effect upon reliability of electric service provided by any regulated public utility. We further find that the Facility is not otherwise contrary to the public interest in that, among other things, rates for the regulated public utility will not be impacted. In addition, we find that the Facility will provide economic benefit.

Pursuant to §§ 56-46.1 A and 56-580 D of the Code, we have given consideration to the effect of the Facility on the environment. On April 30, 2002, Tenaska II received from the DEQ a Prevention of Significant Deterioration Permit, Registration No. 32004, authorizing the Company to construct and operate an electrical power generation facility. On September 5, 2002, Tenaska II filed with the Commission a copy of Virginia Water Protection Permit No. 01-1282 ("VWPP") issued to East Cost Transport, Inc., authorizing it to construct water intake facilities and withdraw water from the James River to serve the Facility.

The DEQ Letter explains that four of the recommendations contained in the DEQ Report were included as a part of the above-mentioned VWPP. These four recommendations involve: (1) precautions for in-stream work; (2) correlating flow conditions with downstream water withdrawals; (3) addressing cumulative impacts of the Tenaska II Facility and the Tenaska Virginia Partners, LP, project in Fluvanna County; and (4) wetland protection practices. We note that effective July 1, 2002, §§ 56-46.1 A and 56-580 D of the Code provide, among other things, that any valid permit or approval regulating environmental impact and mitigation of adverse environmental impact, "whether such permit or approval is granted prior to or after the Commission's decision," shall be deemed to satisfy the requirements of §§ 56-46.1 A and 56-580 D of the Code "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." Therefore, pursuant to §§ 56-46.1 A and 56-580 D of the Code, the Commission shall impose no additional conditions with respect to these four recommendations.

The DEQ Letter identifies four other recommendations contained in the DEQ Report that "could have been included as conditions of" the VWPP, but were not. The record reflects that Tenaska II has agreed to comply with three of these four recommendations, which pertain to: (1) a monitoring program in Fluvanna; (2) wildlife and waterfowl habitat areas; and (3) spill prevention measures.¹⁰ We will require the Company to comply with these three recommendations. The fourth recommendation involves consideration of alternative wastewater discharge, such as routing the effluent into a water storage reservoir rather than directly into the James River, to address concerns regarding the thermal effects of the effluent. The DEQ Letter states that this recommendation was not included in the VWPP, which pertains to water withdrawal, because the DEQ Water Permits Support Office believed that it lacked the requisite authority.

The record is clear, however, that this fourth recommendation will be addressed as part of the process for receiving a Virginia Pollutant Discharge Elimination System Permit ("VPDES") from the DEQ. Witnesses for both the Department of Conservation and the DEQ testified that thermal effects on the James River and alternative wastewater discharge would be addressed by the VPDES permitting process.¹¹ Thus, the recommendation on wastewater discharge is within the authority of, and is being considered by, the permitting agency. Pursuant to §§ 56-46.1 A and 56-580 D of the Code, the Commission shall impose no additional condition with respect to this recommendation.

Finally, the DEQ Letter of November 21, 2002, notes that three recommendations contained in the DEQ Report of November 19, 2001, pertain to matters not governed by permits or approvals. These recommendations involve: (1) protection of individual trees; (2) pollution prevention practices; and (3) limiting the use of pesticides and herbicides. Tenaska II agreed to implement these recommendations. We will require Tenaska II to comply with these recommendations as a condition of the certificate.

In addition, the Commission will condition the certificate granted herein upon the Company's receipt of all environmental and other permits necessary to construct and operate the Facility. We also will provide that the certificate will expire two years from the date of this Order if construction on the Facility has not commenced.

³ See, e.g., Tenaska, Case No. PUE-2001-00039, Final Order (April 19, 2002); Application of Old Dominion Electric Cooperative, For a certificate of public convenience and necessity for electric generation facilities in Louisa County, Case No. PUE-2001-00303, Final Order (July 17, 2002).

⁴ Va. Code Ann. §§ 56-46.1 A and 56-580 D (i).

⁵ Va. Code Ann. § 56-596 A.

⁶ Va. Code Ann. §§ 56-580 D (ii). See also 20 VAC 5-302-20 14; Ex Parte: In the matter of amending filing requirements for applications to construct and operate electric generating facilities, Case Nos. PUE-2001-00313 and PUE-2001-00665, Order Adopting Rules and Prescribing Additional Notice at 6 (Dec. 14, 2001).

⁷ Va. Code Ann. §§ 56-46.1 A and 56-580 D.

⁸ Va. Code Ann. §§ 56-46.1 and 56-596 A.

⁹ Va. Code Ann. §§ 56-580 D (ii).

¹⁰ Ex. GK-8 at 10-11.

¹¹ See Tr. at 48, 64-68, and 73.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 56-580 D of the Code, Tenaska II is hereby granted authority and a certificate of public convenience and necessity to construct and operate the Facility described in this proceeding.
- (2) The certificate granted herein shall be conditioned upon the receipt of all environmental and other permits necessary to construct and operate the Facility.
- (3) As a condition of the certificate, Tenaska II shall comply with the recommendations made by DEQ in the DEQ Report filed in this proceeding, except for the five recommendations identified herein on which the Commission shall impose no additional conditions: (a) precautions for in-stream work; (b) correlating flow conditions with downstream water withdrawals; (c) addressing cumulative impacts of the Tenaska II Facility and the Tenaska Virginia Partners, LP, project in Fluvanna County; (d) wetland protection practices; and (e) alternative wastewater discharge.
- (4) The certificate granted herein shall expire in two years from the date of this Order, if construction of the Facility has not commenced.
- (5) The Stipulation between Staff, Tenaska II, and Columbia Gas is hereby approved and adopted.
- (6) 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.

MOORE, Commissioner, Concurs:

Given the statutory change effective July 1, 2002, I concur with my colleagues in the decision to approve construction and operation of the proposed facility. While the necessary permits from all other agencies have not been issued, as reflected in the order, there appears to be nothing further for this Commission to consider. I continue to be extremely concerned that the environmental studies, analyses, and reviews prior to the issuance of permits and approvals may not be adequate or as thorough as they should be.¹ If the studies, analyses, and reviews of the state are inadequate, Virginia may suffer unnecessarily, causing harm not only to the environment, but to the health of the citizens and the economy of the Commonwealth.

¹ Examples of areas where, based on the records before the Commission, additional analysis and study should be required are discussed in my prior concurrences and dissents. See Commissioner Moore concurrence, *Application of Old Dominion Electric Cooperative, For approval of a certificate of public convenience and necessity for electric generating facilities*, Case No. PUE-2002-00003, Final Order (November 6, 2002); Commissioner Moore concurrence, *Application of CPV Cunningham Creek LLC, For approval of a certificate of public convenience and necessity pursuant to Va. Code §56-265.2, for an exemption from Chapter 10 of Title 56, and for the interim authority to make financial expenditures*, Case No. PUE-2001-00477, Final Order (October 7, 2002); Commissioner Moore concurrence, *Application of Old Dominion Electric Cooperative, For a certificate of public convenience and necessity for electric generation facilities in Louisa County*, Case No. PUE-2001-00303, Final Order (July 17, 2002); Commissioner Moore dissent, *Application of Buchanan Generation, LCC, For permission to construct and operate an electrical generating facility*, Case No. PUE-2001-00657, Final Order (June 25, 2002) ("*Buchanan*, Moore dissent"); Commissioner Moore dissent, *Application of Tenaska Virginia Partners, L.P., 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, Final Order (April 19, 2002) ("*Tenaska*, Moore dissent").

This case presents another example based on the data and explanations provided to the Commission. The most critical area in this proceeding appears to be ozone where the current background ozone concentration level in the area of the proposed plant is already at 117 ppb, which is almost equal to the present NAAQS for ozone. The cumulative impact study puts the ozone concentration level at 121 ppb, above the current NAAQS of 120, but below the violation threshold. Ozone concentration levels under the more stringent revised standard were not provided although it was said that the area would be in attainment under both standards. Although not stated, it certainly appears that those involved in the permitting process act as though if there is no violation, then Virginia's environment and people are safe. This is incorrect. There is no safe level of ozone, and exceedences under the revised standard (eight-hour, 80 ppb) have been more than fifteen times greater statewide than under the one-hour standard (one-hour, 120 ppb). See *Tenaska*, Moore dissent at 6-8 and *Buchanan*, Moore dissent at 3-4. Given these facts and the current ozone level in the area, more data should be provided and analyzed, and the impacts of ozone on the health of people and the environment should be studied and considered carefully before the Commonwealth decides whether to approve the construction and operation of the proposed facility.

**CASE NO. PUE-2001-00430
DECEMBER 16, 2003**

APPLICATION OF
MIRANT DANVILLE, LLC

For approval of a certificate of public convenience and necessity pursuant to Va. Code § 56-265.2, an exemption from Chapter 10 of Title 56 and interim approval to make financial commitments and undertake preliminary construction work

DISMISSAL ORDER

On November 3, 2003, counsel for Mirant Danville, LLC ("Mirant"), requested to withdraw its application for approval of a certificate of public convenience and necessity to construct a 550 MW electric generating facility in Danville, Virginia (the "Project"). Mirant had filed its application with the State Corporation Commission ("Commission") on August 16, 2001. On January 31, 2002, following the public hearing on the application, Mirant publicly announced that it had indefinitely deferred the construction of the Project. On February 4, 2002, a Hearing Examiner's report was issued recommending that

the Commission approve construction and operation of the Project; however, recognizing the recent announcement, it was also recommended that Mirant advise the Commission of its intent concerning the Project. Mirant advised the Commission on February 6, 2002, that it was not abandoning the Project and had initiated the process to find a suitable developer for the Project and requested that the Commission continue to process its application. On November 3, 2003, Mirant filed a letter with the Commission stating that its attempts to identify a new developer for the Project have been unsuccessful and requests permission to withdraw its application. On November 12, 2003, a Hearing Examiner's report was issued recommending that the Commission grant Mirant's request to withdraw the application and remove the case from the Commission's docket.

NOW THE COMMISSION, having considered the request, finds that it is reasonable and should be granted.

Accordingly, IT IS ORDERED THAT Mirant's request to withdraw its application is granted, and this case is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUE-2001-00431
JUNE 24, 2003**

APPLICATION OF
AEP RETAIL ENERGY, LLC

For permanent licenses to conduct business as a natural gas and electric competitive service provider and as an aggregator

DISMISSAL ORDER

On October 5, 2001, AEP Retail Energy, LLC ("AEP" or the "Company"), was issued License Nos. E-2, G-3, and A-3, by the State Corporation Commission ("Commission") to provide competitive electric, natural gas, and aggregation services to all classes of retail customers throughout Virginia as the Commonwealth opens up to retail access and customer choice.

By letter dated June 12, 2003, ("Letter"), AEP advised that it did not wish to retain its licenses to supply electric, natural gas, and aggregation services.

NOW UPON CONSIDERATION of AEP's Letter and having been advised by its Staff, the Commission is of the opinion and finds that the Company's current licenses, License Nos. E-2, G-3, and A-3, are terminated. As a result, AEP is no longer authorized to act as a competitive service provider and aggregator in Virginia.

Accordingly, IT IS ORDERED THAT:

- (1) AEP's license, License No. E-2, is hereby terminated without prejudice to the Company should it reapply to the Commission for a new license as a CSP.
- (2) AEP's license, License No. G-3, is hereby terminated without prejudice to the Company should it reapply to the Commission for a new license as a CSP.
- (3) AEP's license, License No. A-3, is hereby terminated without prejudice to the Company should it reapply to the Commission for a new license as a CSP.
- (4) This case is hereby dismissed.

**CASE NO. PUE-2001-00532
JANUARY 30, 2003**

APPLICATION OF
AMERICA'S ENERGY ALLIANCE, INC.
and
NOVEC ENERGY SOLUTIONS, INC.

For licenses to conduct business as an electric and natural gas competitive service provider and aggregator

ORDER REISSUING LICENSES

On November 30, 2001, the State Corporation Commission ("Commission") issued to America's Energy Alliance, Inc. ("Alliance"), License Nos. E-9, G-11 and A-10. These licenses authorized Alliance to provide competitive electric and natural gas service and aggregation services to residential, commercial and industrial customers in retail access programs throughout the Commonwealth of Virginia as the Commonwealth opens up to retail access and customer choice.

On April 15, 2002, Alliance made a filing with the Commission advising that it had changed its corporate name to NOVEC Energy Solutions, Inc. On January 29, 2003, Alliance filed an official request for an update to its licenses to reflect its new corporate name.

NOW THE COMMISSION, upon consideration of this matter, finds that Alliance's License Nos. E-9, G-11 and A-10 to conduct business as a competitive electric and natural gas service provider and as an aggregator, shall be canceled and reissued in the name of NOVEC Energy Solutions, Inc.

Accordingly, IT IS ORDERED THAT:

(1) License No. E-9 authorizing America's Energy Alliance, Inc. to provide competitive electric service to residential, commercial and industrial customers in conjunction with the retail access programs is hereby canceled, and shall be reissued as License No. E-9A in the name of NOVEC Energy Solutions, Inc.

(2) License No. G-11 authorizing America's Energy Alliance, Inc. to provide competitive natural gas service to residential, commercial and industrial customers in conjunction with the retail access programs is hereby canceled, and shall be reissued as License No. G-11A in the name of NOVEC Energy Solutions, Inc.

(3) License No. A-10 authorizing America's Energy Alliance, Inc., to provide aggregation services to residential, commercial and industrial customers in conjunction with the retail access programs is hereby canceled, and shall be reissued as License No. A-10A in the name of NOVEC Energy Solutions, Inc.

(4) NOVEC Energy Solutions, Inc., shall operate under these licenses as reissued pursuant to the same terms and conditions as set forth in our Order Granting Licenses entered in this docket on November 30, 2001.

(5) This case shall remain open for consideration of any subsequent amendments or modifications to these licenses.

**CASE NO. PUE-2001-00535
APRIL 3, 2003**

PETITION OF
ROANOKE GAS COMPANY
and
COMMONWEALTH PUBLIC SERVICE CORPORATION

For Annual Informational Filings

**ORDER ADOPTING RECOMMENDATIONS
AND DISMISSING PROCEEDING**

On October 2, 2001, Roanoke Gas Company ("Roanoke" or "RGC") and Commonwealth Public Service Corporation ("CPSC" or "Commonwealth") (hereinafter collectively referred to as the "Petitioners" or the "Companies") filed a letter with the Clerk of the State Corporation Commission ("Commission") requesting that the Commission waive the requirement that the Petitioners file Annual Informational Filings ("AIFs"), using as their test periods the twelve months ended September 30, 2001. These AIFs would ordinarily be due to be filed with the Commission on January 28, 2002.

In support of their request, the Petitioners maintained that they intended to file a consolidating general rate case based on a new test period ended March 31, 2002, with new rates to be effective December 1, 2002. The Companies anticipated filing their general rate application on or around the first week in July 2002.

On October 17, 2001, the Commission entered an Order granting the Petitioners' request for waiver. Among other things, the Commission docketed the proceeding and directed that in the event the Companies determined not to file a consolidated rate application on or around July 5, 2002, they file their AIFs for the twelve months ending September 30, 2001, by no later than July 5, 2002. The Commission cautioned that the waiver it granted did not relieve the Companies of their obligation to file the reports on their respective Distribution System Renewal Surcharges ("DSR surcharges" or "DSRS"), required as part of the stipulations accepted by the Commission in Case No. PUE-1998-00626¹ and Case No. PUE-1999-00438.² Additionally, the Commission ordered the Companies to file with the Clerk of the Commission an earnings test for RGC and CPSC respectively for the twelve months ended September 30, 2001, on or before January 28, 2002. The Commission further directed the Companies to file with the Commission earnings tests for RGC and CPSC, respectively, for the twelve months ended September 30, 2002, on or before December 3, 2002. The Commission left the captioned case open to receive the earnings tests required to be filed herein.

On June 17, 2002, Roanoke filed its application for a general increase in rates with the Commission. In this application, docketed as Case No. PUE-2002-00373, among other things, RGC sought to terminate the DSR surcharges for itself and Commonwealth.³

On February 5, 2002, Roanoke and CPSC filed their respective earnings test with the Commission. On May 2, 2002, the Staff filed its Report in the proceeding. In its Report, the Staff utilized the earnings tests filed by the Companies to evaluate the appropriateness of their DSR surcharges as well as the deferral of their extraordinary test year uncollectible expenses.

¹ Application of Roanoke Gas Company, For general increase in rates and to revise its tariff, Case No. PUE-1998-00626, 1999 S.C.C. Ann. Rep. 440, 442 (hereinafter referred to as "Case No. PUE-1998-00626").

² Application of Commonwealth Public Service Corporation, For a general increase in rates and revision in tariffs, Case No. PUE-1999-00438, 1999 S.C.C. Ann. Rep. 504, 505 (hereinafter referred to as "Case No. PUE-1999-00438").

³ A Final Order in Case No. PUE-2002-00373 was entered on January 7, 2003. See Application of Roanoke Gas Company, For a general increase in rates, Case No. PUE-2002-00373, Doc. Con. Cen. No. 030110332, slip. op. (Jan. 7, 2003 Final Order).

The Staff reported that as a result of Case No. PUE-1998-00626 for Roanoke and Case No. PUE-1999-00438 for Commonwealth, the Companies' rates were frozen through November 30, 2002. It explained that the stipulations accepted in these cases allowed Roanoke and CPSC to make timely recoveries of plant renewal investment outside the context of a rate case through their respective DSR surcharges. These stipulations required that DSRS recoveries would be subject to annual earnings tests. As provided in these agreements, for Roanoke, there would be three annual earnings tests addressing the periods for the twelve months ended September 30, 2000, through the twelve months ended September 30, 2002.⁴ For CPSC, there would be two annual earnings tests, for the periods encompassing the twelve months ended September 30, 2001, through the twelve months ended September 30, 2002. At the end of the annual earnings tests, cumulative DSR surcharge recoveries would be subject to refund to the extent that they exceeded cumulative underearnings net of DSR surcharge recoveries.

For purposes of evaluating Roanoke's DSRS for the test year ended September 30, 2001, the Staff included all of the adjustments utilized in the earnings test evaluation of the uncollectible deferral, including the deferral of \$288,447 of test year uncollectible costs. Staff made adjustments to remove the impact of test year DSRS collections. As provided in the stipulation accepted in Case No. PUE-1998-00626, the Staff removed test year DSR surcharge revenues so DSRS recoveries for the three-year surcharge period could be measured against underearnings exclusive of DSR surcharge recoveries. Staff also removed the federal and state income tax, gross receipts tax, and uncollectible account impact of the test year DSRS recoveries.

After considering these adjustments, Roanoke earned an 8.22% return on rate base and a 9.18% return on common equity. Relative to the 10.25% benchmark return on common equity, Roanoke underearned during the second collection year by \$387,052. DSR surcharge collections during the second year were \$434,191. The two year cumulative underearnings were \$1,186,685, while the two year cumulative DSR surcharge collections were \$632,107. As provided in Case No. PUE-1998-00626, surcharge collections would be refundable to the extent they exceeded any net underearnings determined over the three earnings test periods.

With regard to uncollectible expenses, the Staff reported that Roanoke and CPSC experienced substantial increases in their respective uncollectible expenses, primarily as a result of high natural gas costs. Staff reached an agreement with both Companies to provide for regulatory asset deferral of their respective excessive uncollectible costs arising from unpaid gas bills. The deferral was equal to the excess of the test year net charge-off level relative to the 5-year average net charge-off level from 1996-2000. For Roanoke, the regulatory asset amount related to uncollectible expense was \$288,447, and for CPSC the amount was \$28,519. Staff proposed that amortization of the new regulatory assets would occur over a three-year period and would commence, effective with the rates resulting from Roanoke's general rate application docketed as Case No. PUE-2002-00373. Staff evaluated recovery of the excessive uncollectible cost regulatory assets based on earnings as compared to the midpoint of the authorized range of return on common equity.

Based on its evaluation of the earnings test, and prior to the deferral of excess test year uncollectible costs, Staff reported that Roanoke earned an 8.41% return on rate base and a 9.58% return on common equity after limited adjustments. With the deferral of \$288,447 of uncollectible costs, RGC earned an 8.80% return on rate base and a 10.41% return on common equity. Since establishment of the regulatory asset resulted in earnings which were below the 10.50% midpoint of the authorized return on common equity range, no reduction of the newly created regulatory asset was recommended by Staff.

With regard to CPSC's earnings, Staff noted that prior to the deferral of test year uncollectible costs, Commonwealth earned a 4.59% return on rate base and a 2.13% return on common equity after limited adjustments. Staff noted that following the deferral of the uncollectible costs, the Company earned a 5.55% return on rate base and a 4.17% return on common equity. Staff concluded that since CPSC's earnings were below the authorized 10.50% midpoint of the return on equity range, no reduction of the newly created regulatory asset was required.

With regard to the evaluation of CPSC's DSR surcharge collections, Staff reported that, based upon the stipulated benchmark of 10.25%, and after adjustments including the deferral of \$28,519 of test year uncollectible costs, CPSC underearned during the initial collection year by \$95,849. DSR surcharge collections during the initial year were \$4,559. Staff reported that CPSC's cumulative underearnings to date were \$95,849, and its cumulative undercollections to date through its DSR surcharges were \$91,290.

Staff concluded that neither Roanoke nor CPSC had overearned with respect to the test year uncollectible cost deferral. Staff advised that it would make a recommendation on the appropriateness of Roanoke's and CPSC's cumulative DSR surcharge collections after evaluating the September 30, 2002, earnings tests for these Companies.

By its letter filed on June 14, 2002, the Company advised that it did not intend to file a response to the Staff's May 2, 2002 Report.

On December 12, 2002, the Companies, by counsel, filed a "Motion to Accept Late Filing", together with their earnings tests for the twelve months ended September 30, 2002. According to the Companies, inclement weather delayed the filing of these earnings tests with the Commission.

On December 17, 2002, the Commission entered an Order accepting the earnings tests for Roanoke and Commonwealth for the twelve months ended September 30, 2002, out of time.

On March 12, 2003, the Staff filed its Report on the Companies' earnings tests for the twelve months ending September 30, 2002. In its Report, the Staff noted that in Roanoke's general rate case, Case No. PUE-2002-00373, the Companies requested termination of their respective DSR surcharges following the expiration of these surcharges on November 30, 2002. Staff reported that continued amortization of the uncollectible regulatory asset, established in the captioned matter (Case No. PUE-2001-00535) was considered in Case No. PUE-2002-00373, and would be considered in each subsequent rate application or AIF.

With regard to Roanoke's DSR surcharge collections, Staff employed the stipulated benchmark of 10.25%. In addition to Roanoke's adjustments, Staff removed the test year DSR surcharge collections and the federal and state income tax and uncollectible account impacts of the test year DSR surcharge recoveries. Staff synchronized interest and the related tax impact because a consolidated capital structure was used. Roanoke earned a 6.84% return on rate base and a 7.37% return on common equity. Relative to the 10.25% benchmark on common equity, Roanoke underearned during the second collection year by \$1,056,461. DSR surcharge collections during the second year were \$494,895. The three-year cumulative underearnings were \$2,243,146, while the

⁴ The Staff evaluated Roanoke's earnings test for the twelve months ending September 30, 2000, in Case No. PUE-2001-00067, and determined that Roanoke was not overearning.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

three-year cumulative DSR surcharge collections were \$1,127,002. Since Roanoke had a net undercollection in relation to the DSR surcharge collections through the three years ended September 30, 2002, Staff recommended that no further action be taken.

With regard to CPSC's DSR surcharge collections, the Staff reported that CPSC earned a 3.03% return on rate base and a (0.74%) return on common equity. Relative to the 10.25% benchmark return on common equity, CPSC underearned during the two-year collection period by \$278,952. DSR surcharge collections during the two-year collection period were \$11,701. Exhibit 6 of the Staff Report demonstrated that CPSC had a net undercollection in relation to DSR surcharge collections through the two years ended September 30, 2002. Staff therefore recommended that no further action was necessary and that the DSR surcharge collections for Roanoke and CPSC were appropriate.

By letter dated March 17, 2003, the Companies, by counsel, advised that they had reviewed the March 12, 2003, Report and agreed with its conclusions.

NOW UPON CONSIDERATION of the Companies' application, the Staff Reports filed herein, and the Companies' March 17, 2003 Response thereto, the Commission is of the opinion and finds that since the Companies' cumulative DSR surcharge recoveries did not exceed the cumulative underearnings net of DSR surcharge recoveries, the Staff's recommendation that no refunds of these charges were necessary should be accepted; and that this case should be dismissed from the Commission's docket of active proceedings.

Accordingly, IT IS ORDERED THAT:

- (1) Staff's recommendation that no refunds are necessary as a result of CPSC's and RGC's respective DSR surcharges is hereby accepted.
- (2) There being nothing further to be done in this case, this application shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be made a part of the Commission's files for ended causes.

**CASE NO. PUE-2001-00581
FEBRUARY 20, 2003**

APPLICATION OF
ENERGY CONSULTANTS, INC.

For a permanent license to conduct business as an electric aggregator

DISMISSAL ORDER

On November 30, 2001, Energy Consultants, Inc. a Virginia corporation ("Energy Consultants" or the "Company"), was issued a license, License No. A-9, by the State Corporation Commission ("Commission") to provide competitive electric aggregation services to residential and commercial retail customers throughout the Commonwealth of Virginia as the Commonwealth opens up to retail access and customer choice.

On February 3, 2003, Energy Consultants filed with the Commission articles of termination of corporate existence. The Company's corporate existence was terminated on February 3, 2003, pursuant to a certificate of termination issued by the Commission on that date.

NOW UPON CONSIDERATION of the termination of Energy Consultants as a corporation in Virginia and having been advised by its Staff, the Commission is of the opinion and finds that the Company's current license, License No. A-9, is revoked. As a result, Energy Consultants is no longer authorized to act as a competitive service provider in Virginia.

Accordingly, IT IS ORDERED THAT:

- (1) Energy Consultants' license, License No. A-9, is hereby revoked without prejudice to the Company should it reapply to the Commission for a new license as a CSP.
- (2) This case is hereby dismissed.

**CASE NO. PUE-2001-00584
NOVEMBER 4, 2003**

APPLICATION OF
CONSTELLATION NEWENERGY, INC.

For a license to conduct business as a natural gas competitive service provider

ORDER GRANTING LICENSE

On September 22, 2003, Constellation NewEnergy, Inc. ("Constellation" or "the Company"), filed an application with the Virginia State Corporation Commission ("Commission") for a license to provide competitive natural gas services. The Company intends to serve commercial and industrial customers in the retail access program throughout the Commonwealth of Virginia as the Commonwealth opens up to retail access and customer choice. The Company attested that it would abide by all applicable regulations of the Commission as required by 20 VAC 5-3 12-40 B of the Commission's Rules Governing Retail Access to Competitive Energy Services, 20 VAC 5-312-10 am. ("Retail Access Rules").

On October 6, 2003, the Commission issued its Order for Notice and Comment, establishing the case and requiring that this Order be served upon appropriate persons. The Order also required the Commission's Staff to analyze the reasonableness of the Company's application and present its findings in a Staff Report.

No comments from the public on Constellation's application were received.

The Staff filed its Report on October 27, 2003, concerning Constellation's fitness to provide competitive natural gas services. In its report, Staff summarized Constellation's proposal and evaluated its financial condition and technical fitness and found the Company to be technically and financially qualified. The Company filed comments on October 30, in response to the Staff Report supporting Staff's recommendations.

NOW UPON CONSIDERATION of the application and Staff's report, the Commission is of the opinion and finds that Constellation's request should be granted.

Accordingly, IT IS ORDERED THAT:

(1) Constellation shall be granted License No. G-18 for the provision of competitive natural gas services to commercial and industrial retail customers in the retail access program throughout the Commonwealth of Virginia.

(2) This license is not valid authority for the provision of any product or service not identified within the license itself.

(3) Failure of Constellation to comply with the Retail Access Rules, the provisions of this Order, other State Corporation Commission orders and rules, or other applicable state or federal laws may result in an enforcement action by the Commission including, without limitation, the revocation, suspension, or modification of the license granted herein, the refusal to renew such license, the imposition of appropriate fines and penalties, or such other additional actions as may be necessary to protect the public interest.

(4) This matter shall remain open pending the receipt of any reports required by the Retail Access Rules, as well as any subsequent amendments or modifications to the license granted herein.

**CASE NO. PUE-2001-00585
JANUARY 22, 2003**

APPLICATION OF
SALTVILLE GAS STORAGE COMPANY, L.L.C.

For a certificate of public convenience and necessity under the Utility Facilities Act

ORDER ISSUING CERTIFICATES

On August 6, 2002, the State Corporation Commission ("Commission") entered an order which, among other things, directed that, upon execution of appropriate Virginia Department of Transportation county road maps, and subject to the conditions set forth in Ordering Paragraph three (3), certificates of public convenience and necessity be issued to Saltville Gas Storage Company, L.L.C. ("Saltville", "LLC", or the "Company").

On December 13, 2002, the Staff of the Division of Energy Regulation ("Staff") filed with the Clerk of the Commission a Memorandum indicating that Staff's geotechnical expert had completed his review of Saltville's mechanical integrity testing of the caverns at the Storage Facility. A copy of Staff expert's final report was attached to said filing. Furthermore, Staff indicated it was of the opinion that Saltville had satisfied the materials integrity testing portion of the conditions specified in the Commission's August 6, 2002, Order Granting Certificate.

On December 19, 2002, Saltville filed its letter indicating that it has complied with all of the requirements imposed on the Company by either the Commission's August 6, 2002, Order Granting Certificate or October 7, 2002, Order For Clarification.

On December 20, 2002, Virginia Gas Pipeline Company ("VGPC") filed its letter indicating that it has complied with all of the requirements imposed on the Company by either the Commission's August 6, 2002, Order Granting Certificate or October 7, 2002, Order For Clarification.

Accordingly, IT IS ORDERED:

(1) That certificate of public convenience and necessity be issued to Saltville as follows:

Certificate No. GS-3.

(2) That amended certificate of public convenience and necessity be issued to VGPC as follows:

Certificate No. GS-2(a)

(3) That there being nothing further to be done herein, this case shall be dismissed and removed from the list of pending cases.

**CASE NO. PUE-2001-00587
OCTOBER 3, 2003**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

To Change Rates, Charges, Rules, and Regulations

Phase II

ORDER

On January 2, 2002, Columbia Gas of Virginia, Inc. ("Columbia" or "Company"), filed an application for approval of its proposed Retail Supply Choice Plan ("Choice Plan") pursuant to § 56-235.8 B of the Code of Virginia ("Code") and to change certain of the Company's rates, charges, rules and regulations of service. In addition to rates, charges, and terms and conditions for service pursuant to the Choice Plan, the application also included proposals the Commission determined not to be essential to retail access for residential and small commercial customers. These proposals included changes to Rate Schedule Transportation Service 1 and 2 ("TS-1/TS-2"), Rate Schedule Large Volume Transportation Service ("LVTS"), Rate Schedule Large Volume Economic Development Transportation Service ("LVEDTS"), Rate Schedule Large General Service ("LGS"), corresponding amendments to Service Agreements, a new Rate Schedule Transportation Service 3 and 4 ("TS-3/TS-4"), a new Rate Schedule Aggregation Service ("AS"), a new Industrial/Commercial Competitive Service Provider Coordination Agreement, and a Gas Cost Incentive Mechanism ("GCIM") proposal.

On February 7, 2002, the Commission issued an Order for Notice and for Filing Comments and Requests for a Hearing, which docketed the application and established a procedural schedule. On February 12, 2002, the Company moved for an extension of time for publishing notice and filing testimony. On February 14, 2002, the Commission issued an Order Revising Schedule, which granted the requested relief and modified the procedural schedule. The Orders of February 7 and 14, 2002, among other things, directed the Commission Staff ("Staff") to investigate the Company's proposed changes to rates, charges, rules, and regulations for transportation and other services, and to file an analysis and recommendations on or before April 17, 2002. On April 4, 2002, Staff filed a motion requesting that the proposals not essential to retail access for residential and small commercial customers be separately considered. On April 9, 2002, the Commission issued an Order on Motion suspending the filing date for Staff's report and allowing responses to Staff's motion.

On June 6, 2002, the Commission entered an Order bifurcating the proceeding into Phase I and Phase II. We explained that § 56-235.8 B of the Code required a decision on the Choice Plan by July 1, 2002, and determined that we would consider the Choice Plan in Phase I. The Commission assigned a Hearing Examiner to conduct Phase II, which would consider the proposed tariff revisions and proposed new services.

On July 12, 2002, following a settlement approved by the Commission in a separate case on related issues,¹ the Company filed a Motion for Leave to Withdraw and Reinstate Certain Rate Schedules. By ruling dated July 30, 2002, and in accordance with the Declaratory Judgment case, the Hearing Examiner granted the Company's motion to amend proposed Rate Schedule TS-1/TS-2 and Rate Schedule AS and to withdraw Rate Schedules TS-3/TS-4.

A hearing was convened on September 4, 2002, to receive testimony from public witnesses. On September 16, 2002, the Virginia Industrial Gas Users' Association ("VIGUA") filed a Motion to Dismiss the Proposed TS-1/TS-2 Schedule. Evidentiary hearings were held on September 26 and 27, 2002. At the hearing on September 26, 2002, Columbia and Stand Energy ("Stand") submitted an Offer of Settlement modifying the Company's proposals in this case and resolving all issues between Stand and the Company. On September 27, 2002, Columbia proposed "improvements" to the Offer of Settlement, which further modified the Company's proposed changes to rates, charges, rules, and regulations for transportation and other services.

On October 10, 2002, the Hearing Examiner heard oral argument on VIGUA's motion to dismiss and ruled that he would take the motion under advisement to be addressed in his report to the Commission. The evidentiary hearing was reconvened on November 6 and 8, 2002. Counsel appearing at the hearings were Stephen H. Watts, II, and Edward L. Flippen for the Company; Guy T. Tripp, III, and Renata M. Manzo for Stand; Louis R. Monacell for VIGUA; Anthony Gambardella for MeadWestvaco Corporation; C. Meade Browder, Jr., and Raymond L. Doggett, Jr., for the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel"); and Wayne N. Smith and Sherry H. Bridewell for Staff. Donald S. Wheeler appeared pro se. More than twenty public witnesses testified regarding numerous concerns with many of the Company's proposals. Post-hearing briefs were filed on January 30, 2003.

On March 13, 2003, the Company filed substitute tariff sheets for Rate Schedule TS-1/TS-2 and Rate Schedule AS. With these tariff revisions, implementation of the Company's proposals was delayed until November 1, 2003.

Hearing Examiner Howard P. Anderson, Jr., issued his report on May 16, 2003 ("Report"). The Examiner, among other things, denied VIGUA's motion to dismiss, summarized and analyzed the record, and made the following findings:

1. Daily Banking and Balancing should not be approved at this time;
2. The Company should offer bank volumes of 0% to 3% of the customer's annual volume, and the maximum and default bank volume should be 3% of a transportation customer's annual volume;
3. The \$0.35 excess bank tolerance fee existed prior to this case and should be continued;
4. The Company should have the authority to impose daily and seasonal Balancing Service Restrictions ("BSRs") and Nomination Restrictions ("NRs");

¹ Petition of Columbia Gas of Virginia, Inc., For Declaratory Judgment, Case No. PUE-2002-00070, 2002 S.C.C. Ann. Rep. 514 ("Declaratory Judgment case").

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

5. A daily tolerance band of 90% to 110% during periods that BSRs are in effect should be approved;
6. During periods that BSRs are in effect, customers should be able to access their banks to satisfy up to 10% of their daily consumption;
7. A customer with a zero or negative bank as a result of an NR should have a one-month grace period to build a positive bank;
8. The waiver provision applicable to penalties pertaining to BSRs should be reinstated and extended to the pools of customers in aggregation groups;
9. The Company should notify customers and agents at least one day in advance of imposing a BSR or NR;
10. Primary notification of BSRs and NRs should be made by means of the Company's Electronic Bulletin Board;
11. Mandatory secondary notification of BSRs and NRs should be made by means of email, fax, or phone call as elected by the customer or agent;
12. The customer or agent should be responsible for providing and maintaining accurate contact information with the Company, and the Company will have fulfilled its duty if it makes the required secondary notification using the information provided by the customer or agent;
13. The Company's proposed Rate Schedule AS – Aggregation Service should be approved;
14. The proposed aggregation service fee of \$0.02/Mcf is cost based, and therefore just and reasonable, and should be approved;
15. The Company's proposal to require financial assurance and a service agreement from agents that do not form aggregation groups should not be approved;
16. Aggregation Service Agreements should be approved as long as no financial assurance is required;
17. To the extent that it does not conflict with the findings made by the Examiner, the Offer of Settlement between the Company and Stand should be approved;
18. Rate Schedule DPPS – Demand Polling and Pulse Signal Service should be approved;
19. With regard to Rate Schedule DPPS, a one-time fee of \$120.00 for pulse signal service and a monthly fee of \$15.00 for demand polling service is appropriate and should be approved;
20. The Company's proposed Rate Schedule GPLS - Gas Parking and Lending Service should be approved on an experimental basis for a three-year period;
21. The Company should compile and maintain the requisite data required by Staff to monitor the Gas Parking and Lending Service;
22. The Company's proposed GCIM is not in the public interest and should be rejected;
23. Staff's proposed language regarding security deposits for large volume customers should be approved; and
24. The Company's proposal to close Limited Sales Service, Special Agency Service, and Natural Gas Vehicle Service rate schedules should be approved.

Comments on the Examiner's Report were filed by Columbia, VIGUA, Staff, Stand, Consumer Counsel, and Donald S. Wheeler.

NOW THE COMMISSION, having considered the record, the pleadings, the Hearing Examiner's Report, the comments thereon, and the applicable law, is of the opinion and finds as follows.

Daily Balancing, Bank Volumes, BSRs, and NRs

Phase II of this case primarily involves the ability of Columbia to manage its gas supply and the concomitant impact on transportation and firm service customers. The Company's proposals for daily banking and balancing, bank volumes, BSRs, and NRs are significantly interrelated and must be considered as a whole.

The Company has modified its proposals throughout this proceeding, such that the currently proposed tariffs have traveled a circuitous route. The Company did not file these proposals as part of a rate application. Rather, as discussed above, Columbia's changes to its transportation services for large customers originally were submitted as part of its Choice Plan for residential and small commercial customers. As a result, certain cost of service data associated with these proposals, and how such proposals relate to the Company's overall cost of service, are absent from this proceeding.

In addition, at least a portion of the Company's proposals constitutes a rate increase. For example, the Company's current daily banking and balancing proposal requires customers to deliver on a daily basis 80% to 120% of actual demand on that day and assesses daily balancing fees for certain failures to stay within the 80% to 120% band. Daily balancing previously was not limited to any specific daily imbalance. Thus, Columbia's proposal requires customers to pay more for the same service that they previously were receiving. That is, the Company is seeking to assess a new charge for a service that was included in a previously approved tariff. Columbia, however, has not submitted cost data necessary for us to approve a rate increase.

Columbia's BSR/NR proposal also represents a rate increase. This proposal permits the Company, for example, to issue a BSR such that all transportation customers are required to match their usage and deliveries within a daily tolerance band of 90% to 110%, and to limit all transportation customers' ability to bank excess deliveries when an NR is in effect. In addition, the Company proposes to issue BSRs/NRs for economic, as well as capacity or supply, reasons. As found by the Examiner, however, Columbia's previously approved tariff "did not specifically address BSRs or NRs."² The previously approved tariff also did not permit the proposed banking and balancing restrictions for economic reasons when there were no capacity limitations. Thus, the transportation service restrictions contemplated by the BSR/NR proposal represent a reduction in the level of banking and balancing service provided to transportation customers, while continuing to charge those customers the same basic rate.

The Company also has failed at this time to establish that its proposed changes to daily banking and balancing are just and reasonable. For example, the Company has not adequately studied the impact of these changes on its revenues, has not sufficiently shown the impact on the purchased gas adjustment ("PGA"), and has not established the effect on the Company's costs of providing service (such as on its storage costs for injections, withdrawals, and related transportation).

Furthermore, the Examiner explained that the daily balancing requirement should be rejected at this time, finding that "to approve such a dramatic change as daily balancing, the Company first must prove it can provide the necessary reliable technical and customer service support."³ We agree. Similarly, the Company has not established that it has the ability to provide the necessary technical and customer support attendant to BSRs and NRs at this time. We will not approve these tariff modifications until there is a record before us establishing that the Company has the ability to implement its proposals.

In addition, rejecting the Company's daily banking and balancing proposal, and finding that such proposal is significantly interrelated with the other transportation changes and that these proposed services need to be evaluated as a whole, also results in the rejection at this time of the bank volume, BSR, and NR proposals. Moreover, with respect to the revised bank volume service, Columbia has not shown that its \$0.35 per Mcf fee for excessive bank volumes remains reasonable in connection with the new banking and balancing proposals, including the proposed elimination of the 4% and 5% bank volume options.

The Company has not provided cost and revenue data associated with the bank volume services, an evaluation of the cost and revenue impact of modifying daily balancing and implementing its proposed BSRs and NRs, nor an analysis of how its new proposals relate to the Company's overall cost of service. In addition, the extent to which firm service customers and transportation customers pay Columbia for storage service is relevant to the reasonableness of the Company's proposals.⁴ The Company, however, does not provide the cost data or analyses necessary to examine this question.

The transportation schedules could result in both risks and benefits for firm service and transportation customers. For example, certain banking and balancing practices of transportation customers may shift risks to firm sales customers without compensation. In other instances, firm sales customers may benefit from banking and balancing activities by transportation customers.

We also recognize that, compared to the recent price and volatility of wellhead gas, the average wellhead price of gas was relatively low and stable when the Company's previous banking and balancing procedures were approved in Case No. PUE-1995-00033. With additional data and analyses, Columbia may establish that modifications to its transportation schedules are justified. The Company may, in fact, need to implement tighter banking, balancing, and other transportation requirements to maintain adequate operational control of its system. Columbia, however, has not presented sufficient evidence here to support its requested changes. Further, such proposals cannot be adequately considered outside of a proceeding where all rate case information is provided and rates can be adjusted as necessary considering the individual rates and costs as well as aggregate revenues and costs.

In sum, we cannot conclude, based on this record, that the Company's proposed transportation schedules, including daily banking and balancing, revised bank volumes, BSRs, and NRs, are just and reasonable. In addition, based on the interrelated nature of these services, we find that we need cost data that is absent in this proceeding in order to evaluate whether the new proposals, taken as a whole, are just and reasonable. We cannot adequately assess, based on the case currently before us, the impact of the various new tariffs on each other and the benefits and costs to customers and to the Company's operation as a whole.

Based on the current record, however, we find that modifications to Columbia's transportation schedules should be considered further. The Company is directed to file, within 120 days from the date of this Order, proposed transportation tariffs with supporting documentation as discussed herein.⁵ Columbia and the participants to this case are encouraged to discuss this matter prior to such filing, with the goal of reaching agreement on what is filed with the Commission.⁶ The Staff is requested to coordinate the discussions in this regard.

Having rejected at this time the Company's proposed new transportation schedules, Columbia's previously approved transportation tariffs in effect on June 30, 2002, should be implemented, except as otherwise provided herein, for service rendered on and after the date of this Order. We note that these

² Report at 29.

³ Report at 26.

⁴ For example, in recommending approval of Columbia's proposal to eliminate the 4% and 5% bank volume options, the Examiner found as follows: "The Company's transportation customers are, in effect, competing with the Company's firm customers for storage and capacity upstream of Columbia's system. Transportation customers neither contract for, nor pay for storage capacity." Report at 27. VIGUA asserts, on the other hand, that transportation customers currently pay a portion of the Company's storage costs. It is correct that transportation customers do not separately contract with the Company for storage. There is not sufficient evidence in this case, however, to establish the extent to which the prior transportation tariffs and banking and balancing charges recover storage costs from transportation customers.

⁵ If the Company does not intend to propose new transportation schedules, it shall file an appropriate pleading requesting a waiver of this directive.

⁶ Other interested persons may, of course, participate in such discussions. While Columbia's new filing will be noticed for public comment and participation, it will be helpful if interested persons can find areas of agreement prior to such filing.

previously approved tariffs provide the Company with the authority to curtail certain services and to take protective actions in the event of supply or capacity problems.

Finally, in accordance with the foregoing, Columbia is directed to recalculate forthwith, using the rates approved in this Order, each bill it rendered to its customers that used in whole or in part the interim rates being replaced by the rates made effective herein. In each instance where the application of the rates being established by this Order yields a reduced bill to the customer, the Company is directed to refund with interest the difference to its customers as directed herein.

Rate Schedule AS – Aggregation Service

The Hearing Examiner approved in part the Company's proposed Rate Schedule AS – Aggregation Service. Specifically, the Examiner rejected Columbia's additional financial assurance provisions and approved the proposed \$0.02 per Mcf aggregation service fee, finding that the Company submitted a cost analysis supporting such fee. The Examiner explained that Rate Schedule AS is a new optional service available as a companion to Rate Schedule TS 1/TS-2. Consistent with our discussion above, we find that Rate Schedule AS, as a companion to Rate Schedule TS-1/TS-2, should be reviewed in relation to the proposed transportation changes as a whole. Thus, as with Rate Schedule TS-1/TS-2, Rate Schedule AS is rejected at this time.

Rate Schedule DPPS - Demand Polling and Pulse Signal Service

The Company proposes to provide transportation customers or their agents access to daily demand measurement information pursuant to the terms and conditions of proposed Rate Schedule DPPS – Demand Polling and Pulse Signal Service. The Examiner recommended approval of this tariff. The Examiner also found that the Company provided adequate justification for a one-time fee of \$120.00 for pulse signal service and a monthly fee of \$15.00 for demand polling service. The Examiner, however, determined that the "Company's ability to provide this service on a reliable and accurate basis again comes into question."⁷ In our discussion above on banking and balancing services, we explained that we will not approve a tariff change until there is a record before us establishing that the Company has the ability to implement its proposal. Likewise, we will not approve Rate Schedule DPPS at this time.

Gas Cost Incentive Mechanism

Columbia states that its proposed GCIM would change its traditional PGA to a more competitive market model, while maintaining the advantages of a regulated company serving the role of a gas supplier of last resort. The Company asserts that the GCIM will foster innovative portfolio management with the goals of: (1) acquiring gas supplies for Columbia's PGA customers at prices that are below recognized purchasing benchmarks; and (2) developing skills and products related to upstream markets. Columbia also explains that the Company, Staff, and Consumer Counsel have agreed to a revised GCIM to be effective from July 1, 2002, until June 30, 2005.⁸

The Hearing Examiner found that the GCIM should be rejected. The Examiner explained that this mechanism represents a major change in the way gas costs are allocated and, for the Company to improve its gas procurement performance, it would have to engage in off-system sales, options, and hedging. The Examiner expressed concern about inter-company sales between different NiSource (which owns Columbia and other local distribution companies) companies to create artificial profits. The Examiner stated that off-system sales currently provide a direct benefit to the PGA customers as a means of off-setting commodity costs. Under the GCIM, the Company would share in the benefits of off-system sales, thereby providing a new source of revenue for Columbia.

In addition, and most troubling to the Examiner, ratepayers would be responsible for at least part of the cost of hedging and other risk-taking actions by the Company: "The entire purpose of the GCIM is to give the Company incentives to engage in taking risks with ratepayers bearing at least part of the cost if unsuccessful."⁹ The Examiner also found that implementation of the GCIM is so dramatic a change to the PGA that it should not be approved. We agree that the Company has not established that the proposed GCIM is just and reasonable.

Rate Schedule GPLS – Gas Parking and Lending Service

The Company's proposed Rate Schedule GPLS – Gas Parking and Lending Service is an optional load management service generally available to competitive service providers that provide gas commodity sales to residential and small commercial retail choice customers served off the Columbia distribution system and to large volume transportation customers and their marketers. The Hearing Examiner explained that this tariff would allow eligible customers to store (i.e., park) or borrow (i.e., loan) gas from the Company on a short-term basis, subject to capacity availability.

The Hearing Examiner recommended approval of this rate schedule on a three-year experimental basis. The Company, however, states that absent the GCIM, Rate Schedule GPLS would not provide an incentive for Columbia to pursue actively opportunities for Gas Parking and Lending Service during the experiment. This is because the Company currently proposes that revenues from Gas Parking and Lending Service would flow through the GCIM sharing mechanism of the PGA. Thus, if the Commission does not approve the GCIM, the Company requests that it be allowed to withdraw its proposal for Rate Schedule GPLS to redesign and refile it as an independent load management service in the future.

⁷ Report at 33.

⁸ The Company states that Staff and Consumer Counsel agreed to a revised GCIM at the hearing. The Company complains, however, that Staff's post-hearing brief recommends against the GCIM. We have reviewed the pre-filed testimony and the hearing transcript and, taken as a whole, find that the record on this point is less than clear. Specifically, it is unclear whether Staff and Consumer Counsel agreed to support the revised GCIM, or whether these parties agreed to support the revised GCIM in the event that the Commission did not reject the GCIM proposal. For example, in comments on the Examiner's Report, Consumer Counsel states that "[we] did not advocate that the GCIM be adopted, and thus, we do not object to the recommendation made by Hearing Examiner Anderson" to reject the GCIM. Consumer Counsel then asserts "that the safeguards [in the revised GCIM] are necessary to protect the interests of consumers in the event that the Commission allows [Columbia] to implement its GCIM." Similarly, it is unclear whether Staff witness Henderson supported the revised GCIM, or whether she agreed with the revisions to the GCIM in the event that the Commission did not reject its implementation. We have found it unnecessary to rely on the contentions in Staff's post-hearing brief regarding this tariff proposal.

⁹ Report at 41.

As discussed above, we have rejected the proposed GCIM. Accordingly, we will permit the Company to withdraw its currently proposed Rate Schedule GPLS.

Rate Schedules LSS, SAS, and NGVS

The Hearing Examiner recommended that the Commission approve the Company's request to close Rate Schedules LSS – Limited Sales Service, SAS – Special Agency Service, and NGVS – Natural Gas Vehicle Service. The Examiner found that these rate schedules have no customers, that comparable service is available under other rate schedules, and that eliminating these schedules does not impact rates. We adopt the Examiner's recommendation in this regard and permit the Company to close Rate Schedules LSS, SAS, and NGVS.

Security Deposits

The Company proposed tariff language for Section 7.1(c) of its General Terms and Conditions regarding the collection of security deposits from large volume customers prior to providing sales or transportation service. The Hearing Examiner recommended that the tariff also include specified language for the return of, and for the payment of interest on, such deposits. We adopt the Examiner's recommendation in this regard.

Waiver of Penalties

On July 28, 2003, Columbia filed an application requesting the Commission to grant a waiver of certain penalties incurred by transportation customers under the currently effective Rate Schedule TS-1/TS-2, which was filed on October 2, 2002, and became effective on an interim basis and subject to refund on November 1, 2002. Columbia asks the Commission to allow it to waive penalties associated with BSRs and interruptions that took place during the 2002-2003 winter season. On August 21, 2003, Mr. Wheeler filed a response, and on September 30, 2003, VIGUA filed a response. Based on the instant Order, which denies the aforementioned penalties and requires refunds, the Company's request for waiver is deemed moot.

Accordingly, IT IS ORDERED THAT:

- (1) The Company's proposed Gas Cost Incentive Mechanism is hereby rejected for the reasons set forth herein.
- (2) Consistent with the findings made herein, the Company may withdraw Rate Schedule GPLS – Gas Parking and Lending Service.
- (3) The Company may close Rate Schedules LSS – Limited Sales Service, SAS – Special Agency Service, and NGVS – Natural Gas Vehicle Service.
- (4) The Company's proposed tariff language for Section 7.1(c) of its General Terms and Conditions regarding the collection of security deposits from large volume customers is hereby approved, as modified by the Hearing Examiner.
- (5) Consistent with the findings made herein, the Company's proposed revisions to Rate Schedule TS-1/TS-2, together with the revisions to the terms and conditions of service associated with these schedules, are hereby rejected.
- (6) The Company's proposed Rate Schedule AS – Aggregation Service is hereby rejected for the reasons set forth above.
- (7) Proposed Rate Schedule DPPS – Demand Polling and Pulse Signal Service is hereby rejected for the reasons set forth above.
- (8) Consistent with the findings made herein, the Company shall forthwith file with the Commission's Division of Energy Regulation revised tariffs, effective for service rendered on and after the date of this Order.
- (9) Columbia is directed to recalculate, forthwith, using the rates being established by this Order, each bill it rendered that used in whole or in part the interim rates, charges, fees, penalties, and proposals being replaced by the rates, charges, fees, penalties, and provisions of terms and conditions of service established by this Order. In each instance where application of the rates, charges, fees, penalties, and provisions of terms and conditions of service established by this Order yields a reduced bill to the customer, Columbia shall refund with interest as directed below, the difference.
- (10) Interest upon the ordered refunds shall be computed from the date payment of each monthly bill was due during the interim period until the date refunds are made, at an average prime rate for each calendar quarter. The applicable 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 established in the Federal Reserve Bulletin, or in the Federal Reserve's Selected Interest Rates ("Selected Interest Rates") (Statistical Release G.13), for the three months of the preceding quarter.
- (11) The interest required to be paid herein shall be compounded quarterly.
- (12) The refunds ordered above may be accomplished by credit to the appropriate customer's account for current customers (each refund category shown separately on each customer's bill). Refunds to former customers shall be made by check to the last known address of such customers when the refund amount is \$1.00 or more. Columbia may offset the credit or refund to the extent no dispute exists regarding the outstanding balances for 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 of these balances. The Company may retain refunds owed to former customers when the refund amount is less than \$1.00. However, Columbia shall prepare and maintain a list detailing each of the former accounts for which refunds are less than \$1.00, and in the event such former customers contact Columbia 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.
- (13) On or before December 1, 2003, Columbia 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 itemizing the cost of the refund and accounts charged. Such itemization of costs shall include, inter alia, computer costs, personnel-hours, associated salaries, and costs for verifying and correcting the refunds directed in this Order.

(14) Columbia shall bear all costs associated with the refunds directed herein.

(15) The Company is directed to file, within 120 days from the date of this Order, proposed transportation tariffs with supporting documentation as identified herein, including certification as to whether the Company has the technical means to implement the proposed changes to its transportation tariffs.

(16) The Staff is requested to coordinate the discussions among the Company and interested persons as discussed herein.

(17) Based on the findings in this Order, Columbia's request for a waiver of the penalty language of Rate Schedule TS-1/TS-2 for the 2002-2003 winter is now moot.

(18) This matter is dismissed.

**CASE NO. PUE-2001-00587
OCTOBER 22, 2003**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

To Change Rates, Charges, Rules, and Regulations

Phase II

ORDER ON RECONSIDERATION

On October 3, 2003, we entered an Order, wherein among other things, we directed Columbia Gas of Virginia ("Columbia" or "Company"), pursuant to ordering paragraph 15 of the Order, to file, within 120 days from the final date of the Order, proposed transportation tariffs with supporting documentation as identified in the Order. The 120-day period ends on January 31, 2004.

On October 20, 2003, the Company, by counsel, filed a Petition for Reconsideration. In its Petition for Reconsideration, the Company requested this Commission to revise Ordering Paragraph (15) of our Order dated October 3, 2003, in order to provide the Company with the opportunity to use its Annual Information Filing, which must be filed on or before April 29, 2004, in the required filing of proposed tariffs. The Company specifically requests that the "120 days" in ordering paragraph 15 of the Order be revised to "209 days."

NOW THE COMMISSION, having considered Company's Petition for Reconsideration, is of the opinion and finds that:

(1) The Company's request for reconsideration of our Order dated October 3, 2003, should be granted for the purpose of amending ordering paragraph (15) as provided herein.

(2) The Company's request to postpone the deadline for filing the required tariffs and supporting documentation from January 31, 2004, to April 29, 2004, in order to allow the Company to utilize information that it is required to provide in its Annual Informational Filing in the preparation of such filings, is reasonable and should be granted.

(3) The Company is admonished to include with the tariffs and supporting documentation filed in this matter all relevant information relating to the schedules that are filed with respect to the tariffs, in order to avoid the likelihood that Commission Staff and interested parties will be required to request further information through the discovery process, so that the Commission may conclude its consideration of these tariffs in advance of the commencement of the 2004-2005 heating season. As noted in footnote 6, at page 13 of our October 3, 2003, Order, we anticipate providing an opportunity for further public notice and participation relative to this new filing.

Accordingly, IT IS ORDERED THAT:

(1) Ordering Paragraph (15) of our October 3, 2003, Order is amended to read:

(15) The Company is directed to file, not later than April 29, 2004, proposed transportation tariffs with supporting documentation as identified within the October 3, 2003, Order, including certification as to whether the Company has the technical means to implement the proposed changes to its transportation tariffs.

(2) With the exception of the amendments made herein, the findings and Ordering Paragraphs set out in the Order dated October 3, 2003, shall remain in effect.

(3) This matter is dismissed.

**CASE NO. PUE-2001-00587
OCTOBER 23, 2003**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

To Change Rates, Charges, Rules, and Regulations

Phase II

ORDER GRANTING RECONSIDERATION

On January 2, 2002, Columbia Gas of Virginia, Inc. ("Columbia" or "Company"), filed an application for approval of its proposed Retail Supply Choice Plan ("Choice Plan") pursuant to § 56-235.8 B of the Code of Virginia ("Code") and to change certain of the Company's rates, charges, rules and regulations of service. In addition to rates, charges, and terms and conditions for service pursuant to the Choice Plan, the application also included proposals the Commission determined not to be essential to retail access for residential and small commercial customers. These proposals included changes to Rate Schedule Transportation Service 1 and 2 ("TS-1/TS-2"), Rate Schedule Large Volume Transportation Service, Rate Schedule Large Volume Economic Development Transportation Service, Rate Schedule Large General Service, corresponding amendments to Service Agreements, a new Rate Schedule Transportation Service 3 and 4, a new Rate Schedule AS - Aggregation Service, a new Industrial/Commercial Competitive Service Provider Coordination Agreement, and a Gas Cost Incentive Mechanism proposal.

On June 6, 2002, the Commission entered an Order bifurcating the proceeding into Phase I and Phase II. We explained that § 56-235.8 B of the Code required a decision on the Choice Plan by July 1, 2002, and determined that we would consider the Choice Plan in Phase I. The Commission assigned a Hearing Examiner to conduct Phase II, which would consider the proposed tariff revisions and proposed new services. Hearing Examiner Howard P. Anderson, Jr., issued his report on May 16, 2003.

On October 3, 2003, the Commission issued an Order that, among other things, rejected the Company's proposed: (1) revisions to Rate Schedule TS-1/TS-2, together with the revisions to the terms and conditions of service associated with these schedules; (2) Rate Schedule AS – Aggregation Service; and (3) Rate Schedule DPPS – Demand Polling and Pulse Signal Service. The Order also found that, based on the record in this case, modifications to Columbia's transportation schedules should be considered further and directed the Company to file, within 120 days from the date of the Order, proposed transportation tariffs with supporting documentation as identified in the Order, including certification as to whether the Company has the technical means to implement the proposed changes to its transportation tariffs.

On October 21, 2003, Stand Energy Corporation ("Stand") filed a Petition for Reconsideration ("Petition"). Stand requests reconsideration of Ordering Paragraphs (6) and (7) of the October 3, 2003, Order, which rejected Rate Schedule AS – Aggregation Service and Rate Schedule DPPS – Demand Polling and Pulse Signal Service, respectively. Stand asks that the Commission provide for the continuation, subject to refund, of Aggregation Service and Demand Polling and Pulse Signal Service until such time as the Commission makes a final determination with respect to transportation tariffs to be filed by Columbia in accordance with the October 3, 2003, Order. Stand states that Rate Schedules AS and DPPS have been in effect, subject to refund, since November 1, 2002.

Stand asserts that the absence of Aggregation Service, which is an optional service, during the coming winter will be disadvantageous to transportation customers and likely will result in their incurring unnecessary gas acquisition costs, as well as possible imbalance penalties assessed by Columbia. Stand also contends that Aggregation Service will not disadvantage firm customers and could make additional storage capacity available for firm customers.

Stand states that Demand Polling and Pulse Signal Service provides important information in enabling transportation customers and their marketers to monitor customer usage and to manage gas supply effectively. Stand asserts that, without such information, customers and their marketers will be unable to match gas deliveries with gas usage.

NOW THE COMMISSION, having considered the pleadings, the record, and the applicable law, is of the opinion and finds as follows. We grant the Petition for purposes of continuing our jurisdiction over this matter, considering such Petition, and allowing other parties and Staff to respond to the Petition.

The other parties to this case and Commission Staff may file comments addressing the matters raised in the Petition on or before November 7, 2003. Finally, Ordering Paragraphs (6) and (7) of the October 3, 2003, Order, are hereby suspended pending the Commission's reconsideration. All of the other directives set out in the October 3, 2003, Order for which no reconsideration has been granted, remain in effect.

Accordingly, IT IS ORDERED THAT:

- (1) The Petition for Reconsideration filed by Stand Energy Corporation is hereby granted for purposes of continuing our jurisdiction over this proceeding.
- (2) Ordering Paragraphs (6) and (7) of the October 3, 2003, Order, are hereby suspended pending the Commission's reconsideration. All of the other findings and directives set out in the October 3, 2003, Order for which no reconsideration has been granted, remain in effect.
- (3) On or before November 7, 2003, any other party and Commission Staff may file comments addressing the matters raised in the Petition for Reconsideration.
- (4) This matter is continued pending further order of the Commission.

**CASE NO. PUE-2001-00587
NOVEMBER 24, 2003**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

To Change Rates, Charges, Rules, and Regulations

PHASE II

ORDER ON RECONSIDERATION

On January 2, 2002, Columbia Gas of Virginia, Inc. ("Columbia" or "Company"), filed an application for approval of its proposed Retail Supply Choice Plan ("Choice Plan") pursuant to § 56-235.8 B of the Code of Virginia ("Code") and to change certain of the Company's rates, charges, rules and regulations of service. In addition to rates, charges, and terms and conditions for service pursuant to the Choice Plan, the application also included proposals the Commission determined not to be essential to retail access for residential and small commercial customers. These proposals included changes to Rate Schedule Transportation Service 1 and 2 ("TS-1/TS-2"), Rate Schedule Large Volume Transportation Service, Rate Schedule Large Volume Economic Development Transportation Service, Rate Schedule Large General Service, corresponding amendments to Service Agreements, a new Rate Schedule Transportation Service 3 and 4, a new Rate Schedule AS - Aggregation Service, a new Industrial/Commercial Competitive Service Provider Coordination Agreement, and a Gas Cost Incentive Mechanism proposal.

On June 6, 2002, the Commission entered an Order bifurcating the proceeding into Phase I and Phase II. We explained that § 56-235.8 B of the Code required a decision on the Choice Plan by July 1, 2002, and determined that we would consider the Choice Plan in Phase I. The Commission assigned a Hearing Examiner to conduct Phase II, which would consider the proposed tariff revisions and proposed new services. Hearing Examiner Howard P. Anderson, Jr., issued his report on May 16, 2003.

On October 3, 2003, the Commission issued an Order that, among other things, rejected the Company's proposed: (1) revisions to Rate Schedule TS-1/TS-2, together with the revisions to the terms and conditions of service associated with these schedules; (2) Rate Schedule AS – Aggregation Service; and (3) Rate Schedule DPPS – Demand Polling and Pulse Signal Service. The Order also found that, based on the record in this case, modifications to Columbia's transportation schedules should be considered further and directed the Company to file, within 120 days from the date of the Order, proposed transportation tariffs with supporting documentation as identified in the Order, including certification as to whether the Company has the technical means to implement the proposed changes to its transportation tariffs.

On October 21, 2003, Stand Energy Corporation ("Stand") filed a Petition for Reconsideration ("Petition"). Stand requests reconsideration of Ordering Paragraphs (6) and (7) of the October 3, 2003, Order, which rejected Rate Schedule AS – Aggregation Service and Rate Schedule DPPS – Demand Polling and Pulse Signal Service, respectively. Stand asks that the Commission provide for the continuation, subject to refund, of Aggregation Service and Demand Polling and Pulse Signal Service until such time as the Commission makes a final determination with respect to transportation tariffs to be filed by Columbia in accordance with the October 3, 2003, Order. Stand states that Rate Schedules AS and DPPS have been in effect, subject to refund, since November 1, 2002.

Stand asserts that the absence of Aggregation Service, which is an optional service, during the coming winter will be disadvantageous to transportation customers and likely will result in their incurring unnecessary gas acquisition costs, as well as possible imbalance penalties assessed by Columbia. Stand also contends that Aggregation Service will not disadvantage firm customers and could make additional storage capacity available for firm customers.

Stand states that Demand Polling and Pulse Signal Service provides important information in enabling transportation customers and their marketers to monitor customer usage and to manage gas supply effectively. Stand asserts that, without such information, customers and their marketers will be unable to match gas deliveries with gas usage.

On October 23, 2003, the Commission issued an Order granting the Petition for purposes of continuing our jurisdiction over this matter, considering the Petition, allowing other parties and Staff to respond to the Petition, and suspending Ordering Paragraphs (6) and (7) of the October 3, 2003, Order pending the Commission's reconsideration.

On November 5, 2003, Donald S. Wheeler filed comments on the Petition. Mr. Wheeler asserts "[i]f the Commission allows for the continuation of Rate Schedules AS and DPPS, then the Commission should also require Columbia to honor its commitment to perform Daily Imbalance Trading beginning November 1, 2003." Daily Imbalance Trading permits Columbia's customers and suppliers to trade daily imbalances before Columbia levies any penalties. Mr. Wheeler states that the majority of Columbia's transportation customers are not participating in Aggregation Service, and that Columbia must allow these customers and their suppliers additional flexibility through Daily Imbalance Trading to avoid onerous penalties.

On November 5, 2003, the Virginia Industrial Gas Users' Association ("VIGUA") filed a response to the Petition. VIGUA states that it takes no position on whether the Commission should change and reverse its prior ruling on Rate Schedules AS and DPPS. VIGUA, however, offers the following comments in the event the Petition is granted: (1) the rates for such services should be on an interim basis, subject to refund, and without a finding of cost justification; and (2) the Commission should find, consistent with recent Commission precedent,¹ that Columbia's cost justification for Rate Schedules AS and DPPS is procedurally deficient.

On November 7, 2003, Columbia filed comments on the Petition ("Comments"). The Company supports approval of Rate Schedule AS, subject to certain modifications: (1) remove references to provisions contained in proposed Rate Schedule TS-1/TS-2, which has been rejected by the Commission; (2) eliminate financial assurance requirements as recommended by the Hearing Examiner; (3) entitle Aggregation Nomination Groups to elect up to a

¹ Application of Virginia-American Water Company for a general increase in rates, Case No. PUE-2002-00375, Order on Hearing Examiner's Report (Sep. 3, 2003) ("Virginia-American").

maximum bank tolerance of 5%, consistent with the Commission's October 3, 2003, Order; and (4) implement comparable conforming modifications to the Aggregation Service Service Agreement.

Columbia asserts, however, that it would not be appropriate for the Commission to approve Rate Schedule AS on an interim basis, subject to refund. Columbia contends that Rate Schedule AS will provide a new, incremental service at an entirely new rate of \$0.02 per Mcf, which was found by the Hearing Examiner to be just and reasonable based on cost data provided by the Company. The Company also argues that VIGUA's reliance on Virginia-American is misplaced.

In addition, Columbia responds to Stand's request for approval of Rate Schedule DPPS. In lieu of such approval, Columbia proposes to continue to afford access to pulse signals in the same manner as contemplated in the Offer of Settlement adopted by the Commission in our August 26, 2002, Final Order in Petition of Columbia Gas of Virginia, Inc., for a Declaratory Judgment, Case No. PUE-2002-00070 ("Declaratory Judgment Case"). Columbia asks the Commission to confirm continuation of this commitment as an appropriate resolution of Stand's request.

The Company opposes Mr. Wheeler's request for the Commission to require Columbia to perform Daily Imbalance Trading. Columbia states that: (1) it has no commitment to provide such service, contrary to Mr. Wheeler's claim; (2) the Commission's October 3, 2003, Order rejected all of Columbia's transportation proposals; (3) Mr. Wheeler did not file a petition for reconsideration; and (4) Mr. Wheeler is precluded by Rule 220 of the Commission's Rules of Practice and Procedure from obtaining the relief he seeks.

Columbia also explains that the Commission's previous suspension of Ordering Paragraphs (6) and (7) of the October 3, 2003, Order had the effect of suspending Columbia's obligation to make refunds of fees and charges specified in Rate Schedule AS. In the event the Commission denies Stand's Petition, the Company requests the Commission to extend, until sixty (60) days from the date of issuance of an order on the Petition, the time for Columbia to complete refunds of fees and charges under Rate Schedule AS and for Columbia to file a Refund Report with respect to those fees and charges.

Finally, Columbia explains that it is authorized by Stand to state that Stand supports the Company's Comments and that Stand requests the Commission to grant the relief requested by Columbia in its Comments.

NOW THE COMMISSION, having considered the pleadings, the record, and the applicable law, is of the opinion and finds as follows. We grant the Petition as provided below.

We approve a modified Rate Schedule AS, which shall not remain a companion to previously proposed Rate Schedule TS-1/TS-2. Accordingly, we adopt Rate Schedule AS with the following changes as requested by Columbia: (1) remove references to provisions contained in proposed Rate Schedule TS-1/TS-2, which has been rejected by the Commission; (2) eliminate financial assurance requirements as recommended by the Hearing Examiner; (3) entitle Aggregation Nomination Groups to elect up to a maximum bank tolerance of 5%, consistent with the Commission's October 3, 2003, Order; and (4) implement comparable conforming modifications to the Aggregation Service Service Agreement.

Rate Schedule AS, as modified herein, will remain effective on an interim basis, subject to refund. The Company has explained that this is a new, incremental service at an entirely new rate. As found in our October 3, 2003, Order, Columbia's proposed transportation schedules, including Rate Schedule AS, must be evaluated as whole. We cannot adequately assess, based on the case currently before us, the impact of Aggregation Service on other tariffs, on the Company's operation as a whole, and on the Company's aggregate revenues and costs.²

As requested by Columbia and supported by Stand, we direct Columbia to continue its commitment to afford access to pulse signals as contemplated in the Offer of Settlement adopted by the Commission in the Declaratory Judgment Case. Finally, consistent with our October 3, 2003, Order, we do not adopt Daily Imbalance Trading as part of this proceeding.

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) Stand's Petition for Reconsideration is granted as provided for in this Order.
- (2) Ordering Paragraph (6) of the October 3, 2003, Order is vacated.
- (3) Ordering Paragraph (7) of the October 3, 2003, Order is no longer suspended.
- (4) Proposed Rate Schedule AS – Aggregation Service shall remain in effect on an interim basis, subject to refund, with the following modifications: (1) remove references to provisions contained in proposed Rate Schedule TS-1/TS-2, which has been rejected by the Commission; (2) eliminate financial assurance requirements as recommended by the Hearing Examiner; (3) entitle Aggregation Nomination Groups to elect up to a maximum bank tolerance of 5%, consistent with the Commission's October 3, 2003, Order; and (4) implement comparable conforming modifications to the Aggregation Service Service Agreement.
- (5) The Company shall continue its commitment to afford access to pulse signals in the same manner as contemplated in the Offer of Settlement adopted by the Commission in our August 26, 2002, Final Order in Petition of Columbia Gas of Virginia, Inc., for a Declaratory Judgment, Case No. PUE-2002-00070.
- (6) Daily Imbalance Trading is not adopted in this proceeding.

² However, we reject VIGUA's assertion that Columbia's cost justification for Rate Schedule AS is deficient under Virginia-American. The instant proceeding is fundamentally different from the rate increase request in Virginia-American. For example, in this case Rate Schedule AS is an optional service, is desired by customers, is proposed by the Company, and is subject to refund. The principles stated in Virginia-American remain unaltered by this case.

- (7) Columbia shall file Rate Schedule AS, revised as required herein, within 30 days from the date of this Order.
- (8) This matter is dismissed.

**CASE NO. PUE-2001-00663
JANUARY 21, 2003**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY D/B/A DOMINION VIRGINIA POWER

For a certificate of public convenience and necessity for facilities in Fluvanna County: Two parallel 500 kV transmission lines to provide service to Tenaska Virginia Partners, L.P.'s electric generating facility

ORDER GRANTING AMENDED CERTIFICATE

On November 29, 2001, as revised on December 4, 2001, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion" or "Company") filed an application ("Application") with the State Corporation Commission ("Commission") for approval and certification of electric facilities in Fluvanna County. Dominion proposes to construct and operate two parallel 500 kV transmission lines, extending the length of approximately 0.91 mile, to provide service to a new 900 MW natural gas-fired combined-cycle power plant to be constructed by Tenaska Virginia Partners, L.P. ("Tenaska"), in Fluvanna County.¹ Approximately 0.76 mile of the right-of-way needed to construct both transmission lines is on property owned by Tenaska, and the remaining 0.15 mile is on private property. Dominion proposes to cut its existing Dooms-Elmont 500 kV transmission line and loop new lines in and out of a new switching station as the most practical and least cost option for interconnecting the Tenaska facility.

On March 22, 2002, the Commission issued an Order for Notice and Hearing docketing this case, directing the Company to provide public notice of its Application, establishing a procedural schedule, setting hearings on this matter, directing Commission Staff ("Staff") to investigate the Application, and appointing a Hearing Examiner to conduct further proceedings.

On June 3, 2002, public hearings were convened in Palmyra to receive public witness testimony. Rebecca W. Hartz, Esquire, appeared on behalf of Staff, and M. Renae Carter, Esquire, appeared for the Company. No public witnesses offered comment at the hearing.

On June 7, 2002, Staff filed a report on the Application. Staff also attached to its report a coordinated review of the Application prepared by the Department of Environmental Quality ("DEQ") dated May 21, 2002, which contained the DEQ's recommendations, for the Commission's consideration in issuing a certificate, of environmental mitigation measures to be taken by Dominion ("DEQ Recommendations"). Staff recommended that the Commission approve the Application, and that the DEQ Recommendations be required as conditions of the certificate. Dominion filed rebuttal testimony on June 17, 2002.

On June 27, 2002, a public hearing was convened in Richmond. M. Renae Carter, Esquire, James C. Dimitri, Esquire, and Jill C. Hayek, Esquire, appeared for the Company. Rebecca W. Hartz, Esquire, appeared on behalf of Staff. No public witnesses offered comment at the hearing.

On November 5, 2002, Chief Hearing Examiner Deborah V. Ellenberg entered a Report summarizing the record and analyzing the evidence and issues in this proceeding. The Examiner recommended that the Commission grant Dominion an amended certificate of public convenience and necessity for the Dooms-Elmont transmission line, and made the following findings:

- (1) The proposed transmission lines are necessary to interconnect the approved Tenaska facility to Dominion's transmission system;
- (2) The proposed lines will have no adverse impact on system reliability, and may increase the reliability of the Dooms-Elmont line on a per-mile basis;
- (3) The proposed route will reasonably minimize adverse impacts on the scenic assets, historic districts, and the environment of the area concerned;
- (4) The proposed route minimizes acquisition of additional right-of-way;
- (5) The proposed transmission lines will have no adverse impact on economic development in Fluvanna County;
- (6) The Company should be required to comply with the DEQ Recommendations; and
- (7) The proposed project is in the public convenience and necessity and therefore should be approved.

On November 13, 2002, the Company submitted a response to the Report. The Company supported the findings and recommendations of the Report, with a clarification and requested modification. The Company explained that the average span between towers, based on the design presented at the hearing, was 1100 feet for the lines constructed between the existing 500 kV line and the Company's switching station. For the lines between the switching station and the Tenaska facility, the approximate average span was estimated to be 750 feet. The Company stated, however, that the final design likely will yield average span lengths of approximately 750 feet for the entire length of the line, and that the average height of the structures will be approximately 100 feet, which is lower than the design presented at the hearing.

¹ The Tenaska facility was approved by a majority of the Commission on April 19, 2002. Application of Tenaska Virginia Partners, L.P., Case No. PUE-2001-00039, Final Order (April 19, 2002).

In its November 13, 2002, response, the Company also noted certain developments that have taken place since the hearing with respect to environmental issues raised in this case. Dominion stated, among other things, that environmental site assessments have been prepared by Burgess and Niple for the entire Tenaska property. Dominion further asserted that the assessments have been discussed with Mr. Thomas Modena of the DEQ Office of Remedial Programs, who advised the Company that additional hazardous waste studies will not be required. Thus, the Company requested the Commission to recognize that the recommendation by the DEQ's Waste Program's Division regarding an environmental site assessment has been satisfied based on the availability of the assessments prepared by Burgess and Niple.

On December 9, 2002, Staff filed a reply to the Company's response of November 13, 2002. The reply stated that Staff has no concern with the final design of the transmission line as set forth in the Company's response, as long as the conductor clearance requirements and all other applicable requirements of the National Electrical Safety Code ("NESC") continue to be met. Staff also attached a December 3, 2002, letter from the DEQ replying to the Company's explanation of the final design of the line and the Company's November 13, 2002, response. The DEQ explained in such letter that it appears, under the final design, that the maximum number of transmission towers would increase by one. The DEQ also noted that it does not wish to change the recommendations contained in its coordinated review dated May 21, 2002. Finally, the DEQ stated that, provided the Company adheres to the DEQ Recommendations, the DEQ has no objection to the new configuration of transmission line towers proposed in Dominion's response of November 13, 2002. The Company has not objected to the recommendations contained in Staff's reply of December 9, 2002, and in the DEQ's letter of December 3, 2002.

NOW THE COMMISSION, having considered the record, the pleadings, the Hearing Examiner's Report, the Company's response thereto and the Staff's reply,² and the applicable law, is of the opinion and finds as follows.

We adopt the Hearing Examiner's findings listed above. We find that the proposed project satisfies §§ 56-46.1 and 56-265.2 of the Code of Virginia ("Code"). Pursuant to the Utility Facilities Act, Chapter 10.1 (§§ 56-265.1 *et seq.*) of Title 56 of the Code, we grant Dominion an amended certificate of public convenience and necessity for the Dooms-Elmont transmission line.

The transmission project that we approve today is based on the final design as set forth in the Company's November 13, 2002, response to the Hearing Examiner's report. This design differs from the design presented at the hearing and will yield average span lengths of approximately 750 feet for the entire length of the line and average structure heights of approximately 100 feet, which is lower than the design presented by the Company earlier. We note that the Company did not submit this final design in the normal course of the proceeding. Rather, the Company submitted the final design after the evidentiary hearings and after issuance of the Hearing Examiner's report. The only participants in this case, however, are Staff and, as facilitated by Staff, the DEQ. In its December 9, 2002, reply, Staff stated that it has no objection to the final design as long as the Company complies with all applicable NESC requirements. As a condition of the amended certificate, we will require the Company to comply with the conductor clearance requirements, and all other applicable requirements, of the NESC. Staff's December 9, 2002, reply also included a letter from the DEQ, wherein the DEQ stated that it has no objection to the final design as long as Dominion adheres to the DEQ Recommendations. As noted above, we have adopted the Hearing Examiner's findings, including that the Company should comply with the DEQ Recommendations.

Finally, Dominion's November 13, 2002, response to the Hearing Examiner's report also requests the Commission to recognize that the DEQ recommendation regarding an environmental site assessment has been satisfied based on the availability of the assessments prepared by Burgess and Niple. We will neither confirm nor deny the Company's request based solely on its November 13, 2002, response. The Company must comply with all the conditions that we place on the amended certificate granted herein.

Accordingly, IT IS ORDERED THAT:

(1) Dominion is authorized to construct and operate two parallel 500 kV transmission lines in Fluvanna County as proposed in this case and provided for in this Order.

(2) Pursuant to §§ 56-265.2, 56-46.1, and related provisions of Title 56 of the Code of Virginia, the Company's application for a certificate of public convenience and necessity to construct two parallel 500 kV transmission lines in Fluvanna County is granted as set forth in this Order.

(3) Pursuant to the Utility Facilities Act, Chapter 10.1 (§§ 56-265.1 *et seq.*) of Title 56 of the Code of Virginia, Dominion is issued the following amended certificate of public convenience and necessity for the Dooms-Elmont transmission line:

Certificate No. ET-81g which authorizes Virginia Electric and Power Company under the Utility Facilities Act to operate presently constructed transmission lines and facilities in Fluvanna County, and to construct and operate the proposed 500 kV transmission lines as authorized in Case No. PUE-2001-00663, all as shown on the detailed map attached to the certificate; this Certificate No. ET-81g will replace Certificate No. ET-81f previously issued to Virginia Electric and Power Company.

(4) As a condition of the certificate granted in this case, Dominion will comply with the recommendations contained in the Department of Environmental Quality's coordinated review, dated May 21, 2002.

(5) As a condition of the certificate granted in this case, Dominion will comply with the conductor clearance requirements, and all other applicable requirements, of the National Electrical Safety Code.

(6) As a condition of the certificate granted in this case, the transmission lines must be constructed and in-service by January 1, 2006; however, the Company is granted leave to apply for an extension for good cause shown.

(7) This case shall be dismissed and removed from the list of pending cases.

² We will accept Staff's December 9, 2002, reply, which has not been opposed by the Company.

**CASE NO. PUE-2001-00716
JUNE 27, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
TERRY L. STROCK, et al.
v.
B&J ENTERPRISES, L.C.

FINAL ORDER

By letter dated October 26, 2001, B&J Enterprises, L.C. ("B&J" or the "Company") notified its customers and the State Corporation Commission's ("Commission") Division of Energy Regulation of its intent, pursuant to the Small Water or Sewer Public Utility Act, Va. Code ("Code") § 56-265.13:1 et seq., to increase its monthly sewer rates from \$40.00 to \$95.00,¹ effective for service rendered on and after December 13, 2001. On November 21, 2001, approximately 90% of the Company's customers filed a petition with the Commission objecting to the Company's proposed rate increase. On December 12, 2001, pursuant to Va. Code § 56-265.13:6, the Commission issued a Preliminary Order suspending the Company's proposed rates for 60 days.² The Preliminary Order further directed the Company and Staff to file a response to address an issue raised by a customer, Joan G. Moore, who asserted that the Company was barred by Va. Code § 56-265.13:6 B from implementing a rate increase until April 2002.³

On January 30, 2002, the Commission issued an Order finding that final approval of rates in March 2001 that differed from those proposed by the Company and implemented on an interim basis and subject to refund in September 1999 did not constitute a separate rate increase implemented by the Company within the meaning of § 56-265.13:6 B of the Code. The Commission, therefore, permitted B&J to implement its proposed rate increase in this case effective February 11, 2002, on an interim basis, and subject to refund with interest. The Commission's Order also appointed a Hearing Examiner to conduct all further proceedings in this matter.

The Hearing Examiner issued a Ruling dated March 8, 2002, setting forth a procedural schedule in this case which provided interested persons an opportunity to participate and file testimony and exhibits; scheduled a hearing for June 17, 2002, in Blacksburg, Virginia; and directed the Company to provide public notice of the application and the hearing on its proposed rates. On March 19, 2002, counsel for B&J filed a Motion for Extension of Procedural Schedule. The Hearing Examiner issued a Ruling on March 22, 2002, which rescheduled the hearing to July 15, 2002.

The hearing was convened as scheduled on July 15, 2002, in Blacksburg, Virginia. Edward L. Flippen, Esquire, and Paige G. Lester, Esquire, appeared as counsel for the Company. Joan G. Moore appeared *pro se*. N. Reid Broughton, Esquire, appeared on behalf of the Blacksburg Country Club Estates Homeowners' Association ("Homeowners' Association"). Rebecca W. Hartz, Esquire, appeared as counsel to the Commission Staff. In addition, testimony was received from three public witnesses. Pursuant to a bench ruling, post-hearing briefs were filed by the parties and Staff on August 26, 2002.

Hearing Examiner Howard P. Anderson, Jr., issued his report on December 19, 2002 ("Report"). In his Report, the Examiner determined that a monthly sewer rate for B&J of \$50.00 was reasonable and made the following findings:

1. The use of a test year ending December 31, 2001, is proper in this proceeding;
2. The Company's test year operating revenues, after all adjustments, were \$63,720;
3. The Company's test year operating revenue deductions, after all adjustments, were \$67,267;
4. The Company's test year operating income, after all adjustments, was \$(3,547);
5. The Company's proposal to recalculate the value of land transferred to the Company in consideration of, among other things, completing the sewer system to certain lots should be denied;
6. The Company's adjusted end of test period rate base is \$175,597;
7. The Company's current rates produced a return on adjusted end of test period rate base of -2.02% during the test year;
8. The Company requires additional gross annual revenues of \$15,930 which will provide a return on rate base of 7.05%;
9. The Company's monthly rate should be set at \$50.00;
10. A cash working capital allowance is not appropriate and should not be permitted because the Company bills in advance;
11. The Company should be required to promptly refund, with interest, all revenues collected under its interim rates in excess of the amount found just and reasonable by the Examiner;

¹ At the hearing on July 15, 2002, counsel for the Company advised that the Company was reducing its rate increase request from \$95.00 to \$90.00 per month. Tr. at 23.

² Virginia Code § 56-265.13:6 provides that the Commission may suspend the proposed rates for no more than 60 days.

³ Virginia Code § 56-265.13:6 B states in pertinent part: "A small water or sewer utility shall not implement an increase in the utility's rates or charges more than once within any twelve-month period."

12. The Company's proposed tariff changes should not be allowed to take effect because the Company failed to provide the proper notice as required by law;
13. Staff's booking recommendations, except as adjusted by the Examiner, are reasonable and should be implemented;
14. The Commission should order the Company to maintain its accounting system in accordance with Uniform System of Accounts ("USOA") requirements for Class C Utilities and direct the Company to file a letter of compliance with the Commission within three months of the final order in this proceeding; and
15. A loan value of \$175,597 attributable to capital improvements is reasonable and the principal should be paid with connection fee proceeds, beginning with any amounts currently escrowed on the Company's books. Once the \$175,597 is paid in full, the Company should place connection fee proceeds in escrow to be used for future capital improvements. The remaining balance of the note (above \$175,597) should be immediately taken off the Company's books.

The Hearing Examiner recommended we enter an order adopting the findings in his report and dismissing the case from the active docket. The Examiner further directed that comments on the Report were to be filed within twenty-one days from the date of the Report, or on or before January 9, 2003. On December 30, 2002, the Company filed a Motion for Extension of time for filing comments to the Report. On January 7, 2003, the Commission issued an Order granting the Company's motion and extending the date for filing comments to January 22, 2003. Comments on the Report ("Comments") were filed by the Homeowners' Association, Joan G. Moore, Staff, and the Company.

The Hearing Examiner also provided a review of the Company's history, including the Company's prior case, Case No. PUE-1999-00616 ("Prior Proceeding").⁴ On December 14, 1995, B&J and Blacksburg Country Club, Inc. ("BCC"), entered into a sales contract ("sales contract"). The sales contract provided that B&J would receive a number of undeveloped lots in Blacksburg Country Club Estates ("BCC Estates") in return for: (1) paying off a \$42,000 construction loan; (2) upgrading and/or building the roads in the BCC Estates subdivision to Virginia Department of Transportation standards; (3) operating the sewer system to provide sewer service; and (4) assuming all of BCC's real estate development and operations obligations with regard to all phases of BCC Estates.⁵ On September 2, 1999, B&J filed an application with the Commission for a certificate of public convenience and necessity to operate the sewer system. In its prior application, B&J proposed a monthly rate of \$34.00, an availability charge of \$20.00 per month, a service connection fee of \$17,500, and a disconnection and reconnection fee of \$5,000.⁶

On March 20, 2001, the Commission issued an Order in the Prior Proceeding, granting B&J a certificate of public convenience and necessity and establishing a monthly sewer rate of \$40.00. On April 10, 2001, B&J filed a Petition for Reconsideration ("Petition"). In its Petition, B&J requested that the Commission clarify the proper use of connection fee proceeds and a \$2,500 capital contribution from certain designated lot owners. B&J further requested in its Petition that if the Commission's findings were not consistent with the original intent of the Commission's March 20, 2001, Order, that the Commission reconsider its decision on those issues.⁷

By Order issued May 14, 2001, the Commission denied B&J's request to apply connection fee proceeds to debt repayment and directed B&J to maintain all collected connection fees in an escrow account. The Commission found the record to be insufficient to conclude that B&J had, as the Company asserted, borrowed sizable amounts in order to complete the sewer infrastructure. The Commission further found that B&J could supplement the record on the use of connection fees for debt repayment in its next rate proceeding. The Commission also permitted the Company to collect a one-time capital contribution from owners of lots individually owned at the time the Company acquired the system under the sales contract.⁸ As noted above, on October 26, 2001, B&J notified its customers and the Commission of its intent to increase its monthly sewer rates from \$40.00 to \$95.00.

NOW THE COMMISSION, having considered the record, the pleadings, the Hearing Examiner's Report, the responses thereto, and the applicable law, is of the opinion and finds as follows herein. We adopt the findings of the Hearing Examiner except as modified by this Order.

In the Prior Proceeding, we explained that "this has been a uniquely complicated proceeding, owing in large measure to the contract under which the current owners of the sewer system acquired it."⁹ Approximately five months after the Prior Proceeding ended, B&J notified its customers and the Commission's Staff of its intent to increase monthly sewer rates from \$40.00 to \$95.00. Our discussion in the Prior Proceeding is equally applicable here:

In choosing to enter this transaction, the Company undertook a calculated business risk that it could profitably develop and operate the sewer treatment system in conjunction with its other development activities. However, unlike the business of real property development, operation of a sewer utility is a public service function and subject, under the Code of Virginia, to regulation by the Commission and other agencies of the Commonwealth. When the Company acquired the system it knew, or should have known, that our approval of the rates and terms of the service it could offer its customers in Country Club Estates was needed.¹⁰

⁴ Application of B&J Enterprises, L.C. For a certificate of public convenience and necessity to operate a sewerage utility ("B&J Enterprises, L.C."), Case No. PUE-1999-00616, 2001 S.C.C. Ann. Rep. 386.

⁵ Report at 4.

⁶ Report at 5.

⁷ Id.

⁸ Id.

⁹ B&J Enterprises, L.C., Case No. PUE-1999-00616, 2001 S.C.C. Ann. Rep. 390 ("B&J obligated itself by this contract to undertake certain development activities, including extension of the existing sewer system, in return for receipt of enumerated parcels of developed and undeveloped real estate.").

¹⁰ B&J Enterprises, L.C., Case No. PUE-1999-00616, 2001 S.C.C. Ann. Rep. 386, 388.

The Code establishes the standards that must be met in setting the Company's rates, which include the following:

Reasonable and just charges for service within the meaning of this section shall be the lowest charges as shall produce sufficient revenues to pay all lawful and necessary expenses incident to:

1. The operation of the system, including maintenance costs, operating charges, and interest charges on bonds or other obligations;
2. The providing for the liquidation of bonds or other evidence of indebtedness and the attraction of capital;
3. The providing of adequate funds to be used as working capital, as well as reasonable reserves and funds for making replacements, which may be escrowed and used only as working capital if the Commission so directs as a result of a proceeding conducted pursuant to § 56-265.13:6;
4. The providing for the payment of taxes that may be assessed against the small water or sewer utility or its property; and
5. Compensation of owners of the utility for their capital or property invested in the system, if any, and for their time and other resources expended in the operation of the system not otherwise recovered under subdivisions 1 through 4 of this section.¹¹

In this proceeding as in a typical rate case, the Commission must ascertain rates on a prospective basis. As part of this rate setting process, the Commission must identify the revenues needed by the Company to pay all lawful and necessary expenses as referenced in the statute above. Regulatory commissions perform such function by, among other things, undertaking a thorough examination and appraisal of total company costs in a recent, "test" year.¹² This involves identifying expenses most representative of the future and determining a proper level of expense for the Company on a going-forward basis. This process generally includes examining costs, normalizing for non-recurring expenses, adjusting for known future changes in costs, and providing a fair return on the capital invested in the system providing the utility service.

Management Fee

The Company requests a management fee of \$28,033 for Mr. Reynolds.¹³ Mr. Reynolds is employed by CSW Associates ("CSW"), an affiliate of B&J. Mr. Reynolds holds a Class IV Wastewater Works Operators Certificate and his duties with B&J include daily operation and oversight of the sewer system.¹⁴ The Examiner correctly found that "[a]lthough B&J is a small sewer company and not subject to the Affiliates' Act, affiliate expenses are nonetheless closely scrutinized" because the two entities do not deal at arms' length.¹⁵ Similar to our discussion below regarding rate case expense, the Company kept no detailed records of the time spent by Mr. Reynolds for management service,¹⁶ and we may disallow all or some portion of that cost.¹⁷

It is clear, however, that Mr. Reynolds devoted time to operation and oversight of the sewer system. Staff calculated a management fee expense of \$28,033 after investigating this matter. The Examiner concluded that Staff's proposed management fee expense should be reduced by \$6,030, which represents B&J's payments to Messrs. Lovern and Stiltner to check on the system and perform required tests.¹⁸ We do not find, however, that the Staff's proposed management fee is duplicative of the services provided by Messrs. Lovern and Stiltner. We approve a management fee expense of \$28,033.

Rate Case and Regulatory Expense

The Examiner found that the Company should not be permitted to recover additional rate case expense attendant to the Prior Proceeding.¹⁹ In the Prior Proceeding, the Commission allowed an estimated \$24,000 in rate case expense to be amortized over a five-year period.²⁰ The Company requests that, based on actually incurred expenses from the Prior Proceeding, it be permitted to increase its recovery of rate case expense by an additional \$52,948 to be amortized over a five-year period.²¹ We deny this request. The \$24,000 was found to be a reasonable level of rate case expense for the Prior Proceeding in

¹¹ Va. Code § 56-265.13:4.

¹² The test year used by the Hearing Examiner, and adopted herein by the Commission, is 2001. Report at 6.

¹³ B&J Comments at 4.

¹⁴ Report at 6 (citation omitted).

¹⁵ Report at 9-10. See Commonwealth of Virginia, ex rel. Bruce M. Berry, et al. v. Virginia Suburban Water Company, Case No. PUE-1992-00015, 1993 S.C.C. Ann. Rep. 252, 254 ("Virginia Suburban"); Commonwealth Gas Services, Inc. v. Reynolds Metals Co., 236 Va. 362, 367, 374 S.E.2d 35, 38 (1988); Va. Code § 56-78.

¹⁶ Report at 10.

¹⁷ See, e.g., Virginia Suburban at 255 (citing Commonwealth Gas Services, Inc. v. Reynolds Metals Co., 236 Va. 362, 367, 374 S.E.2d 35, 38 (1988)).

¹⁸ Report at 10.

¹⁹ Report at 12-13.

²⁰ Report at 12.

²¹ B&J Comments at 11.

that case. Consistent with the discussion below, we find that the additional \$52,948 is exorbitant. In addition, as noted above, the rate making process involves fixing rates for the future – to produce sufficient revenues for the Company to pay all lawful and necessary expenses pursuant to § 56-265.13:4 of the Code. The additional Prior Proceeding rate case expense requested by B&J is, at best, a past expense. Acceptance of such expense is inappropriate for determining the proper level of expenses in this case.

Next, the Examiner recommended approval of \$5,000, amortized over a three-year period, for rate case expense for the current proceeding.²² The Company initially estimated the rate case expense for the current case to be \$51,000.²³ However, taking into account only the rate case expense incurred to date, B&J now requests permission to amortize \$38,670 over three or five years.²⁴ The Company provided evidence prior to the hearing of actual rate case expenses of \$23,885.²⁵ B&J asserts in its Comments that its rate case expenses, to date, have increased such that the \$23,885 should be increased by \$14,785.²⁶

The requested rate case expense encompasses services provided by Mr. Reynolds. Mr. Reynolds is an employee of CSW, which is an affiliate of B&J. As stated above, given that CSW and B&J are affiliates and, thus, do not deal at arms length, these expenses must be carefully scrutinized, and the Company is required to meet a stringent burden of proof to justify the reasonableness of its affiliate rate case expense. The Hearing Examiner found that B&J's cost estimate included \$18,000 for "Company," and "[n]o further data was provided."²⁷ The Company asserts, however, that the "totality of [Mr. Reynolds'] testimony demonstrates that his involvement is daily and continuous ... [and] took considerable time."²⁸ The Company provided evidence that Mr. Reynolds' average rate is approximately \$35 per hour and the market price for certified operator services is \$85 per hour; thus, B&J concludes that ratepayers received a substantial benefit from the use of Mr. Reynolds' services.²⁹

The Company did not, however, adequately support the charges made to it by Mr. Reynolds.³⁰ There is a lack of specific evidence or records regarding the amount of time spent by Mr. Reynolds on various rate case activities.³¹ We find that B&J has not proven the amount of time spent by Mr. Reynolds working on the rate case. Given this lack of proof, we do not find that the amount of time attributed to Mr. Reynolds in providing services to B&J for this case is reasonable. In addition, the Company's identification of hourly rates for similar services does not alter our finding. Although B&J provided evidence of comparative hourly rates, there is insufficient evidence on the total hours, or total rate case expense, that reasonably may have been incurred by a non-affiliated service provider for the services performed by Mr. Reynolds in this proceeding.³²

As recognized by B&J, the Supreme Court of Virginia permits disallowance of "any part of expenses actually incurred where the evidence shows such expenses are exorbitant, unnecessary, wasteful or extravagant."³³ Thus, a public utility's rate case expense must bear some reasonable relationship to the utility and to the utility's rate request. The business of a public utility is not risk free, and the utility cannot expect ratepayers to serve as guarantors for all rate case expenses.

We find that the Company's estimated rate case expense of \$51,000, which was provided for the first time in its rebuttal testimony and represents approximately 80% of its current annualized revenues, is exorbitant.³⁴ Even if B&J had kept meticulous records of its expenses, ratepayers cannot be the guarantors of whatever the Company might choose to spend for rate case expense.³⁵ There must be a reasonable limit. Here, no matter how the issue is

²² Report at 13.

²³ This was broken down as follows: (1) Company, \$18,000; (2) legal support, \$25,000; and (3) accounting support, \$8,000. Report at 10.

²⁴ B&J Comments at 11-12, 18.

²⁵ Exhibit 22. This was broken down as follows: (1) Company, \$11,149; (2) legal support, \$5,876; and (3) accounting support, \$6,860. We note that, contrary to assertions in Staff's Post-Hearing Brief, there is no evidence in this case establishing that B&J could have reduced its legal expenses and received adequate representation by retaining legal counsel from a smaller firm located near the Company. See Staff Post-Hearing Brief at 9-10.

²⁶ B&J Comments at 12-13 n.17. This was broken down as follows: (1) Company, \$4,200; (2) legal support, \$8,223; (3) accounting support, \$1,140; and (4) related preparation costs, \$1,223.

²⁷ Report at 13.

²⁸ B&J Comments at 17-18, n.24.

²⁹ B&J Comments at 17.

³⁰ See, e.g., Commonwealth of Virginia, ex rel. State Corporation Commission v. Po River and Sewer Company. For a review of rate increase pursuant to Va. Code § 56-265.13:6, Case No. PUE-1992-00039, 1995 S.C.C. Ann. Rep. 272, 275 at n.10 ("We find that the Company has satisfied this standard, presenting evidence that identified the comparable costs for similar services provided by non-affiliated service providers, identifying the charges made to it by [its affiliate] for the services rendered, and presenting affirmative evidence regarding the benefits of such services to [the utility] and its ratepayers.").

³¹ The evidence of the time spent by Mr. Reynolds on this case is the Company's estimate of three hours per day, on average, as provided at the hearing. See B&J Comments at 13.

³² The Company does not object to Mr. Reynolds maintaining a log of his activities for B&J in the future. The Company states, however, that it should not be penalized in the evaluation of rate case expense for its "prior failure to maintain a log when no such requirement previously existed." B&J Comments at 23-24. The Commission is invoking no such penalty. The burden of proof that we apply to affiliate expenses is reflected in prior Commission decisions as noted herein.

³³ Lake of the Woods Utility Co. v. State Corporation Commission, et al., 223 Va. 100, 109-110, 286 S.E.2d 201, 206 (1982) ("Lake of the Woods").

³⁴ See Report at 11.

³⁵ See Lake of the Woods, 223 Va. 100, 109-110, 286 S.E.2d 201, 206.

analyzed, the limit has been breached not only by the \$51,000 estimate, but also by the Company's currently requested amount of \$38,670, which represents approximately 60% of annualized revenue. Without an extraordinary showing, not present here, we find these amounts exorbitant.

The difficult task is to determine what a reasonable level is in such a case. The currently requested amount is beyond reason, and the Company has failed to justify the expense. There is no detailed information on affiliate expenses, and other expenses are estimates with little support.

We find that the Company has not met its burden of proof to justify the reasonableness of its affiliate rate case expense; thus, we have the authority to disallow all or some portion of that cost.³⁶ Further, we will not consider evidence of \$14,785 in additional actual rate case expense submitted by B&J in its response to the Hearing Examiner's Report. Neither the participants in this case, nor the Examiner, have had an opportunity to analyze or to litigate this alleged amount.³⁷ The Company presented evidence at the hearing of \$12,736 for legal and accounting support incurred prior to the hearing. In addition, it is clear that Mr. Reynolds spent time on this proceeding, though the exact amount of time has not been sufficiently established. In addition, B&J has incurred rate case expenses subsequent to the hearing. Rather than disallow all of these expenses, we will add \$12,000 of estimated expenses to the \$12,736 noted above. We find that \$24,736 of rate case expense amortized over a period of four years, although high for a utility the size of B&J, is within the range of reasonableness in this instance.

Operation and Maintenance Expense

The Hearing Examiner evaluated whether certain expenditures should be capitalized or treated as operation and maintenance ("O&M") expenses. The Examiner capitalized \$22,513 of costs from eight invoices collectively marked as Exhibit 18.³⁸ This represents approximately \$8,825 more in capitalized costs than recommended by Staff.³⁹ The Company asserts, however, that its expensing of certain items is correct and supported by Staff witness Armistead.⁴⁰ As discussed above, the Commission must determine the proper level of expenses on a going-forward basis. We find that the Examiner properly capitalized the eight invoices totaling \$22,513. The repairs made and items purchased will enhance the operational aspects of the system such that these costs should be depreciated over a reasonable period and not included in current O&M expense.

The Company opposes Staff witness Armistead's elimination of \$1,647 of expenses that he concludes are non-recurring. The Company states that eliminating such expenses denies it the opportunity to recover these types of normal costs, and that these small expense items do not distort the level of O&M expense that B&J will incur in the future.⁴¹ We find that these expenditures are non-recurring in nature and should not be allowed in future rates.⁴²

The Hearing Examiner concluded that the cost of the lawn mower (\$218.41) and weed eater (\$208.00) should be eliminated. The Examiner found that a contractor performed the work for which this equipment was purchased.⁴³ The Company opposes the Examiner's elimination of these two items, which it classifies as an expense.⁴⁴ Staff reclassified the cost of the lawn mower and weed eater as capital expenditures.⁴⁵ We will capitalize these two items, which reasonably may be necessary to perform routine maintenance tasks other than those performed by the contractor. Finally, we reject the changes proposed by Ms. Moore to O&M expense and utility plant in service, finding that such modifications are not appropriate.⁴⁶

Uniform System of Accounts

The Company must conform its accounting system to USOA requirements for Class C Wastewater Utilities, as required by Commission Order in the Prior Proceeding and by Commission rules.⁴⁷ The Company does not object to conforming to the USOA requirements for a Class C Wastewater

³⁶ See, e.g., Virginia Suburban, 1993 S.C.C. Ann. Rep. at 255 (citing Commonwealth Gas Services, Inc. v. Reynolds Metals Co., 236 Va. 362, 367, 374 S.E.2d 35, 38 (1988)).

³⁷ The Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*, generally prohibit the introduction of evidence subsequent to the evidentiary hearing. The Company has not requested a waiver of those rules nor provided any justification for us to consider new evidence at this late stage of the proceeding. We find that it is neither necessary nor appropriate to accept new evidence contained in B&J's Comments.

³⁸ Report at 15-16. The Hearing Examiner recommends that the following costs be capitalized: (1) pump station repairs and installation of a new pump, with the exception of pumping and hauling that should be expensed; (2) piping and replacing a pump at pump station #2; (3) installation of a new control panel and float switches; (4) blowers; (5) installation of a locking device; (6) planting of pine trees and construction of a split rail fence; (7) a tripod; and (8) construction of a safety enclosure.

³⁹ The Hearing Examiner, in determining his recommended rate base, added \$8,825 in additional capital items to Staff's rate base calculation. Report at 20.

⁴⁰ B&J Comments at 19.

⁴¹ B&J Comments at 19-20.

⁴² The Examiner also found that there was "not adequate time for proper review by the Staff and parties" of the invoice in the amount of \$15,808.15 for pump station repairs, and that such invoice should be excluded from consideration in this case. Report at 15. We will not consider the invoice in this proceeding.

⁴³ Report at 16.

⁴⁴ B&J Comments at 19; Report at 16.

⁴⁵ Report at 16.

⁴⁶ Moore Comments at 1.

⁴⁷ See Report at 25; Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of adopting rules implementing the Small Water or Sewer Public Utility Act, Case No. PUE-1987-00037, 1987 S.C.C. Ann. Rep. 291.

Utility.⁴⁸ The Company, however, opposes the Hearing Examiner's recommendation to deny an annual expenditure of \$1,200 for accounting assistance from a non-affiliated entity to meet these requirements. We find that this is a reasonable expense for the Company at this time and will grant B&J's request. We will reevaluate this finding in any subsequent rate proceeding for B&J.

Booking Clarification

The Company seeks clarification on certain booking recommendations by the Hearing Examiner, recommendations to which the Company does not object.⁴⁹ We find that the Company should comply with these recommendations, which are clearly delineated in the Examiner's Report. In addition, contrary to B&J's request, we find that it is appropriate to restate on its books plant, accumulated depreciation, contributions in aid of construction, ("CIAC"), and accumulated amortization of plant as of December 31, 2001.

Cash Working Capital Allowance

The Company requests a cash working capital allowance. The Hearing Examiner stated that the Company bills in advance and, thus, concluded that a cash working capital allowance is not appropriate.⁵⁰ The Company responds, however, that customers are not paying bills in a timely manner, and that the Company is not receiving the benefit of billing in advance. B&J also asserts that its threat of disconnection is a hollow threat: "Absent the ability to pass the complete cost of disconnection to its customers, the Company would potentially have to incur a greater cost to disconnect the customer than would be recovered, even assuming the disconnection caused the customer to pay in full."⁵¹ B&J further states that it is required to pay for certain items immediately, such as capitalized expenses and rate case expenses, but must recover the amounts outlaid over a longer period.

We will permit the Company a cash working capital allowance, which is reflected by an increase to rate base. Specifically, we will increase rate base by an amount equivalent to 1/9th of B&J's O&M expenses approved in this Order. We note, however, that a cash working capital allowance is not a substitute for properly addressing B&J's uncollectible amounts. Following the USOA requires accrual accounting, wherein B&J should book revenue based on the amount billed and should record uncollectible expense to its bad debt expense account. Thus, one manner in which to address uncollectibles is for the Company to request, and to justify, an uncollectible allowance in rates and to record uncollectibles as an expense on its books. B&J has not sought such treatment in this proceeding.

Availability Fee

An availability fee for the owners of undeveloped lots was not included in the Company's proposed tariff changes.⁵² Thus, the Hearing Examiner found that the imposition of an availability fee cannot be considered in this proceeding.⁵³ The Examiner also found, however, that the Company should pursue an availability fee in a future proceeding. The Examiner concluded that the availability of sewer service has greatly enhanced the value of the undeveloped lots, that the owners of the undeveloped lots have received a benefit for which the current residents are paying, and that this is inequitable and should be corrected.⁵⁴

The Company requests the Commission to conclude, in this proceeding, that an implied equitable servitude or easement, or the like, exists and that all "lot owners have notice as a matter of law and therefore are eligible to be charged an availability fee in the event such tariff change is noticed" in a future proceeding.⁵⁵ B&J asserts that it would be "inefficient to require unnecessarily the review of this legal issue at a later time."⁵⁶ The Homeowners' Association requests that the Commission direct the Company to give proper notice and request authority for an availability fee on the remaining undeveloped lots.

In the Prior Proceeding, we found as follows:

[T]he Commission has concluded earlier that imposition of availability fees 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.' The record is devoid of evidence that indicates the existence of any contract clause in deeds of purchase or any restrictive covenant that would alert prospective purchasers of lots in Country Club Estates that the purchase of a lot comes with an obligation to support, through payment of an availability fee, the sewer utility.⁵⁷

⁴⁸ B&J Comments at 20.

⁴⁹ B&J Comments at 26. The recommendations are: (1) maintain all invoices in the Company's file that pertain to expenses and to capital disbursements; (2) maintain property records on all capitalized plant items; (3) maintain a log of miles driven and reason for the trip when using a truck owned by an affiliated company; and (4) maintain a log of Mr. Reynolds' time and work performed for B&J. Report at 26.

⁵⁰ Report at 19.

⁵¹ B&J Comments at 29.

⁵² B&J Comments at 30; Report at 14. The Company states that 79 lots are eligible for the availability fee. Report at 14 n.89.

⁵³ Report at 14.

⁵⁴ The Examiner noted that if a \$20.00 availability fee were imposed, the Company estimates the monthly residential rate would be reduced by almost \$12.00. Report at 14 n.89.

⁵⁵ B&J Comments at 30-31.

⁵⁶ B&J Comments at 31.

⁵⁷ B&J Enterprises, L.C., Case No. PUE-1999-00616, 2001 S.C.C. Ann. Rep. 386, 388.

We will not modify our finding from the Prior Proceeding. We do not find, based on the record before us, that an implied equitable servitude or easement exists which would permit an availability fee to be imposed absent an express contract or restrictive covenant.

Next, the Homeowners' Association requests that B&J assess the availability fee on its own undeveloped lots and that rates be reduced to reflect those revenues.⁵⁸ Ms. Moore states that there should be an availability fee on B&J's lots as allowed by the Commission in the Prior Proceeding, and that B&J should not be allowed to discontinue an availability fee on its own lots without having provided notice to its customers.⁵⁹ In the Prior Proceeding we rejected an availability fee for undeveloped lots not owned by the Company and permitted, but did not require, an availability fee for lots owned by B&J and for which it can develop appropriate legal instruments to notify potential purchasers of the existence of an availability fee.⁶⁰ The Company chose not to implement an availability fee solely on its own lots. We will not mandate an availability fee for B&J's lots as part of this case, but we will reconsider this issue in any subsequent rate case. If the Company chooses not to assess an availability fee on its own lots (and on those who subsequently purchase these lots), we will consider imputing such revenues to B&J if requested again by participants in a subsequent rate case and the evidence warrants such imputation.

Connection and Disconnection Fees

The Hearing Examiner found that, as with the availability fee, the Company failed to provide notice of tariff changes regarding connection and disconnection fees.⁶¹ The Company, however, "requests confirmation that, if properly amended and noticed, the Company could specify in the tariff that the connection fee is due from a lot owner when the lateral is installed and the lot has the option of obtaining service, even if the lot does not choose to make use of the lateral immediately (*i.e.*, there is no structure on the lot)."⁶² B&J also states that "[b]ecause of both the varying nature of the [disconnection] cost and the significance of the cost, it is prudent for the Company to establish in advance that the Commission concurs in the application of the [disconnection] charge and other collection costs to the delinquent ratepayer, assuming the tariff language is amended accordingly."⁶³ We will not rule on these matters in this case, where notice has not been given of the Company's request to modify its tariff regarding connection and disconnection fees. The Company must provide adequate notice.

Next, the Hearing Examiner concluded that the Company failed to collect \$40,500 in connection fees for 2000 and 2001, and found that these additional connection fees should be reflected by reducing the Company's rate base.⁶⁴ B&J states that its classification of connection fees withstood an extensive audit and review of the Company's books by Staff, and that the Examiner's attribution of such fees "is not appropriate and has no foundation and should be rejected."⁶⁵ In addition, B&J explains that it has not approached the collection of connection fees in an aggressive manner.⁶⁶ The Company states that the connection fee issue was not settled until the Commission's May 2001 Order in the Prior Proceeding, that B&J recognized it is not unusual for people to need some time to gather a lump sum payment or to make arrangements to pay over a period of time, and that B&J has tried to accommodate reasonable timing requests.⁶⁷

We do not accept, for purposes of this proceeding, the Examiner's recommendation to reduce rate base by the additional \$40,500 in uncollected connection fees. In future proceedings, however, the Company is directed to file detailed information on the process it has put in place to bill, book, and collect these fees and the results of such action. Connection fees represent customer-provided capital and serve to reduce rate base. These connection fees, if booked when billed, would result in an increase to CIAC by the billed connection fees and would serve as a reduction to rate base. The collection of this additional CIAC would reduce B&J's need to borrow funds necessary to make system improvements and would reduce interest costs. While we may appreciate B&J's accommodation of customer payment arrangements, not billing and collecting these fees could have the effect of shifting costs to other ratepayers.

The Homeowners' Association and Ms. Moore assert that CIAC should be further increased to reflect additional uncollected connection fees from 2002 and earlier.⁶⁸ We agree with the Examiner that there is insufficient evidence to justify such treatment, and that uncollected connection fees for periods beyond the end of the test year (*i.e.*, December 31, 2001) should not be reflected in CIAC for this case.

⁵⁸ Homeowners' Association Comments at 2-3.

⁵⁹ Moore Comments at 3.

⁶⁰ B&J Enterprises, L.C., Case No. PUE-1999-00616, 2001 S.C.C. Ann. Rep. 386, 389 at ordering paragraph (3). In the Prior Proceeding we also explained as follows: "If B&J chooses to implement an availability charge, while it retains ownership of the lots, we will impute to its revenue an amount equal to the fees it could collect upon sale of the lots to a properly notified customer." *Id.* at 388.

⁶¹ Report at 24-25.

⁶² B&J Comments at 31-32.

⁶³ B&J Comments at 32.

⁶⁴ Report at 18, 20.

⁶⁵ B&J Comments at 42.

⁶⁶ Reynolds Rebuttal Testimony, Exhibit 7 at 14.

⁶⁷ *Id.*

⁶⁸ Homeowners' Association Comments at 3; Moore Comments at 2.

Finally, the Hearing Examiner found that there is a sufficient basis to support the use of escrowed connection fees to pay a portion of the Company's debt.⁶⁹ The Company asserts that the escrowed connection fees should be used to pay the portion of the debt that is equivalent to rate base.⁷⁰ As discussed below, we do not adopt the Company's proposed rate base. We will permit the Company, however, to use escrowed connection fees to pay utility-related debt.⁷¹

Recalculation of CIAC

In the Prior Proceeding the Commission found that the lots transferred to B&J from the BCC should be attributed as CIAC and, therefore, should serve to reduce rate base.⁷² B&J asserts, however, that the Commission erred in the Prior Proceeding when we concluded that the Company received the undeveloped lots from BCC at no cost.⁷³ Thus, B&J states that its CIAC should be adjusted "to reflect the elimination of the consideration of the value of the mains installed to individually owned lots."⁷⁴ If the Commission does not make this adjustment, the Company requests that the methodology from the Prior Proceeding be retained with corrections as to the actual cost and actual numbers of lots to which laterals and mains were extended.⁷⁵ Specifically, B&J states that the calculation should be updated to reflect: (1) final actual cost information; and (2) 42 lots, as opposed to 73, that required sewer mains to be constructed.⁷⁶

The Hearing Examiner rejected the Company's requests in this regard. The Examiner also found that Staff and the other parties had insufficient time for discovery or proper analysis of the Company's new calculation, which B&J proposed after Staff and the other parties had filed testimony in this case.⁷⁷

We find, as we did in the Prior Proceeding, that it is appropriate to reduce rate base by the amount of CIAC attributed to the lots transferred to B&J from BCC. Based on the record in this proceeding, we again conclude that \$210,605 reasonably represents that value. We find that the evidence presented in this proceeding is insufficient for us to reduce CIAC as requested by the Company. The Company, however, may present evidence in a future case on its proposed recalculation of this amount, and B&J should provide Staff and the other parties a full opportunity to evaluate and respond thereto.

Rate Base

In determining rate base, we will start with Staff's recommended rate base, after certain adjustments, of \$206,321.⁷⁸ We will make further adjustments to Staff's recommended rate base pursuant to our findings above: (1) an increase of \$9,251, which represents additional capitalized items; and (2) a reduction of \$278, which represents accumulated depreciation. This results in a total net plant of \$215,294. After including \$8,125, which represents a cash working capital allowance, total rate base is \$223,419.

The determination of rate base is guided by fundamental rate making tenets. Rate base, in general, represents the total investment in the facilities of a utility employed in providing its service. Moreover, establishment of the rate base requires a determination of the dollar amount of property used and useful in rendering utility service. The utility is entitled to a reasonable rate of compensation on the rate base. Thus, rate base will not necessarily equate to the utility's capital investment – especially when not all of such investment is used to render utility service.

We have adopted a rate base that reasonably represents the dollar amount of property used and useful in rendering utility service. The Company proposed a rate base of \$308,228,⁷⁹ which differs from Staff's proposal in two primary areas: (1) a reduction in CIAC attributed to the sales contract in the amount of \$98,021; and (2) inclusion of a cash working capital allowance of \$13,122. As discussed above, we have not recalculated CIAC attributed to the sales contract, and we have provided a cash working capital allowance.

Utility-Related Debt

The Hearing Examiner also recommended that the Company immediately take off its books the amount of its debt obligation with Grundy National Bank ("GNB") that exceeds the level of rate base determined herein.⁸⁰ The Company asserts, among other things, that such proposed

⁶⁹ Report at 22.

⁷⁰ B&J Comments at 39-42.

⁷¹ As discussed below, we find that the utility-related debt is equal to the net plant balance, which is \$215,294.

⁷² In the Prior Proceeding, the Hearing Examiner reduced the Company's rate base by the amount of CIAC related to the value of undeveloped lots transferred to B&J under the sales contract with BCC, and we adopted the Hearing Examiner's calculation of the value of the undeveloped lots. Specifically, the Hearing Examiner calculated such CIAC by multiplying the number of individually owned lots, 73, by the average cost of connecting mains to those lots, \$2,885, for a result of \$210,605. Report at 16-17 n.103.

⁷³ B&J Comments at 36.

⁷⁴ *Id.*

⁷⁵ B&J Comments at 39.

⁷⁶ The Company's new calculation results in CIAC for this purpose of \$112,584. B&J Comments at 38-39.

⁷⁷ Report at 17-18.

⁷⁸ *See* Report at 19; Armistead Direct Testimony, Exhibit 20 at Statement 1.

⁷⁹ Dooley Rebuttal Testimony, Schedule 3.

⁸⁰ Report at 22.

"manipulation" would impermissibly interfere with the contractual relationship between GNB and B&J, that the Commission does not have jurisdiction as to contracts between a utility and private parties, and that writing down the note constitutes confiscation of B&J's property without just compensation.⁸¹

B&J proposes to restructure the note, the face value of which is \$735,813.57, to allocate a portion of the original face value to the development company as part of the consideration already received by that company, resulting in a debt obligation for the utility of \$555,935.⁸² The Company states that the utility's debt obligation includes the total amounts borrowed by the Company in order to complete the infrastructure of the sewer system and to complete upgrades to the plant, and includes the amounts borrowed during the years in which the Company operated at a loss.⁸³ B&J further states that "[t]hrough the Company acknowledges that the recovery of past losses cannot be obtained from future ratepayers, that amount is still an obligation of the Company that is secured in part by the Company's assets pursuant to an enforceable instrument."⁸⁴ Staff, however, recommends that the utility's debt obligation should be equal to the net utility plant approved by the Commission.⁸⁵

The Commission has the authority to establish the booking standards for public utilities, such as B&J, which are subject to the Commission's jurisdiction. For example, as noted above, we have required the Company to conform its accounting system to the USOA requirements for Class C Wastewater Utilities. Moreover, we can direct a utility to reflect on its books investment, debt, and expenses that we have permitted for rate making purposes. In the Prior Proceeding, we found that "[t]he record shows that the Company's principals did make certain borrowings, but does not permit a finding as to which, if any, of these borrowed funds were used for the sewer and which were used for road construction, bridge construction, or other development activities."⁸⁶ Again, in this proceeding, the record does not support a finding as to which of these borrowed funds were used for the sewer and which were used for road construction, bridge construction, or other development activities.

We will not permit rates and ratepayers to be impacted by the portion of the debt that does not represent investment in facilities employed in providing utility service. The Company has not fully substantiated its requested loan balance for the utility. The Company has not provided information "tracing the funds into the sewer construction."⁸⁷ The Company has not established that its proposed debt obligation for the utility of \$555,935 supports only sewer operations, with the exception of an amount attributable to the net plant found reasonable herein. Thus, the debt obligation for the utility proposed by B&J is not attributed to the sewer system and should not be supported by utility customers. As a result, it is inappropriate to maintain a debt balance of \$555,935, as requested by B&J, on the books of the utility.

Accordingly, we find that the amount of debt in excess of the net plant balance should be transferred off of the books of the utility. Contrary to the Company's assertions, this booking adjustment does not reduce the total debt obligation reflected by the note, reduce the loan balance, or modify the loan agreement. Rather, we are requiring a booking adjustment for the utility to reflect proper recognition of the rate making implications of such debt. This debt obligation originally was on the books of the utility's parent company.⁸⁸ Indeed, as discussed above, B&J already has proposed in this proceeding to re-allocate a portion of the note in excess of \$555,935, which would result in transferring the amount of debt in excess of \$555,935 off of the books of the utility. Likewise, our requirement herein will result in transferring the amount of debt in excess of the net plant balance off of the books of the utility.⁸⁹

Monthly Rate

The Examiner noted that prior to May 1999, B&J's monthly rate was \$29.00. In the Prior Proceeding, the Company requested and implemented a \$34.00 rate effective May 1999. In March 2001, the Commission authorized a monthly rate of \$40.00. In October 2001, B&J notified its customers that it would impose a monthly rate of \$95.00 effective December 13, 2001. At the hearing, the Company reduced its rate request to \$90.00.⁹⁰ Staff proposed a rate of \$58.00. The Hearing Examiner concluded that the Company's proposed rate of \$90.00 clearly constitutes rate shock and found that a rate of \$50.00 per month is reasonable.⁹¹ The Company now seeks a rate of \$84.00.⁹²

⁸¹ B&J Comments at 22-23.

⁸² B&J Comments at 40 nn.39-40.

⁸³ B&J Comments at 40.

⁸⁴ *Id.*

⁸⁵ Armistead Direct Testimony, Exhibit 20 at 13, and Appendix A at 13.

⁸⁶ *B&J Enterprises, L.C.*, Case No. PUE-1999-00616, 2001 S.C.C. Ann. Rep. 390, 391.

⁸⁷ *See id.*

⁸⁸ Mr. Reynolds explained that "[a]t the time the amounts were initially borrowed, the operation of the Sewerage System and the completion of the development tasks in Blacksburg County [sic] Club Estates were consolidated into one corporate entity," and that the original loan "included amounts for both operating [sic] of the Sewerage System and other developmental activities (though allocable between the two activities)." Reynolds Direct Testimony, Exhibit 6 at 13. Mr. Reynolds further stated that the "amount of the loan attributable solely to the Sewerage System has been separated and restated into a note in the name of B&J solely attributable to the amounts borrowed for the Sewerage System." *Id.*

⁸⁹ The Company, for example, may choose to transfer the amount of debt in excess of the net plant balance back to the utility's parent company.

⁹⁰ Report at 23.

⁹¹ Report at 24.

⁹² B&J Comments at 24.

The Company asserts that the \$50.00 rate recommended by the Examiner "is completely insufficient to enable the Company to pay its proper expenses, much less provide the owners with the statutorily required compensation for the cost of capital."⁹³ B&J states that § 56-265:13.4 of the Code requires that "the utility receive a rate of return in addition to receiving sufficient revenues to cover operating expenses, the cost of debt, and the cost to attract capital," and that its revenues must enable the Company to make principal repayments on its debt.⁹⁴ The Company asserts that the Examiner's rate of return of 7.05% "is deceiving, however, because this positive rate of return is only reached by artificially depressing the expenses of the Company."⁹⁵ B&J further states that "GNB, the holder of the note representing the utility's debt, has indicated that B&J must begin to make principal repayments on the Company's note; otherwise, the Company runs the risk that the bank will call the loan."⁹⁶

The Company also states that the Hearing Examiner's "Report constitutes the taking of private property without just compensation, which is constitutionally impermissible."⁹⁷ B&J notes the basic ratemaking principle that utility rate regulation can result in an improper taking if rates are set at a level found to be unjust or confiscatory.⁹⁸ The Company asserts that the setting of rates "is impacted by the recognition of revenues, the consideration of expenses and the setting of a reasonable rate of return," and that the "illusion of a positive rate of return by denying the Company reimbursement of operational expenses and interest expense mandated by the statute is a 'manipulation' that cannot pass Constitutional muster."⁹⁹ B&J also states that the "utility benefited from the rate base portion of the debt in its capital expansion and improvement," and that it "benefited from the non-rate base portion of the debt because, absent those borrowed amounts, the utility would have been unable to operate and pay its expenses in the ordinary course of business."¹⁰⁰

We approve a monthly rate of \$60.00. We find that this rate satisfies the requirements of § 56-265.13:4 of the Code, which entitles the Company "to recover a level of revenues sufficient to pay for its lawful and necessary expenses, and to compensate its owners for their investment in the system."¹⁰¹ The Company proposes a rate of return of 7.42%.¹⁰² We find that a monthly rate of \$60.00 results in a reasonable rate of return of 7.41%.¹⁰³

We disagree with B&J's assertion that the approved rate of return is an "illusion" resulting from "manipulation."¹⁰⁴ We have not denied the Company revenues to pay operational and interest expenses mandated by Virginia statute. Section 56-265:13.4 of the Code does not mandate that the Company receive sufficient revenues to pay all expenses it chooses to incur. Rather, the Commission must establish the "lowest charges" sufficient for the Company to pay all "lawful and necessary expenses."¹⁰⁵ Thus, in this case, we have determined the Company's lawful and necessary expenses.

In addition, § 56-265:13.4 of the Code does not require a rate that enables the Company to make principal payments on any debt obligation it chose to assume. Rather, the rate that we establish herein permits the Company to make principal payments on that portion of its debt which we have found represents investment in facilities that are used and useful in providing utility service. Moreover, to the extent any portion of B&J's debt was utilized for prudent operational expenses in the ordinary course of business, such expenditures have been properly recognized in the rate making process as operational expenses.

We are not required to assume a rate base equal to a particular capital investment regardless of what the funds are used for. Rather, investors are entitled to earn a return only on the investments that are used and useful in providing utility service.¹⁰⁶ As discussed above, we have adopted a rate base that reasonably represents the dollar amount of property used and useful in rendering utility service. Thus, we have found that the amount of capital upon which B&J is entitled to earn a return is not equivalent to the rate base requested by the Company.

⁹³ B&J Comments at 24.

⁹⁴ B&J Comments at 24-25.

⁹⁵ B&J Comments at 25.

⁹⁶ *Id.*

⁹⁷ B&J Comments at 42-43.

⁹⁸ B&J Comments at 43.

⁹⁹ *Id.*

¹⁰⁰ B&J Comments at 44.

¹⁰¹ *Commonwealth of Virginia, ex rel. Mike Deane, et al. v. Botetourt Forest Water Corp.*, Case No. PUE-1998-00059, 1999 S.C.C. Ann. Rep. 401, 404 ("*Botetourt Forest*").

¹⁰² B&J Comments at Appendix A.

¹⁰³ The net operating income of \$16,553 established by this Order, divided by the approved rate base of \$223,419, results in a rate of return of 7.41%. A monthly rate of \$60.00 allows for the recovery of \$10,226 in interest assuming an interest rate of 4.75% on the utility debt allowed in this case, *i.e.*, the net plant found reasonable herein. This monthly rate also provides for the coverage of total O&M, depreciation and taxes in the amount of \$79,027 and allows the Company additional funds in the amount of \$6,327 for working capital and profit.

¹⁰⁴ B&J Comments at 43.

¹⁰⁵ Va. Code § 56-265.13:4.

¹⁰⁶ *See, e.g., Duquesne Light Co.*, 488 U.S. 299, 317 (1989) ("We cannot determine whether the payments a utility has been allowed to collect constitute a fair return on investment, and thus whether the government's action is confiscatory, unless we agree upon what the relevant 'investment' is. For that purpose, all prudently incurred investment may well have to be counted.") (Scalia, J., concurring); *Missouri Southwestern Bell v. Public Service Commission of Missouri, et al.*, 262 U.S. 276, 289 (1923) (An order of a state commission is confiscatory if it "prevents the utility from earning a fair return on the amount prudently invested in it" (footnote omitted).) (Brandeis, J., dissenting).

Finally, no rate of return or cost of capital analyses have been performed in this case. We previously have explained, in establishing rates under § 56-265:13.4 of the Code, that "since no rate of return or cost of capital analyses were performed in this proceeding, we should not use rate of return as the primary determinant of rates going forward."¹⁰⁷ Accordingly, we need not primarily rely upon rate base/rate of return to establish future rates for the Company. The monthly rate that we approve herein provides an increase in operating revenue of \$31,860, which produces operating income of \$16,553 after operating expenses, depreciation, and taxes found reasonable herein. We find that the rates established herein are "just and reasonable and will provide sufficient revenues for [the Company] to serve its customers."¹⁰⁸ In sum, pursuant to statutory requirements, we have determined the charges that shall produce sufficient revenues to pay the Company's lawful and necessary expenses. We cannot, however, ensure that B&J conducts its business in a manner that produces net operating income or net revenues.¹⁰⁹

Request for Oral Argument

Finally, we will deny the Company's request for oral argument. B&J states that "[g]iven the nature and complexity of the issues discussed herein, the Company respectfully requests that the Commission schedule oral argument to hear the issues."¹¹⁰ This case, however, has been "fully litigated and argument presented both in brief and comment on the Examiner's Report."¹¹¹ We find that oral argument is not necessary.

Accordingly, IT IS ORDERED THAT:

- (1) The Company's request for oral argument is denied.
- (2) The findings and recommendations of the Hearing Examiner, as modified herein, are hereby adopted.
- (3) The Company may assess a monthly charge of \$60.00 for sewer service.
- (4) The remaining charges, fees, and terms and conditions of service shall be as approved in this Order or, if not addressed in this Order, as recommended by the Hearing Examiner.
- (5) Within thirty (30) days from the date of this Order, the Company shall file with the Commission's Division of Energy Regulation rates, rules, and regulations of service consistent with the terms of this Order.
- (6) On or before August 1, 2003, B&J shall commence refunds, with interest as directed below, all revenues collected from the application of the interim rates that were effective for service beginning on February 11, 2002, to the extent that such revenues exceed the revenues produced by the rates approved herein.
- (7) Interest upon the ordered refunds shall be computed from the date payment of each monthly bill was due during the interim period or the date payment of the connection fee was due until the date refunds are made, at an average prime rate for each calendar quarter. The applicable 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 G.13), for the three months of the preceding calendar quarter.
- (8) The interest required to be paid shall be compounded quarterly.
- (9) The refunds ordered herein may be accomplished by credit to the appropriate customer's account for current customers (each such refund category being shown separately on each customer's bill). Refunds to former customers shall be made by a check to the last known address of such customers when the refund amount is \$1 or more. B&J 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. B&J may retain refunds owed to former customers when such refund amount is less than \$1; however, B&J will prepare and maintain a list detailing each of the former accounts for which refunds are less than \$1, and in the event such former customers contact the Company and request refunds, such refunds shall be made promptly. All unclaimed refunds shall be handled in accordance with § 55-210.6:2 of the Code of Virginia.
- (10) On or before June 1, 2004, B&J 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, inter alia, computer costs, and the personnel-hours, associated salaries and cost for verifying and correcting the refund methodology and developing the computer program.
- (11) B&J shall bear all costs of the refunding directed in this Order.
- (12) There being nothing further to come before the Commission, this matter shall be removed from the docket and the papers placed in the file for ended causes.

¹⁰⁷ Botetourt Forest, Case No. PUE-1998-00059, 1999 S.C.C. Ann. Rep. 401, 404.

¹⁰⁸ Id.

¹⁰⁹ See, e.g., Federal Power Commission, et al. v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944) ("regulation does not insure that the business shall produce net revenues") (citation omitted).

¹¹⁰ B&J Comments at 46.

¹¹¹ Commonwealth of Virginia, ex rel. David W. Desmond, et al. v. United Water Virginia, Inc., Case No. PUE-1997-00544, 1999 S.C.C. Ann. Rep. 389, 393 (denying request for oral argument).

**CASE NO. PUE-2001-00716
JULY 18, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
TERRY L. STROCK, et al.
v.
B&J ENTERPRISES, L.C.

ORDER ON MOTION

By letter dated October 26, 2001, B&J Enterprises, L.C. ("B&J" or the "Company") notified its customers and the State Corporation Commission's ("Commission") Division of Energy Regulation of its intent, pursuant to the Small Water or Sewer Public Utility Act, Va. Code ("Code") § 56-265.13:1 et seq., to increase its monthly sewer rates effective for service rendered on and after December 13, 2001. On November 21, 2001, approximately 90% of the Company's customers filed a petition with the Commission objecting to the Company's proposed rate increase.

On January 30, 2002, the Commission issued an Order permitting B&J to implement its proposed rate increase effective February 11, 2002, on an interim basis and subject to refund with interest. The Commission's Order also appointed a Hearing Examiner to conduct further proceedings in this matter. On June 27, 2003, the Commission issued a Final Order in this proceeding.

On July 17, 2003, B&J and the Blacksburg Country Club Homeowners' Association filed a Joint Motion for Clarification and Reconsideration ("Joint Motion"), which "petition[s] the [Commission] for clarification and, if necessary, reconsideration of the Commission's Final Order dated June 27, 2003, ... to specify that B&J may, in the future, request consideration of the imposition of an availability fee on all lot owners in BCC Estates."

NOW THE COMMISSION, having considered the Joint Motion, is of the opinion and finds as follows. The Final Order in this proceeding does not preclude B&J, in the future, from requesting consideration of the imposition of an availability fee on all lot owners in BCC Estates. Rather, the Final Order states: "We do not find, based on the record before us, that an implied equitable servitude or easement exists which would permit an availability fee to be imposed absent an express contract or restrictive covenant." Final Order at 19 (emphasis added). We reiterate that our finding on this matter is explicitly limited to the record developed in this case.

Accordingly, IT IS ORDERED THAT:

- (1) The Final Order in this proceeding does not preclude B&J, in the future, from requesting consideration of the imposition of an availability fee on all lot owners in BCC Estates.
- (2) This matter is hereby dismissed.

**CASE NO. PUE-2001-00716
SEPTEMBER 3, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
TERRY L. STROCK, et al.
v.
B&J ENTERPRISES, L.C.

ORDER ON RECONSIDERATION

By letter dated October 26, 2001, B&J Enterprises, L.C. ("B&J" or the "Company") notified its customers and the State Corporation Commission's ("Commission") Division of Energy Regulation of its intent, pursuant to the Small Water or Sewer Public Utility Act, Va. Code ("Code") § 56-265.13:1 et seq., to increase its monthly sewer rates effective for service rendered on and after December 13, 2001. On November 21, 2001, approximately 90% of the Company's customers filed a petition with the Commission objecting to the Company's proposed rate increase.

On January 30, 2002, the Commission issued an Order permitting B&J to implement its proposed rate increase effective February 11, 2002, on an interim basis and subject to refund with interest. The Commission's Order also appointed a Hearing Examiner to conduct further proceedings in this matter. On June 27, 2003, the Commission issued a Final Order in this proceeding ("Final Order").

On July 16, 2003, Joan G. Moore filed a Petition for Reconsideration ("Petition"). Ms. Moore requests that: (1) a reduction of the total allowed B&J for management and operations personnel be considered, consistent with the findings of the Hearing Examiner; (2) a reduction of the total allowed B&J for rate case expenses for this case be considered, consistent with the findings of the Hearing Examiner, the position of the Commission's Staff ("Staff"), and the laws of Virginia; (3) the Commission reconsider its decision to allow B&J a cash working capital allowance; (4) the Commission consider requiring B&J to record contributions in aid of construction ("CIAC") for the year 2001, \$25,000 in sewer connection fees that the evidence shows was paid but not recorded; and (5) the Commission consider now, as part of this case, the inequity to ratepayers that arises from allowing B&J a rate of return on the costs of sewer mains and laterals installed for the benefit of B&J lot owners, but not yet compensated for by recorded sewer connection fees on these lots. Ms. Moore is not seeking reconsideration of the \$60.00 monthly rate established in the Final Order. On July 18, 2003, the Commission issued an Order Granting Reconsideration for the purpose of continuing our jurisdiction over this proceeding and considering the Petition.

NOW THE COMMISSION, having considered the pleadings, the record, and the applicable law, is of the opinion and finds as follows. We deny the Petition as discussed below. We also provide clarification on certain matters raised in Ms. Moore's well-reasoned Petition.

Ms. Moore requests that the Commission reduce the approved management fee of \$28,033 by \$6,030, which represents B&J's payments to Messrs. Lovern and Stiltner to check on the system and to perform required tests. Ms. Moore contends that these services represent unnecessary duplication.

Based on the record before us, we do not find that the \$28,033 management fee is duplicative of the services provided by Messrs. Lovern and Stiltner. We also note that B&J agreed in this proceeding to maintain a log of Mr. Reynolds' time and work performed. Consistent with our discussion in the Final Order, if the Company does not keep detailed records of the time spent by Mr. Reynolds for management service, in the future we may disallow all or some portion of that cost.

Ms. Moore also asks the Commission "to significantly reduce the rate case expense allowed."¹ Ms. Moore states: "If the \$24,736 in rate case expenses is allowed to stand, it will be a travesty of justice sending the message to customers that merely complaining about a rate increase will cost \$180 per customer, and that is before the customers' own cost of representing themselves or hiring counsel to represent them is considered."² For the reasons set forth in the Final Order, we find that \$24,736 of rate case expense amortized over a period of four years is within the range of reasonableness in this instance. In response, however, to Ms. Moore's concern regarding future cases, the Final Order establishes that B&J does not possess an entitlement to the recovery of similar rate case expenses in future proceedings. The Final Order explains that the business of a public utility is not risk free and that "a public utility's rate case expense must bear some reasonable relationship to the utility and the utility's rate request."³ Furthermore, the Final Order admonishes that "[e]ven if B&J had kept meticulous records of its expenses, ratepayers cannot be the guarantors of whatever the Company might choose to spend for rate case expense."⁴

Ms. Moore requests that the Commission reject a cash working capital allowance for B&J. Ms. Moore asserts that "[u]nless B&J wishes to change from billing in advance, to billing after service is rendered, a [cash working capital allowance] is not justified."⁵ As found in the Final Order, however, we conclude that a cash working capital allowance is appropriate based on the record in this case. For example, in addition to B&J's claim that it currently is not receiving the benefits of advance billing, a cash working capital allowance will be used for certain expenses that must be paid for immediately but will be recovered over a longer period.⁶

Ms. Moore asserts that the Company collected \$25,000 in sewer connection fees that it has not recorded on its books. Thus, Ms. Moore requests that the Commission require B&J to record this \$25,000 as CIAC. Ms. Moore also asks that the Commission consider taking certain steps to correct the inequity resulting from "the shifting of costs from B&J lot owners to other ratepayers which arises from uncollected sewer connection fees."⁷ We will not modify our findings on these matters for the reasons contained in the Final Order. We note, however, that the Final Order directed B&J to file detailed information in future proceedings on the process it has put in place to bill, book, and collect connection fees. The Final Order explained that collection of CIAC would reduce B&J's need to borrow funds necessary to make system improvements and would reduce B&J's interest costs. Moreover, connection fees represent customer-provided capital and, if booked when billed, connection fees would result in an increase to CIAC by the billed connection fees and would serve as a reduction to rate base. In future proceedings the Commission's Staff will audit the Company's books to verify that connection fees are properly billed, booked, and collected. If the Company cannot establish that such fees have been properly billed, booked, and collected, we may impute such for ratemaking purposes in future cases.

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) The Petition for Reconsideration filed by Joan G. Moore is denied.
- (2) This matter is dismissed.

¹ Petition at 5.

² *Id.* at 8.

³ Final Order at 12.

⁴ *Id.*

⁵ Petition at 9.

⁶ In addition, the Final Order explained that a cash working capital allowance is not a substitute for properly addressing B&J's uncollectible amounts. Following the Uniform System of Accounts requires accrual accounting, wherein B&J should book revenue based on the amount billed and should record uncollectible expense to its bad debt expense account. Thus, one manner in which to address uncollectibles is for the Company to request, and to justify, an uncollectible allowance in rates and to record uncollectibles as an expense on its books.

⁷ Petition at 12.

**CASE NO. PUE-2001-00722
JANUARY 14, 2002**

APPLICATION OF
KINDER MORGAN VIRGINIA, LLC

For authority to construct and operate an electric generating facility in Cumberland County

DISMISSAL ORDER

On December 27, 2001, Kinder Morgan Virginia, LLC ("Kinder Morgan" or "Company"), filed with the Clerk of the State Corporation Commission ("Commission") its application for a certificate of public convenience and necessity to construct and operate an electric generating facility pursuant to § 56-580 D of the Code of Virginia. In addition, the Company sought interim approval to make financial expenditures and to undertake preliminary construction work.

Under this application, Kinder Morgan proposed to construct a 560 megawatt natural gas-fired electrical generation plant ("facility") at a site in Cumberland County, Virginia, to commence operations by the third quarter of 2004. The facility was proposed to be constructed on a site of approximately 34 acres that is owned by Cumberland County ("County"), and is located adjacent to a now-closed County landfill.

Electricity produced by this generation facility was proposed to be transferred through an energy conversion services arrangement to a major power marketing company not affiliated with Kinder Morgan, or the power would have been sold on a wholesale basis. The Company also stated in its application that energy produced by this facility would not be sold by the Company to retail electric customers in the Commonwealth.

Finally, the application stated that construction of the proposed facility would enhance the competitive market for wholesale electricity in Virginia. Additionally, the application declared that the proposed facility would aid the delivery and reliability of electric power in the Commonwealth.

Pursuant to this Commission's Order for Notice and Hearing dated February 26, 2002, a procedural schedule for this proceeding was established; such schedule included a hearing date of July 9, 2002. At the subsequent request of the Company, and by order dated May 8, 2002, the Commission's hearing examiner assigned to this matter postponed the hearing date to December 17, 2002. Thereafter, and by ruling dated October 21, 2002, the hearing examiner continued the matter generally. The Company requested this continuance and suspension of the procedural schedule in a motion dated October 17, 2002.¹

Finally, on October 30, 2002, the Company filed a motion denominated, Motion to Withdraw Application. In support of its motion, the Company stated that it had decided not to proceed with construction of the generating facility that is the subject of this application. Thereafter, Howard P. Anderson, Jr., the hearing examiner assigned to this matter issued a report dated October 31, 2002, in which he (i) directed that the Company's Motion to Withdraw Application be granted, and (ii) recommended that the Commission enter an order dismissing this application from its docket of pending proceedings.

NOW THE COMMISSION, having considered the Motion is of the opinion and finds that Kinder Morgan Virginia LLC should be allowed to withdraw its application for the proposed facility. We will grant the Motion and dismiss this matter without prejudice.

Accordingly, IT IS ORDERED THAT:

- (1) The Motion to Withdraw Application is hereby granted.
- (2) This matter is hereby dismissed without prejudice from the Commission's docket of active proceedings, and the papers herein shall be placed in the Commission's file for ended causes.

¹ The hearing examiner's October 21, 2002, ruling noted that the Company had requested suspension of the procedural schedule because "the market for new energy generation facilities in Virginia and nationwide has failed to improve and Kinder Morgan Virginia believes it is no longer prudent to continue with the procedural schedule established for this case."

**CASE NO. PUE-2002-00002
AUGUST 1, 2003**

APPLICATION OF
ATMOS ENERGY CORPORATION d/b/a UNITED CITIES GAS COMPANY-VIRGINIA

For an Annual Informational Filing

ORDER ADOPTING RECOMMENDATIONS AND DISMISSING PROCEEDING

On December 28, 2001, Atmos Energy Corporation, formerly known as United Cities Gas Company - Virginia ("Atmos" or the "Company"), delivered its Annual Informational Filing ("AIF") for the test period ended September 30, 2001, to the State Corporation Commission ("Commission"). The Company completed its application on January 14, 2002.

On May 15, 2002, the Staff filed its review and analysis of the 2001 AIF. Staff's accounting analysis demonstrated that Atmos earned a fully adjusted test year return on common equity of 9.73%, a return below the Company's authorized return on equity range of 10.50% to 11.50%, established in Case No. PUE-2000-00171, in the Commission's May 22, 2001 Final Order. Staff's accounting analysis addressed two principal issues. The first issue involved the establishment of a new regulatory asset for excessive uncollectibles expense incurred during the 2000-2001 winter heating season. Through its earnings test establishing the deferral, Staff reported that Atmos earned a test year return on common equity of 11.48%, which was 48 basis points above the benchmark return of 11.00%, the midpoint of the Company's authorized return on equity range. Staff, therefore, asserted that Atmos did not meet the criteria for establishing the full deferral balance of \$492,363, and recommended a \$72,210 write-down of the requested deferral balance to \$420,153, as of September 30, 2001.

The second issue identified by the Staff in its Report related to the appropriate ratemaking treatment for Atmos' merger and integration ("M&I") cost regulatory asset. The Company proposed to allocate 100% of the M&I deferral to its regulated business unit and to amortize the deferral over seven years. Staff, on the other hand, allocated a portion of the initial M&I deferral to Atmos' non-regulated units, netted cumulative merger savings, and allowed a 50/50 sharing of ongoing savings between Atmos' ratepayers and shareholders.

Staff's M&I cost-savings analysis demonstrated that Atmos underamortized the jurisdictional M&I deferral by \$1,623,937, through the end of the 2001 test year. Staff's 2001 earnings test analysis also revealed that Atmos generated sufficient excess earnings to absorb another \$75,942, of the M&I deferral. Staff recommended that the Commission direct Atmos to write down the Virginia jurisdictional portion of the M&I deferral by \$1,699,879 to reflect the appropriate unamortized regulatory balance of \$738,080, as of September 30, 2001.

On July 12, 2002, Atmos, by counsel, filed a Motion for Hearing with the Commission, together with its "Responses to Staff's Accounting Analysis" ("Response"). In its Response, Atmos took issue with Staff's adjustment to weather normalization revenues and with Staff's adjustments to uncollectible expense, other benefits expense, other postretirement benefits ("OPEB") expense, customer deposits, interest on customer deposits, supplier refunds, interest on supplier refunds, accumulated deferred income taxes ("ADIT") and M&I costs. In addition, the Company asserted that the Staff employed a point-in-time rather than a 13-month average capital structure in Staff's earnings test. Atmos contended that its analysis did not indicate a need for a write-down of either the excess uncollectibles deferral or the M&I regulatory asset.

On July 15, 2003, the Staff, by counsel, filed a Motion whereby it requested leave to supplement the May 15, 2002, Staff Report. In support of its Motion, Staff noted that it had met with Atmos to discuss the captioned AIF, and that as a result of the meeting, the Company modified its position on certain issues and agreed to provide additional information relating to various accounting adjustments. Staff also related that it had received and analyzed the information provided by the Company, and that this information would likely result in the modification of certain of Staff's recommendations and schedules that appeared in its May 15, 2002, Report. Staff represented that it had contacted Atmos' counsel, and that Atmos did not oppose the Staff's request to supplement the May 15, 2002 Report.

On July 17, 2003, the Commission entered an Order granting Staff's Motion to file a Supplemental Report. This Order directed Staff to file its Supplemental Report by no later than August 8, 2003.

On July 18, 2003, the Staff filed its Supplemental Report. In this Report, Staff represented that after the August 30, 2002, meeting with Staff, Atmos accepted Staff's weather normalization adjustment as well as Staff's adjustments to other benefits expense, customer deposits, supplier refunds, interest on supplier refunds, and ADIT-Capitalized Selling. In turn, Staff accepted Atmos' position that ADIT-Deferred Gain-United Cities Gas Storage was a non-jurisdictional item, and that the earnings test capital structure should be revised.

With regard to uncollectibles expense, Staff reported that Atmos argued that the Staff's methodology of calculating going forward expense, which applies a net charge off rate to fully adjusted gas and nongas margins based on actual experience, could misstate the going forward level of uncollectibles expense if gas prices were volatile during the test year. The Company asserted that Staff's methodology should be applied only to nongas margins, while the uncollectibles expense related to gas costs should be left at a per book level. Staff acknowledged that while the Company's position on this issue may have merit, such a significant change in ratemaking methodology needed to be made in the context of a rate proceeding. The Company agreed to use Staff's methodology for calculating going forward uncollectibles expense in AIFs until its next rate application is filed with the Commission. Regarding the M&I asset issue, Staff commented that the AIF was not the appropriate docket in which to resolve that issue. Staff and the Company agreed to defer resolution of the M&I regulatory asset issue until the Company's next rate case filing.

As noted in the Supplemental Report, the sole issue remaining in the 2001 AIF was the question of OPEB funding. Staff continued to assert that the Commission's December 30, 1992 Final Order in Case No. PUE-1992-00003 (the "OPEB Order"), required the Company to fund the OPEB accrued fully in order to recover it fully in rates.¹ Staff reported that if the OPEB accrued is not funded, the OPEB expense must be reduced to a pay-as-you-go level and rate base must be reduced for the cumulative funding shortfall. Staff represented that since the August 30, 2002, meeting, Atmos had provided additional documentation regarding its funding of the OPEB accrual. Staff therefore revised its OPEB adjustments in the 2001 earnings test to increase expense by \$15,369, and rate base by \$144,560. As of September 30, 2001, Atmos still had a jurisdictional funding deficit of \$55,502, which translated into an average rate base deduction, net of tax, of \$23,225, in the 2001 earnings test.

After all revisions, Staff's supplemental accounting analysis reveals that Atmos has a fully adjusted return on common equity of 9.34% for the fiscal year 2001. Staff's revised earnings test demonstrates that Atmos earned a return on common equity of 10.64%, which is an 84 basis point decrease compared to Staff's initial earnings test return. According to the Staff, since Atmos' revised return is below the 11% benchmark return, no earnings test write-down is necessary for the excess uncollectibles deferral. Staff reflected a \$21,484 write-down of the M&I asset in the 2001 AIF's earnings test to reduce Atmos' regulatory earnings to the bottom of the approved range, which left an unamortized balance of \$786,591, for the M&I regulatory asset as of September 30, 2001. Staff noted that the Company and the Staff have agreed to delay the resolution of the M&I asset issue until Atmos' next rate proceeding. Staff also reported that it and Atmos have agreed on the following to monitor OPEB funding on a prospective basis: (i) Atmos will establish a formal policy such that once voluntary employees beneficiary association ("VEBA") trust funds are committed to funding the Virginia OPEB accrual, those funds cannot be transferred to another account without notice and explanation to Staff; and (ii) Atmos will provide an annual reconciliation of the Virginia OPEB accrual to the actual Virginia VEBA trust funding, to be included in the annual AIF or rate application.

On July 25, 2003, Atmos, by counsel, filed a letter stating that it did not intend to file a response to the Supplemental Staff Report, and wished to withdraw its request for hearing in this matter. In its letter, the Company indicated that it concurred with the entry of an order adopting the Staff's recommendations in that Report and closing the proceeding.

Now, upon consideration of the record made in this case, the Commission is of the opinion and finds that Atmos and Staff's agreement to defer resolution of the issues related to the remaining balance of the M&I regulatory asset until Atmos' next rate proceeding appears appropriate, especially inasmuch as no change in rates has been recommended in this proceeding. Our acceptance of this Staff recommendation must be understood as merely reserving judgment on this issue and should not be construed as either approval of the recovery of any deferred expenses or as agreement as to any sharing of these expenses between the Company's ratepayers and shareholders. We further find that Staff and Atmos' proposals to monitor the level of Atmos' OPEB funding prospectively appear appropriate, and we will direct Atmos to establish a formal policy so that once VEBA trust funds are committed to funding the OPEB accrual for Virginia, these funds cannot be transferred to another account without notice and explanation to the Staff. Additionally, we direct Atmos to provide for an annual reconciliation of the Virginia OPEB accrual to the Virginia VEBA trust funding in its subsequent AIF or rate application. Adoption of these proposals should permit the Commission, Staff or any interested case participant to evaluate the Company's compliance with the requirements of the OPEB Order.

¹ See Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte, In re: Consideration of a rule governing Accounting for Postretirement Benefits Other than Pensions, Case No. PUE-1992-00003, 1992 S.C.C. Ann. Rep. 315, 316.

Accordingly, IT IS ORDERED THAT:

- (1) The proposal of Staff and Company to delay the consideration of the M&I regulatory asset issue until the Company's files its next rate proceeding is hereby adopted.
- (2) The recommendations found on pages 5-6 of the Staff's July 18, 2003 Supplemental Report are hereby accepted.
- (3) Atmos shall be permitted to withdraw its request for a hearing.
- (4) There being nothing further to be done herein, this proceeding shall be dismissed from the Commission docket of active proceedings, and the papers filed herein shall be filed in the Commission's files for ended causes.

**CASE NO. PUE-2002-00075
MARCH 13, 2003**

APPLICATION OF
CPV WARREN, LLC

For a certificate of public convenience and necessity for electric generation facilities in Warren County, Virginia

FINAL ORDER

On February 4, 2002, CPV Warren, LLC ("CPV", "CPV Warren", or the "Company") filed an application in both confidential and public versions with the State Corporation Commission ("Commission") for approval pursuant to § 56-580 D of the Code of Virginia and the revised provision of 20 VAC 5-302-10 and -20 of the Virginia Administrative Code to construct, own, and operate a 520 MW combined cycle electric generating facility ("Facility") in Warren County, Virginia. As explained in the application, the Facility will interconnect on-site with a 500 kV transmission line owned by Dominion Virginia Power and a 138 kV transmission line owned by Allegheny Power Systems. The Facility will be powered by natural gas and will use low-sulfur distillate oil as a backup fuel for no more than 720 hours per year. CPV requested confidential treatment of commercially sensitive information related to the Facility that CPV Warren deemed confidential.

On March 5, 2002, the Commission issued an Order docketing the matter, and setting forth the procedure under which confidential information could be accessed and used by Staff and parties to the proceeding.

On March 18, 2002, the Commission entered an Order scheduling a public hearing in the matter. The Commission required CPV to provide public notice of its application, provided interested persons with an opportunity to participate in the matter, established a procedural schedule for the filing of testimony, and assigned a Hearing Examiner to conduct further proceedings on the application. A public hearing was scheduled for July 24, 2002.

On April 15, 2002, Washington Gas Light Company ("WGL") filed its Notice of Participation herein. Further, in providing notice of this proceeding pursuant to the March 18, 2002 Order, CPV inadvertently served notice on Columbia Gas of Virginia, Inc., instead of Columbia Gas Transmission Corporation ("TCo"). CPV notified TCo of the proceeding on June 26, 2002, after the deadline for filing notices of participation had passed.

On July 12, 2002, TCo, by counsel, filed a Notice of Participation as a Respondent out of time. In its Notice of Participation, TCo represented that it would accept the record "as is", without further modification and that it was not seeking to delay the procedural schedule for the proceeding. On July 16, 2002, CPV filed a "Motion in Support of Notice of Participation as a Respondent Out-of-Time," asserting that no parties would be prejudiced by permitting TCo to participate in granting the Company's motion. CPV's motion was granted by the July 17, 2002 Hearing Examiner's Ruling.

No comments from the public opposing the Facility were filed with the Commission by the June 14, 2002, deadline established by the March 18, 2002, Order for Notice and Hearing.

The Department of Environmental Quality ("DEQ") coordinated an environmental review of the application conducted by itself and other interested state agencies, the Northern Shenandoah Valley Regional Commission, and Warren County, Virginia. DEQ prepared a report on the potential impacts from construction and operation of the facility as well as recommendations for minimizing those impacts, which was filed on May 29, 2002 ("DEQ Report").

On June 26, 2002, the Commission Staff ("Staff") filed direct testimony regarding its analysis of CPV's application. The DEQ Report was attached to this testimony and was identified at Exhibit 10 in the proceeding. CPV filed rebuttal testimony on July 12, 2002.

An evidentiary hearing was convened as scheduled on July 24, 2002, before Hearing Examiner Alexander F. Skirpan, Jr. James R. Barrett, Esquire, George D. Cannon, Jr., Esquire, and Cassandra Sturkie, Esquire, appeared on behalf of CPV. CPV presented the testimony of Thomas E. Eiden, CPV's Vice President for Project Development, Glen Harkness, President for TRC Environmental Corporation,¹ the supplemental testimony of Frederick M. Sellars, Vice President and National Director of Energy Facilities Permitting for TRC Environmental Corporation ("TRC"), and Harry Vidas, Vice President of Energy and Environmental Analysis, Inc. ("EEA").²

¹ Mr. Harkness' direct testimony was adopted by Mr. Eiden.

² On April 29, 2002, the Commission issued orders in three other certificate proceedings remanding those applications for, among other things, further consideration of cumulative air quality impacts. See Application of Mirant Danville, LLC. For approval of a certificate of public convenience and necessity pursuant to Va. 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-2001-00430, Order (April 29, 2002); Application of CinCap Martinsville, LLC. For a certificate of public convenience and necessity for electric generation facilities in the City of Martinsville, Case No. PUE-2001-00169, Order (April 29, 2002); Application of Kinder Morgan

Sherry H. Bridewell, Esquire, and William H. Chambliss, Esquire, appeared on behalf of the Staff. Staff presented the testimony of Gregory L. Abbott of the Division of Energy Regulation, and Mary E. Owens and Mark Carsley of the Division of Economics and Finance. William Orndorff of the Department of Conservation and Recreation ("DCR"), Division of Natural Heritage, and Thomas F. Wilcox of the Virginia Department of Game and Inland Fisheries ("VDGIF" or "DGIF") appeared and presented testimony on the effect of the project on the Madison Cave Isopod.³ In addition, Charles Turner, Director of DEQ's Office of Air Permit Programs, provided testimony on the effect of the project on air quality and testimony responsive to the testimony presented by Daniel R. Holmes, who appeared as a public witness on behalf of Piedmont Environmental Council ("PEC"). Neither TCo nor WGL appeared at the hearing.

Three public witnesses testified at the hearing, one of which opposed construction of the proposed facility. Richard Traezyk, a resident of Front Royal, testified that he was the Chairman of the Warren County Planning Commission at the time CPV presented its petition for local approval of the Facility. He testified that the Planning Commission unanimously voted to approve CPV's proposed Facility. He noted that he and the Planning Commission had conferred with professionals about the technical aspects of CPV's Facility and visited a similar facility in Hanover, Virginia, to observe its operations. Based on his research, Mr. Traezyk concluded that CPV's power generation facility was superior to coal-fired and nuclear power plants. Among other things, Mr. Traezyk testified that CPV's facility would benefit Warren County by contributing millions of dollars to that County's tax base, diversifying the County's businesses, and bringing high-skilled jobs to the community.

Douglas P. Stanley, a resident of Front Royal and the Warren County Administrator and planning director, appeared as a public witness in support of the proposed facility. He testified that the site, located in the middle of Warren County's industrial corridor, had been zoned for industrial use since 1977, and was "ideally suited" for CPV's facility because of its proximity to interstate gas lines and electric transmission lines. Mr. Stanley addressed the process by which Warren County officials evaluated and approved the conditional use permit ("CUP") for the proposed facility. He noted that both the Planning Commission and the Board of Supervisors unanimously approved the CUP, subject to 54 conditions.

On cross-examination, Mr. Stanley maintained that CPV's commitment to utilizing dry-cooling technology to reduce water consumption distinguished CPV's application from other potential power facility projects. Mr. Stanley confirmed that when the County officials approved the CUP they did not factor in the presence of the Madison Cave Isopod on the land near the facility's proposed site.

Daniel R. Holmes, Special Projects Coordinator for PEC, also appeared as a public witness. Among other things, Mr. Holmes' testimony focused primarily on the impact of the Facility on air quality. Mr. Holmes raised the concern that Warren County was included within the U.S. Environmental Protection Agency's ("EPA's") presumptive boundaries for non-attainment with the eight-hour ozone standards as illustrated by a map he offered (Exhibit 1). He questioned whether CPV's commitment to obtain offsets of nitrogen oxide ("NO_x) emissions was possible and enforceable. He asserted that CPV should use lowest achievable emission rate ("LAER") technology rather than best available control technology at its proposed Facility. Mr. Holmes questioned whether DEQ had addressed Prevention of Significant Deterioration ("PSD") increments for the Facility and expressed concern as to the cumulative impacts of all proposed facilities. He expressed concern that Virginia's PSD program had not been subject to a periodic comprehensive review as prescribed by federal law.

Regarding CPV's commitments to Warren County, Mr. Holmes expressed concerns over whether CPV intends to operate the proposed facility and whether commitments made by CPV to Warren County would be enforceable if CPV sold the facility.

On cross-examination, Mr. Holmes clarified that two of the proposed plants shown on his map (Exhibit 1) purporting to identify preliminary ozone nonattainment areas, existing air quality monitoring and proposed power plants as of June 2001, should be removed because those projects have been withdrawn. Further, he explained that there was a dispute between DEQ and EPA over the classification of Warren County, with DEQ holding that the County should not be considered as an area in non-attainment under the eight-hour ozone standard.

During the proceeding, CPV witness Eiden agreed to the recommendations made in the May 29, 2002, DEQ Report (Exhibit 10), subject to further discussions with DCR and VDGIF regarding the Madison Cave Isopod. Transcript at 114-115.⁴ A late filed exhibit (Exhibit 8) was reserved for the Company to report on the status of its continued dialogue with DCR and VDGIF on this and stormwater runoff concerns. Tr. at 98-100. At the conclusion of the hearing, the Hearing Examiner accepted an offer by the Company and Staff to prepare a summary of the record in lieu of post-hearing briefs in the matter. Tr. at 215-216.

On October 15, 2002, CPV filed Exhibit 8, wherein the Company indicated that it had resolved all outstanding issues regarding the Madison Cave Isopod to the satisfaction of both VDGIF and DCR. In Exhibit 8, CPV committed to the following:

- Contribution To Help Fund Conservation Easement. DCR has expressed its interest in either developing a conservation easement over Madison Cave Isopod habitat located on a parcel currently owned by Fishnet Ministries, Inc., nearby the Project site, or purchasing the property. CPV, with DCR's concurrence, has agreed to contribute \$47,250 toward a fund that will be administered by DCR to acquire the conservation easement or purchase the property.

Virginia, LLC. For approval of a certificate of public convenience and necessity pursuant to Va. 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-2001-00423, Order (April 29, 2002).

To respond to the Commission's interest in developing a factual record regarding potential cumulative air quality impacts, CPV filed a motion on June 27, 2002, to supplement its application with the prefiled testimonies of Mr. Sellars and Mr. Vidas, responsive to the cumulative air quality impacts issue. CPV's unopposed motion was granted by the Hearing Examiner's July 17, 2002 Ruling.

³ The Madison Cave Isopod (*Antrolana Lira*) is listed as threatened under both the United States and the Virginia Endangered Species Acts. Specimens of the Madison Cave Isopod have been identified on a parcel adjacent to the proposed site of the Facility ("Fishnet Ministries Site").

⁴ Hereafter references to the transcript will be to "Tr. at ____".

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- Contribution To Help Fund Monitoring. DGIF has recommended that CPV contribute toward a fund that would be used to monitor potential impacts to the Madison Cave Isopod resulting from the construction and operation of the Project. CPV, with DGIF's concurrence, has agreed to contribute \$10,000 to a monitoring program developed by DGIF for this purpose.
- Stormwater Detention System. DGIF has recommended that the Project's stormwater detention system be designed to withstand a 100-year storm event. The Project's engineer has confirmed the Project's stormwater detention pond and landscaping plan are designed to withstand a 100-year storm event. CPV has further committed to enhance the design of the drainage ditches at the Project site.

On October 18, 2002, a Summary of the Record was filed jointly by Staff counsel and counsel for the Company.

On November 25, 2002, the Hearing Examiner entered a Report ("Report") summarizing the record and analyzing the evidence and issues in this proceeding. The Report made the following findings:

1. The Facility will have no material adverse effect upon the reliability of electric service provided by any regulated public utility;
2. The Facility advances the goal of electric competition in the Commonwealth;
3. The Facility will have no adverse effect upon the rates paid by customers for electric, natural gas, water, or sewer service from any regulated public utility in the Commonwealth;
4. The Facility will have no material adverse effect on any threatened or endangered plant or animal species, any wetlands, air quality, water resources, or the environment generally;
5. The Facility will have a positive impact on economic development;
6. Construction and operation of the Facility will not be contrary to the public interest;
7. Any Certificate issued by the Commission in this case should include a requirement that CPV Warren report to the Clerk of the Commission the name and corporate affiliation of any company joining CPV as an equity partner, and the name and corporate affiliation of any company that purchases all or part of the capacity or output of the Facility on a long-term basis of six months or more;
8. Any Certificate issued by the Commission in this case should include a sunset provision that calls for the Certificate to expire if construction has not commenced within two years from the date of issuance;
9. Any Certificate issued by the Commission in this case should require CPV Warren to comply with all recommendations of the DEQ as agreed to by CPV Warren during this proceeding; and
10. Any Certificate issued by the Commission in this case should include a requirement for CPV Warren to meet its commitments with regard to the Madison Cave Isopod as set forth in Exhibit No. 8.

Based upon his findings, the Hearing Examiner recommended that the Commission: (i) grant CPV authority and a certificate of public convenience and necessity pursuant to § 56-580 D of the Code of Virginia to construct and operate an electric generation facility, and its associated facilities in Warren County as described in the Report and based upon the record developed in the proceeding; (ii) direct the Company to report to the Clerk of the Commission the name and corporate affiliation of any company joining CPV as an equity partner, and the name and corporate affiliation of any company that purchases all or part of the capacity or output of the Facility on a long-term basis of six months or more; (iii) provide that the certificate will sunset if construction has not begun within two years from the date of a Commission final order granting approval of the Facility; (iv) direct CPV Warren to comply with the recommendations of the DEQ as agreed to by CPV Warren during this proceeding; (v) direct CPV to meet its commitments with regard to the Madison Cave Isopod as set forth in Exhibit 8; (vi) provide that the certificate is conditioned on the receipt of all permits necessary to operate the Facility and direct the Company to provide a complete list of these permits to the Division of Energy Regulation; and (vii) dismiss the case from the Commission's docket of active proceedings.

The Hearing Examiner invited the parties to the proceeding to file written comments to the Report within twenty-one days from the date of the Report, *i.e.*, by December 16, 2002. Although no comments were filed by the parties to this case, the National Parks Conservation Association ("NPCA"), the Sierra Club, the Blue Ridge Environmental Defense League ("BREDL"), and PEC each registered concerns through written comments received by the Commission's Office of the Clerk on December 16, 2002.

On January 13, 2003, Douglas K. Morris, Superintendent of Shenandoah National Park, filed a letter in the Clerk's Office on behalf of the National Park Service. Mr. Morris filed this same letter on August 14, 2002. The letter stated that "[d]ue to significant unresolved issues surrounding the potential environmental impacts of this proposed power plant on the Class I Shenandoah National Park and . . . [PSD] increments, I request that the . . . [Commission] keep its Case No. PUE 2002-0075 (sic) file open until VA DEQ completes its PSD permit processing in consideration of our comments."

On December 27, 2002, the Commission Staff filed a "Motion to Receive Letter from Department of Environmental Quality into the Record" ("Motion"). This Motion noted that DEQ filed a letter, dated November 26, 2002 ("DEQ Letter"), in response to a Staff request pursuant to § 10.1-1186.2:1 C of the Code of Virginia. The DEQ Letter discussed the recommendations contained in the DEQ Report of May 29, 2002. The DEQ Letter stated that some of the recommendations in the DEQ Report pertain to matters that are not governed by permits or approvals, some of the recommendations pertain to matters that could be or could have been made into permit conditions depending on the interaction between the agency making the recommendation and the permitting authority, and one recommendation may or may not appear in a permit condition.

Among other things, § 10.1-1186.2:1 C of the Code of Virginia requires that, prior to the close of the Commission's record on an application for certification of an electric generating facility pursuant to § 56-580 of the Code of Virginia, the DEQ shall provide the Commission with certain information about environmental issues identified during the DEQ's review process. The Motion indicated that in view of § 10.1-1186.2:1 C and the provisions of § 56-580 D, it was important to make the attached letter a part of the record to provide information relevant to agency approvals for the proposed Facility. Staff counsel represented that she was authorized to state that none of the parties to the proceeding opposed Staff's Motion, and that the next available exhibit number was Exhibit 18.

NOW THE COMMISSION, having considered the record, the pleadings, the Hearing Examiner's Report, and the applicable law, is of the opinion and finds that a certificate of public convenience and necessity to construct and operate the Facility should be granted to CPV Warren.

The Commission must decide this case on the evidence properly presented in the record. We will not consider the separate comments filed on December 16, 2002, by NPCA, the Sierra Club, BREDL, and PEC, all of which offer evidence and all of which were untimely filed.⁵ We encourage the participation of these entities, and all interested persons or entities, in Commission proceedings. We must, however, ensure that our procedures remain fair to the applicant and to those who participate in accordance with the Commission's orders and regulations.

In this proceeding, adequate notice was provided and interested persons were afforded an opportunity to file written comments on the Company's application in a timely manner, to become parties to the case, or to appear as public witnesses. Our Order for Notice and Hearing, issued March 18, 2002, clearly explained that written comments could be filed on or before June 14, 2002, that persons desiring to participate in the case as a respondent needed to file a notice of participation⁶ on or before May 22, 2002, and that any person not participating as a respondent could present oral testimony at the public hearing on July 24, 2002. In addition, as directed by the Commission, the Company published notice of this proceeding as display advertising in a newspaper or newspapers of general circulation in Warren County, which also set forth the above options in which to participate in this case.

Accordingly, interested persons or entities had three avenues through which to voice their views in this matter: (1) by filing written comments on or before June 14, 2002; (2) by filing a notice of participation and subsequently submitting evidence and/or pleadings as a party; or (3) by submitting evidence as a public witness. The Sierra Club, NPCA, BREDL, and PEC did not appear as parties (*i.e.*, respondents) in this case or file comments by June 14, 2002. Further, the December 16, 2002, comments from these entities were submitted more than six months after the deadline for filing written comments, and subsequent to the evidentiary hearing and issuance of the Hearing Examiner's Report.

The procedures set forth above for participation require issues and evidence to be raised in a manner that permits the applicant and other parties an opportunity to address the same. The Sierra Club, NPCA, BREDL, and PEC did not provide any reason as to why their comments and evidence were not timely presented, why we should consider their comments and evidence out-of-time, or why consideration of their untimely comments and evidence would not unreasonably prejudice the applicant or other participants in the case. We do not find that accepting these comments and evidence is necessary to serve the ends of justice in this proceeding. *See* Rule 5 VAC 5-20-10. If we accepted these filings in this case, we would need to provide the applicant, Staff, and DEQ an opportunity to reply and present evidence in response to material filed months after the deadline for presenting such comments and evidence and after the Hearing Examiner issued his Report. This could require the applicant to undergo another entire hearing process similar to what was concluded with the Hearing Examiner's Report in November of 2002. This is fundamentally unfair given the notice and earlier opportunities afforded these entities to participate.

In addition, we note that Mr. Holmes, Special Projects Coordinator for PEC, chose to participate as a public witness, not as a party.⁷ The Commission's Rules state that "[p]ublic witnesses may not otherwise participate in the proceeding, be included in the service list, or be considered a party to the proceeding." Rule 5 VAC 5-20-80 C. Accordingly, Mr. Holmes' participation as a public witness does not provide a basis for us to consider PEC's comments and evidence of December 16, 2002, signed by Mr. Holmes, as a response to the Hearing Examiner's Report.

As we have indicated in previous orders,⁸ the Virginia Code establishes six general areas of analysis applicable to electric generating plant applications: (1) reliability;⁹ (2) competition;¹⁰ (3) rates;¹¹ (4) environment;¹² (5) economic development;¹³ and (6) public interest.¹⁴ We have evaluated the Facility according to these six areas.

⁵ We will not consider these comments as late-filed written comments or as responses to the Hearing Examiner's Report.

⁶ A notice of participation simply needs to 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. Rule 5 VAC 5-20-80 B of the Commission's Rules of Practice and Procedure ("Rules").

⁷ The Commission's Rules permit a person to represent herself or himself in proceedings before the Commission. *See* Rule 5 VAC 5-20-20. As discussed above, a person desiring to become a party to this case simply had to file a notice of participation as a respondent, in accordance with Rule 5 VAC 5-20-80 B, on or before May 22, 2002.

⁸ *See, e.g., 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, Final Order at 6 and n. 3 (Jan. 9, 2003); Application of Old Dominion Electric Cooperative, For a certificate of public convenience and necessity for electric generation facilities in Louisa County, Case No. PUE-2001-00303, Final Order at 6 and n. 1 (July 17, 2002).*

⁹ Va. Code §§ 56-46.1 A and 56-580 D(i).

¹⁰ Va. Code § 56-596 A.

¹¹ Va. Code § 56-580 D(ii). *See also* 20 VAC 5-302-20 14; *Commonwealth of Virginia, At the relation of the State Corporation Commission, Ex Parte: In the matter of amending filing requirements for application to construct and operate electric generating facilities*, Case Nos. PUE-2001-00313 and PUE-2001-00665, Order Adopting Rules and Prescribing Additional Notice, 2001 S.C.C. Ann. Rep. 585, 586 (Dec. 14, 2001).

¹² Va. Code §§ 56-46.1 A and 56-580 D.

We find that the Facility will have no material adverse effect upon reliability of electric service provided by any regulated public utility. We further find that the Facility is not otherwise contrary to the public interest in that, among other things, rates for the regulated public utility will not be impacted. In addition, we find that the Facility will provide economic benefits.

Pursuant to §§ 56-46.1 and 56-580 D of the Code of Virginia, we have given consideration to the effect of the Facility on the environment. During the hearing, Charles Turner, Director of the Office of Air Permit Programs for DEQ, testified on the status of CPV's PSD application:

This particular facility has submitted an application to us. However, we have not completed a draft permit. And right now, relative to the modeling requirements for this facility, the Class I analysis modeling protocol has only recently been agreed upon. So we have not seen that. We have not received their modeling analysis for the Class II areas either. At this time, we cannot state what the specific standard would be. We can make speculation, but the permit won't be finalized until we receive -- see the results of that modeling and know that the emissions levels do not allow for a violation of the NAAQS standard.

Tr. at 157.

Sections 56-580 D and 56-46.1 A of the Virginia Code direct us to give consideration to the effect of the proposed Facility "on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact." In this regard, however, the 2002 General Assembly passed legislation to amend §§ 56-580 D and 56-46.1 of the Code of Virginia "to avoid duplication of governmental activities" effective July 1, 2002. These statutes provide, among other things, that any valid permit or approval regulating environmental impact and mitigation of adverse environmental impact, "whether such permit or approval is granted prior to or after the Commission's decision," shall be deemed to satisfy the requirements of §§ 56-46.1 A and 56-580 D of the Code of Virginia "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."

CPV Warren has agreed to implement all of the recommendations contained in the May 29, 2002, DEQ Report (Exhibit 10), as modified by Exhibit 8, as a condition of its certificate from the Commission.¹⁵ The record in this case does not establish that any of the recommendations in the DEQ Report: (1) are governed by a permit or approval issued by a governmental entity; or (2) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval.¹⁶ Accordingly, as agreed to by CPV Warren, we will require the Company to comply with the DEQ recommendations in Exhibit 10, as modified by Exhibit 8.

Further, the Commission will condition the certificate granted herein upon the Company's receipt of all environmental and other permits necessary to construct and operate the Facility. We also will provide that the certificate will expire two years from the date of this Order if construction on the Facility has not commenced.

Finally, we must deny the request of Superintendent Morris of the Shenandoah National Park to keep this case open until DEQ completes its PSD permitting process. Mr. Morris's concerns involve matters that are within the authority of, and are being considered by, DEQ in the PSD permitting process. Thus, in accordance with § 56-580 D of the Virginia Code, the matters of concern to Mr. Morris must be addressed by the DEQ, not by this Commission.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 56-580 D of the Code of Virginia, in accordance with the record developed herein, CPV Warren is hereby granted authority and a certificate of public convenience and necessity to construct and operate the Facility described in this proceeding.
- (2) The certificate granted herein shall be conditioned upon the receipt of all environmental and other permits necessary to construct and operate the Facility.
- (3) As a condition of the certificate granted herein and as agreed to by CPV Warren in this proceeding, CPV Warren shall comply with the recommendations made by the DEQ in Exhibit 10, as modified by the commitments set forth in Exhibit 8.
- (4) The certificate granted herein shall expire in two years from the date of this Order, if construction of the Facility has not commenced.
- (5) Staff's December 27, 2002, "Motion to Receive Letter from Department of Environmental Quality into the Record" is granted, and the November 26, 2002, letter from DEQ attached to that Motion will be received as Exhibit 18.
- (6) 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.

¹³ Va. Code §§ 56-46.1 and 56-596 A.

¹⁴ Va. Code § 56-580 D(ii).

¹⁵ See Exhibit 10 at 2-3; Report at 56; Motion at 4. As noted above, the Company reached an agreement with VDGIF and DCR on the DEQ recommendation addressing the Madison Cave Isopod (Exhibit 8).

¹⁶ Consistent with § 10.1-1186.2:1 C of the Virginia Code, we will grant Staff's Motion and accept the DEQ Letter of November 26, 2002, as Exhibit 18.

MOORE, COMMISSIONER, CONCURS:

Given the statutory change effective July 1, 2002, I must concur with my colleagues in the decision to approve construction and operation of the proposed facility. I do so because the issues that would cause me to deny the application without further data and analysis are within the jurisdiction of the DEQ and other agencies rather than this Commission.

I write separately to express my continued concern and mounting alarm at the apparent failure of the Commonwealth to address adequately the impact of power plants on the environment of the Commonwealth.¹ This case is of particular concern because the proposed facility is within five miles of the Shenandoah National Park, a Class I area. While it may be laudable that the applicant has agreed to NO_x offsets that may leave the area in no worse condition than it is now, the fact remains that a major new power plant may be allowed to be constructed in an extremely sensitive area without adequate analysis and review.² At least two areas should raise serious questions, ozone³ and fine particulate matter.⁴

Applicants before the Commission continue to maintain that if the current NAAQS standard is not exceeded, the plant should be approved. No consideration appears to be given to how close the current pollution level is to the limit or the impact of EPA's revised limits that will be implemented over the next few years. The DEQ must go beyond the data and platitudes presented to this Commission,⁵ and ensure that Virginia, her citizens and environment are protected.

¹ Examples of areas where, based on the record before the Commission, additional analysis and study should be required are discussed in my prior concurrences and dissents. See Commissioner Moore concurrence, Application of Old Dominion Electric Cooperative, For approval of a certificate of public convenience and necessity for electric generating facilities, Case No. PUE-2002-00003, Final Order (November 6, 2002); Commissioner Moore concurrence, Application of CPV Cunningham Creek LLC, For approval of a certificate of public convenience and necessity pursuant to Va. Code § 56-265.2, for an exemption from Chapter 10 of Title 56, and for the interim authority to make financial expenditures, Case No. PUE-2001-00477, Final Order (October 7, 2002); Commissioner Moore concurrence, Application of Old Dominion Electric Cooperative, For a certificate of public convenience and necessity for electric generation facilities in Louisa County, Case No. PUE-2001-00303, Final Order (July 17, 2002); Commissioner Moore dissent, Application of Buchanan Generation, LCC, For permission to construct and operate an electrical generating facility, Case No. PUE-2001-00657, Final Order (June 25, 2002) ("Buchanan, Moore dissent"); Commissioner Moore dissent, Application of Tenaska Virginia Partners, L.P., 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, Final Order (April 19, 2002) ("Tenaska, Moore dissent").

² There was no evidence cited by the Hearing Examiner or that I could find in the record that the actual NO_x "offsets" would, in fact, offset the impact of the NO_x emissions of the proposed facility on the air quality in the Class I area.

³ With respect to ozone, the applicant appeared to acknowledge that how close a concentration level may be to the NAAQS is important in assessing the impact of additional pollution concentrations. Exhibit 13 at p. 27. This is particularly critical for ozone where there is no safe level. Tenaska, Moore dissent at pp. 6-7. In this proceeding, however, the Company describes an ozone concentration of 109 ppb as "well below the 1-hour ozone standard of 120 ppb." Exhibit 13, Attached Exhibit 6, at p. 3-11. A concentration of 91% of the allowable NAAQS should not be described as "well below" the limit for a pollutant that has no safe level.

Also, with respect to ozone levels in Warren County, there appears to be a dispute between the DEQ and the EPA as to whether Warren County will have a "non-attainment" designation under the new eight-hour ozone standard. Tr. at 41, 51-56; Exhibit 13 at pp. 11-12. While Mr. Sellars stated the area was within attainment limits, he failed to provide data with respect to the new eight-hour standard. The Company's failure to provide these data means we do not know how close Warren County is to the new, lower eight-hour standard. Under the less stringent one-hour standard, according to the Company, the ozone level in Warren County is already at more than 85% of the NAAQS. As noted in my dissent in Buchanan, exceedances under the eight-hour standard were more than 15 times greater (783 compared to 50) than under the one-hour standard for the 1996-2000 period. Buchanan, Moore dissent at 3-4. It could be that Warren County is above or just below the non-attainment level under the new standard. Again, this is alarming because there is no "safe" level of ozone.

⁴ In response to my concern about fine particulate matter, specifically, PM_{2.5}, Mr. Sellars states that maximum annual concentration data available for Virginia indicate a range of between 12 and 15.1 µg/m³ as compared to the PM_{2.5} NAAQS of 15 µg/m³. Mr. Sellars states that Warren County should be "represented by monitors falling in the middle of the 12 to 15.1 µg/m³ spectrum . . ." Exhibit 13 at p. 29. There was no explanation by Mr. Sellars of why we should not be concerned when PM_{2.5} concentrations in the area in question are, by his estimate, already approximately 90% of the NAAQS. This is particularly alarming since there is no "safe" level of particulate matter. Tenaska, Moore dissent at p. 10.

⁵ Indeed, to the extent certain issues are beyond the jurisdiction of this Commission as a result of the July 1, 2002, amendments to the Virginia Code, it would not appear necessary for the applicant to present evidence on these issues. While this case was filed before July 1, 2002, future applicants may want to consider whether presentations on matters not before the Commission should be included in their applications.

**CASE NO. PUE-2002-00174
APRIL 9, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter concerning the aggregation of retail electric customers under the provisions of the Virginia Electric Utility Restructuring Act

ORDER ADOPTING REVISED REGULATIONS

By Order dated March 18, 2002, the State Corporation Commission ("Commission") initiated this proceeding for the purpose of developing and refining policies, rules, and regulations for the provision of aggregation service.¹ We directed our Staff to conduct an investigation with respect to further refinement of the Commission's rules concerning aggregation, with input from a workgroup comprised of interested parties and stakeholders previously assembled in the Commission's proceeding that developed proposed rules governing retail access to competitive energy services.² Additionally, we directed our Staff to file a report on or before August 1, 2002, concerning the results of its investigation, together with any proposed changes to the Commission's Rules Governing Retail Access to Competitive Energy Services ("Retail Access Rules") 20 VAC 5-312-10 et seq.

On August 1, 2002, Staff filed its report ("Staff Report") outlining the issues examined in the course of its investigation along with the sole recommendation that 20 VAC 5-312-20 D of the Retail Access Rules be amended to require licensed suppliers and aggregators to maintain information in their books and records identifying persons or entities with whom they have marketing relationships. Subsequent to the Staff filing its Report, we issued an Order dated September 20, 2002, by which we directed interested parties to file comments in response to Staff's Report. We received comments from three parties.

After having considered the Staff's Report and the comments filed in response thereto, by Order dated November 1, 2002, the Commission directed the publication of Staff's proposed change to 20 VAC 5-312-20 D in the Virginia Register of Regulations and established a procedural schedule to receive comments on Staff's Report. In our November 1, 2002, Order, after considering comments attached to Staff's Report filed by workgroup participants, we also directed Staff to file two reports on or before July 1, 2004. One report would encompass the impact on the development of a competitive market, of incumbent-affiliated aggregators and their activities in affiliated local distribution companies' service territories. The second report would assess the impact of aggregation contracts (particularly exit fees) on the development of competitive retail markets in the Commonwealth.

In response to our November 1, 2002, Order, we received comments from one party, Dominion Retail Inc. ("Retail"). Retail's comments did not take issue with the adoption of Staff's proposed change to 20 VAC 5-312-20 D. Rather, Retail argued that the two July 1, 2004, reports required of Staff were unnecessary.

NOW THE COMMISSION, upon consideration of the comments filed by workgroup participants, Staff's Report, and comments filed in response thereto, is of the opinion and finds that Staff's proposed changes to 20 VAC 5-312-20 D are reasonable and should be adopted. Further, while Retail's arguments concerning the July 1, 2004, Staff Reports are outside the scope of comments requested by our November 1, 2002, Order, we would simply reiterate that both reports will be beneficial to our assessment of aggregation's impact on the development of a competitive retail generation market.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed amendments to 20 VAC 5-312-20 D are adopted as set forth in Attachment A to this Order.
- (2) A copy of this Order and the rules attached hereto as Attachment A shall be forwarded promptly for publication in the Virginia Register of Regulations.
- (3) This docket shall remain open for the receipt of Staff's Report due on or before July 1, 2004, and for further Orders of the Commission.

NOTE: A copy of Attachment A entitled "Chapter 312. Rules Governing Retail Access to Competitive Energy Services" 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 directed the Staff to conduct an investigation concerning the following three topics: (i) licensing of aggregators, (ii) contractual relationships between aggregators and their customers, and (iii) the impact of incumbent electric utilities' relationships with aggregator affiliates on the development of effective competition within the Commonwealth.

² Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of establishing rules for retail access, Case No. PUE-2001-00013 (Commission Order adopting rules entered on June 19, 2001).

**CASE NO. PUE-2002-00181
JUNE 27, 2003**

PETITION OF
VIRGINIA ELECTRIC AND POWER COMPANY
and
DOMINION RETAIL, INC.

For an exemption of agreement for wholesale sales of power from the filing and prior approval requirements of Chapter 4, Title 56 of the Code of Virginia or, in the alternative, for approval of wholesale power service agreement under Chapter 4, Title 56 of the Code of Virginia, and for expedited consideration

FINAL ORDER

On April 1, 2002, Virginia Electric and Power Company ("Dominion Virginia Power") and Dominion Retail, Inc. ("Dominion Retail") (collectively, "Companies"), filed a petition with the State Corporation Commission ("Commission") under Chapter 4 (§ 56-76 *et seq.*) of Title 56 ("Chapter 4") of the Code of Virginia ("Code") for exemption from the prior approval and filing requirements thereof or, in the alternative, for approval of Dominion Virginia Power's wholesale sales of power at cost-based rates to Dominion Retail.

On June 28, 2002, the Commission issued an Order denying the Companies' request for an exemption from the filing and prior approval requirements of Chapter 4, and approving the proposed arrangement for wholesale sales subject to certain conditions. The Order of June 28, 2002, among other things, required the Companies to revise the Master Power Purchase and Sale Agreement ("Agreement") to include the following terms:

The Virginia State Corporation Commission has continuing supervisory control over the power agreements between Dominion Virginia Power and Dominion Retail and has the authority to exercise the provisions of §§ 56-78 and 56-80 of the Code of Virginia in the future with respect to such agreements and transactions thereunder, including the authority to terminate such agreements and transactions.

If the Virginia State Corporation Commission determines by order that this agreement and/or all agreements and transactions entered into hereunder must be terminated to protect and promote the public interest, then this agreement and/or all agreements and transactions entered into hereunder shall terminate 30 days after the date of the Virginia State Corporation Commission's order.

In addition, the Commission's approval under Chapter 4 was conditioned upon affirmative approval of the revised Agreement by the Federal Energy Regulatory Commission ("FERC").

On July 17, 2002, the Companies filed a Petition for Reconsideration ("Petition for Reconsideration"). On July 18, 2002, the Commission issued an Order Granting Reconsideration and Suspending Prior Order. The July 18, 2002, Order granted reconsideration for purposes of continuing our jurisdiction over this proceeding and suspended our Order of June 28, 2002. On September 27, 2002, the Commission issued an Order On Reconsideration, which granted the Companies' request to keep this docket open pending completion of FERC's review of the revised Agreement, and otherwise denied the Petition for Reconsideration.

On May 23, 2003, the Companies submitted a Supplemental Filing in this docket, renewing their petition for approval of the Agreement ("Supplemental Filing"). The Companies state that on November 5, 2002, Dominion Virginia Power filed with FERC a revised service agreement that included the terms and conditions required by the Commission. The Companies attached to their Supplemental Filing a May 2, 2003, FERC letter order on the revised service agreement (FERC Docket Nos. ER03-159-000, -001, and -002). FERC's letter order conditionally accepted the service agreement for filing subject to one modification: FERC rejected the language required by the Commission and directed Dominion Virginia Power to make a compliance filing, within 15 days of the FERC letter order, to remove such language from the service agreement.

The Companies state that Dominion Virginia Power is making the compliance filing as required by FERC, but that Dominion Virginia Power "will not engage in any transactions with Dominion Retail pending a decision by the Commission in this proceeding." Supplemental Filing at 4. The Companies also state that they "agree to a Commission condition that they will exercise the termination provision of the Master Power Purchase and Sale Agreement (Section 10.1), if directed to do so by the Commission." *Id.* The Companies assert that this proposed condition allows them "to engage in affiliate power transactions subject to FERC's jurisdiction over terms and conditions while retaining this Commission's authority to terminate such transactions, if necessary." *Id.*

NOW THE COMMISSION, having considered the pleadings and the applicable law, is of the opinion and finds that the Companies may not engage in the proposed affiliate transactions and the agreements related thereto are not valid or effective.

As explained in our orders of June 28, 2002, and September 27, 2002, § 56-80 of the Code provides that "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" (emphasis added). That same section also requires that "[e]very 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" (emphasis added). In addition, § 56-590 G of the Virginia Electric Utility Restructuring Act ("Act") states that, except as provided in § 56-590 B 5, nothing in the Act "shall be deemed to abrogate or modify the Commission's authority under Chapter 3 (§ 56-55 *et seq.*), 4 (§ 56-76 *et seq.*) or 5 (§ 56-88 *et seq.*) of Title 56 (emphasis added).

The Companies previously stated in this case that the Commission "has continuing supervisory control over the power agreement between the Companies and has the authority to exercise the provisions of §§ 56-78 and 56-80 of the Code of Virginia in the future with respect to the agreement and transactions thereunder." *See, e.g.*, Response of Petitioners to Staff Report at 8. In the orders of June 28 and September 27, 2002, we concluded, as the Companies had, that if the Commission later determines continuation of such affiliate arrangement is no longer in the public interest, then the Commission should have the authority to take corrective action.

Accordingly, in the June 28, 2002, and September 27, 2002, orders, we rejected requests by the Virginia Committee for Fair Utility Rates, Washington Gas Energy Services, and Staff to deny the Companies' proposed wholesale transactions. Rather, we approved the request subject to certain monitoring requirements and conditions to protect and promote the public interest. We found that, to protect and promote the public interest, the Commission must retain authority over the affiliate arrangement pursuant to Chapter 4, including the authority to revoke our approval of such arrangement.

For example, the Commission may be required to exercise this authority if needed to ensure the continued provision of reliable service to retail customers in the Commonwealth, to advance competition if the arrangement places Dominion Retail in a better position than its competitors to successfully bid for Dominion Virginia Power's output, or to protect Virginia retail customers from negative impacts on the fuel factor margin-sharing mechanism. Given the critical importance of the Commonwealth's continuing jurisdiction over this particular arrangement and the sales of power proposed in this case, we found it necessary for the Commission's continuing authority to be recognized in the Agreement between affiliates in order to protect and promote the public interest under Chapter 4 of Title 56 of the Code.

FERC's letter order, however, explicitly rejected the language required by the Commission to be placed in the Agreement. FERC stated that Virginia is preempted by federal law from reviewing rates, terms and conditions for sales of electric energy at wholesale in interstate commerce. FERC also stated that when it sets a rate, term or condition for such sale, Virginia may not exercise its jurisdiction over a retail rate to review the reasonableness of the wholesale rate, term or condition set by FERC.

In response, the Companies stipulate that, irrespective of FERC's letter order, the Companies will exercise the termination provision of the Agreement if directed to do so by the Commission. Such a stipulation, however, cannot confer jurisdiction to the Commonwealth or this Commission. Such a stipulation also does not provide the Commonwealth with supervisory control and reserved power over this affiliate arrangement as required to protect and promote the public interest under Chapter 4. Moreover, the transactions under the Agreement will be part of the competitive wholesale market. Those transactions will not only impact the Companies, but may impact third parties that are not parties to any stipulation by the Companies. These third parties could actively oppose the Commission's authority and contest the Commonwealth's jurisdiction to take continuing steps that may be necessary to protect and promote the public interest. In such a situation, FERC may assert that it has the authority to prohibit a termination of the Agreement.

Having made the findings required of the Commission under Chapter 4, as explained above, it would be improvident and unwise for the Commission to approve the proposed transactions after FERC has explicitly stated that the Commonwealth cannot exercise its supervisory control and reserved power over this affiliate arrangement as provided for by Virginia statute. Accordingly, the Companies do not have approval to enter into the affiliate transactions proposed in this case, and the agreements related thereto are not valid or effective.

Accordingly, IT IS ORDERED THAT:

- (1) Dominion Virginia Power's request for an exemption from the requirements of § 56-77 A of the Code of Virginia for its proposed wholesale power agreements with Dominion Retail is hereby denied.
- (2) The conditional approval granted in this proceeding by Order dated June 28, 2002, for Dominion Virginia Power to enter into affiliate transactions with Dominion Retail is hereby withdrawn.
- (3) Pursuant to § 56-77 of the Code of Virginia, Dominion Virginia Power's request for approval of wholesale sales of power at cost-based rates to Dominion Retail is hereby denied.
- (4) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUE-2002-00235
FEBRUARY 20, 2003**

JOINT APPLICATION OF
J.W. HOLDINGS, INC.
and
MARINERS LANDING WATER & SEWER COMPANY, INC.

For authority to acquire and dispose of utility assets pursuant to the Utility Transfers Act and for the issuance of a certificate of public convenience and necessity pursuant to Va. Code §§ 56-265.2 and 56-265.3

FINAL ORDER

On April 16, 2002, J.W. Holdings, Inc. ("J.W. Holdings"), and Mariners Landing Water & Sewer Company, Inc. (the "Company"), (collectively, the "Joint Applicants"), filed an application ("Application") seeking authority pursuant to the Utility Transfers Act, Chapter 5 of Title 56 of the Code of Virginia ("Code"), and § 56-265.2 of the Code for J.W. Holdings to dispose of, and for the Company to acquire, certain water system assets pursuant to a license agreement between the two parties.

The Joint Applicants also request that the Commission, pursuant to § 56-265.3 of the Code, issue the Company a certificate of public convenience and necessity to provide water service to the residents of Mariners Landing community and approve the Company's proposed rates, rules, and regulations of service.

On May 6, 2002, the Joint Applicants filed a Motion for Expedited Hearing arguing that the Company needed to make capital improvements, and that the pending Application with the Commission could impact its ability to obtain financing. The Joint Applicants requested that a hearing be scheduled as expeditiously as possible.

The Commission entered a Preliminary Order on May 10, 2002, declaring the Company's rates to be interim and subject to refund while the Staff investigated the reasonableness of such rates. The Commission also directed the Staff to respond to the Motion for Expedited Hearing. A Hearing Examiner was assigned to conduct all further proceedings.

The Staff's Response to the Motion for Expedited Hearing was filed on May 20, 2002. Explaining its role in reviewing the Application and noting that no separate financial information for the water system existed, the Staff stated that it would be unable to perform its review and participate in any hearing scheduled before September 2002.

On June 19, 2002, the Hearing Examiner issued a ruling denying the Motion for Expedited Hearing, scheduling the matter for hearing on September 19, 2002, and establishing a procedural schedule.

On August 27, 2002, the Staff filed a Motion for Extension of Procedural Schedule stating that the employee responsible for conducting the audit of the Joint Applicants' financial records had health issues that precluded him from completing the audit until mid-September 2002. The Joint Applicants had no objection to the modification of the procedural schedule.

The Hearing Examiner granted the Staff Motion for Extension of Procedural Schedule on August 28, 2002. The hearing was rescheduled for November 14, 2002, and the procedural schedule was modified accordingly. Notice of the change was given to the Company's customers.

On November 14, 2002, the evidentiary hearing was convened as scheduled. Wilburn C. Dibling, Jr., Esquire, appeared on behalf of the Joint Applicants, and Katharine A. Hart, Esquire, appeared on behalf of the Staff. Counsel for the Joint Applicants and the Staff presented a Stipulation Agreement ("Stipulation") resolving all of the contested issues between them.

Under the Stipulation, the prefiled direct and rebuttal testimony of the Joint Applicants and the prefiled direct testimony of the Staff were admitted into the record without cross-examination. The Stipulation further provides that:

- (1) The Joint Applicants accept Staff Witness Armistead's accounting recommendations on page 11 of his prefiled testimony and Staff Witness Tufaro's recommendations on pages 12-13 of his prefiled testimony, with the exception of his first recommendation;
- (2) The Joint Applicants and the Staff agree the \$30 monthly service charge for water service, set forth in the Rate Schedule for the Company's proposed tariff, should be increased to \$33 per month;
- (3) The Joint Applicants and the Staff agree to the Total Net Utility Plant figure of \$99,865 in Mr. Armistead's prefiled direct testimony and further agree this figure will be used as the Company's loan balance as of June 30, 2002, upon which interest will be calculated;
- (4) The Joint Applicants and the Staff agree the issue of the management fee claimed by the president of the Company will be deferred to a subsequent rate proceeding; and
- (5) The Company agrees to refund amounts collected during the interim rate period in excess of the final rates approved in this proceeding.

Two public witnesses appeared at the hearing and testified in opposition to the Application. In addition to expressing concern about the proposed rate and fee increase, Larry Sedell, Vice President of the Mariners Village Condominium Association, indicated that he believed that under the current metering scheme that the year-round occupants effectively subsidize the operations of the rental management company which cleans linens for certain units that are rented out between June and September. Mr. Sedell alleges that when there is a turnover in occupancy in one of the units owned by J.W. Holdings, the rental management company launders the sheets and towels in one of the units. He believes that during the months of July and August, this usage caused water bills for him and his neighbor to exceed the allocation per unit and incur an additional usage fee. A second public witness, Norman Mattson, vice president and treasurer and a member of the Board of Directors of the Monoacan Shore Homeowners Association, testified regarding his concerns about the proposed rates and fees.

The Hearing Examiner issued his report on January 8, 2003, finding that:

- (1) Adequate service to the public at just and reasonable rates will not be impaired or jeopardized by the transfer of water utility assets from J.W. Holdings to the Company;
- (2) Pursuant to the Utility Transfers Act, the Commission should approve the transfer of water utility assets from J.W. Holdings to the Company;
- (3) Pursuant to § 56-265.2 of the Code, the Commission should issue the Company a certificate of public convenience and necessity to acquire the water utility facilities from J.W. Holdings;
- (4) The Commission should require the Joint Applicants to file a report with the Commission's Director of Public Utility Accounting within 30 days of the transfer of utility assets from J.W. Holdings to the Company notifying the Commission that such transfer has taken place;
- (5) The rates, fees, and terms of service resulting from the Stipulation are reasonable;
- (6) The Commission should adopt the Stipulation agreed to by the Joint Applicants and the Staff; and
- (7) The Commission should require the Company to implement the Staff's recommendations agreed to in the Stipulation.

The Hearing Examiner recommended that the Commission adopt the findings contained in his Report, approve the transfer of utility assets from J.W. Holdings to the Company pursuant to the terms of the license agreement between the two companies, and grant the Company a certificate of public convenience and necessity to operate a water utility. With regard to Mr. Sedell's complaint concerning the rental management company's laundry practices

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

resulting in full-time residents incurring an average charge, the Hearing Examiner stated that the Staff should continue to investigate whether each condominium unit is being billed for the correct monthly minimum allocation in accordance with the Company's tariff.

NOW THE COMMISSION, having considered the Application, the Hearing Examiner's Report, the Stipulation, and applicable law, is of the opinion and finds that the findings and recommendations of the Hearing Examiner's Report should be adopted. We find that the transfer of water utility assets should be approved pursuant to the Utility Transfers Act. We find that such transfer will not jeopardize or impair the provision of adequate water services at just and reasonable rates. We further find pursuant to §§ 56-265.2 and 265.3 of the Code, that the public convenience and necessity require us to issue a certificate to the Company to provide water service to Mariners Landing residents. We will adopt the Stipulation and approve the Company's proposed rates, charges, rules, and regulations of service as modified therein. We will direct the Company to implement the Staff's recommendations agreed to in the Stipulation.

Further, we find that concerns voiced by Mr. Sedell that he and other year-round residents are billed for excessive usage during the summer months when the rental management company does laundry for certain rental units appear to have merit. We will direct the Staff to study the issue raised in this proceeding of whether the billing allocations are being made appropriately and report to the Commission.

Finally, as noted on May 10, 2002, we declared the Company's rates to be interim and subject to refund while the Staff investigated the reasonableness of such rates. For service connections for other than a single-family dwelling, the interim rate was \$1,400 for a multi-family unit and \$6,800 for 1 inch, \$12,000 for 1.5 inch, \$22,000 for 2 inch, \$44,000 for 3 inch, \$68,000 for 4 inch, and \$137,000 for 6 inch service connections. The Stipulation requires that for connections other than a single-family dwelling, the connection charge to be the actual cost to the Company to complete the connection. We will direct the Company to refund with interest any amounts above the actual cost to the Company received for service connections other than for single-family dwellings.

Accordingly, IT IS ORDERED THAT:

- (1) The findings contained in the Hearing Examiner's Report are hereby adopted.
- (2) J.W. Holdings is hereby granted authority to dispose of the assets of its water system as described in the Application.
- (3) The Company is hereby granted authority to acquire from J.W. Holdings the assets of its water system as described in the Application.
- (4) A report shall be submitted to the Commission's Director of Public Utility Accounting no later than 30 days after the transfer of utility assets from J.W. Holdings to the Company notifying the Commission that such transfer has taken place. The report shall detail the date of transfer, sales price, and accounting entries reflecting the transfer.
- (5) The Company shall be granted a certificate of public convenience and necessity, Certificate No. W-310, authorizing it to provide water service to the Mariners Landing community.
- (6) The Stipulation between the Joint Applicants and the Staff is hereby adopted. The Company shall implement the Staff's recommendations agreed to in the Stipulation.
- (7) The Company's proposed rates, charges, and terms of service as modified by the Stipulation are hereby approved.
- (8) On or before April 18, 2003, the Company shall refund with interest to its customers any amounts above the actual cost to the Company received for service connections other than for single-family dwellings. Refunds to former customers shall be made by check to the last known address of such customers. All unclaimed refunds shall be handled in accordance with § 55-210.6:2 of the Code of Virginia.
- (9) Interest upon the ordered refunds shall be computed from the date payment of each bill was due during the interim period until the date refunds are made, at an average prime rate for each calendar quarter, compounded quarterly. The applicable 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 ("Selected Interest Rates") (Statistical Release G.13), for the three months of the preceding calendar quarter.
- (10) On or before May 16, 2003, the Company shall file with the Division of Energy Regulation a document showing that all refunds have been lawfully made pursuant to this order, and itemizing the costs of the refund and accounts charged. Such itemization of costs shall include, inter alia, computer costs, the personnel hours, associated salaries, and costs for verifying and correcting the refunds directed in this Order.
- (11) The Staff shall study the issue of billing allocation and provide a report to the Commission.
- (12) There being nothing further to be done, this matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUE-2002-00239
JUNE 24, 2003**

JOINT APPLICATION OF
CASCADE MOUNTAIN PROPERTY OWNERS ASSOCIATION, INCORPORATED
and
CASCADE MOUNTAIN WATER COMPANY, INC.

For authority to acquire and to dispose of utility assets pursuant to the Utility Transfers Act and for the issuance of certificates of public convenience and necessity pursuant to §§ 56-265.2 and 56-265.3

FINAL ORDER

On April 19, 2002, Cascade Mountain Property Owners Association, Incorporated ("Association"), and Cascade Mountain Water Company, Inc. (the "Company"), (collectively, "Joint Applicants"), filed a joint application with the State Corporation Commission ("Commission") requesting authority, pursuant to the Utility Transfers Act, for the Company to acquire and for the Association to dispose of certain water utility assets pursuant to a license agreement. Such assets serve the subdivision known as the Cascade Mountain Resort located in Carroll County, Virginia.

The Joint Applicants also request that the Commission issue the Company certificates of public convenience and necessity pursuant to §§ 56-265.2 and 56-265.3 of the Code of Virginia ("Code"). In addition, the Company requests approval of its proposed rates and rules and regulations of service.

Specifically, the Company proposes to charge a \$450.00 service connection fee and a \$150.00 annual minimum service charge for water service. The minimum service charge is payable in advance.

In addition, the Company will charge an annual availability fee of \$100.00,¹ a bad check charge of \$6.00, and a turn-on charge of \$35.00 to restore service for non-payment of any bill or for violation of the Company's rules and regulations of service. Finally, there is a \$35.00 charge to terminate water service at the customer's request, a maximum customer deposit equal to the customer's estimated liability for two months' usage, and a 1½% per month late payment charge.

On May 22, 2002, the Commission issued an Order directing the Company to give customers and public officials within its proposed service territory notice of the joint application and to provide interested persons with an opportunity to comment and request a hearing. The Commission also directed its Staff to review and analyze the joint application and to file a report detailing the results of its investigation.

The Company filed the required proofs of notice and service with the Commission on July 18, 2002. There were no comments or requests for hearing.

Pursuant to Commission Orders dated August 21, 2002, and January 21, 2003, Staff filed its Report on April 25, 2003.

In its Report, Staff found that there was no indication that the proposed transfer would have any adverse impact on the provision of adequate service to the public at just and reasonable rates. Staff, therefore, recommended approval of the proposed transfer of the water utility assets from the Association to the Company pursuant to a license agreement. Staff also recommended that the Company file a report detailing the date the transfer took place within 30 days of such transfer.

In addition, Staff recommended that the Commission grant the Company certificates of public convenience and necessity pursuant to §§ 56-265.2 and 56-265.3 of the Code. Staff found that the Company's proposed rates were just and reasonable and recommended approval of such rates and the Company's proposed miscellaneous fees, charges, and rules and regulations of service.

Finally, Staff recommended that the Commission adopt Staff's accounting adjustments, booking recommendations, and reporting requirements. Specifically, Staff recommended that the Commission order the Company to do the following:

- (1) Maintain its books and records separately from those of the Association and in accordance with the USOA for Class C Water Companies;
- (2) Depreciate plant and amortize contributions in aid of construction ("CIAC") at the 3% composite rate;
- (3) Capitalize the cost of service connections and record such connection fees in Account 271;
- (4) Maintain all invoices and other records for revenues, expenses, and plant;
- (5) Restate plant, CIAC, accumulated depreciation, and accumulated amortization of CIAC as of December 31, 2002, to the levels reflected in Column (3) of Staff's Statement II;
- (6) Maintain property records for all capitalized costs;
- (7) Exclude the Company from the Association's state tax return;
- (8) Submit to the Commission's Division of Public Utility Accounting an Annual Financial and Operating Report based on calendar year information by April 1 of each year; and
- (9) Record future supplies to Account 151.

¹ Availability fees may be imposed only by agreement, such as through a contract or restrictive covenant.

By letter dated May 28, 2003, the Company stated that it has no objection to the recommendations detailed in the above-referenced Report, including the accounting adjustments and booking recommendations.

NOW THE COMMISSION, having considered the joint application, Staff's Report, the Response thereto, and applicable law, is of the opinion that the above-captioned joint application, should be approved. We find that the public convenience and necessity requires that the Company acquire the assets of the Cascade Mountain Water System. We also believe that such transfer will not impair or jeopardize the provision of adequate service to the public at just and reasonable rates.

Moreover, we find that it is in the public interest for the Company to provide water service to the subdivision known as the Cascade Mountain Resort and that the Company's proposed rates are just and reasonable. We will, therefore, approve those rates and the Company's proposed charges, fees, and rules and regulations of service. We will also accept Staff's accounting adjustments, booking recommendations, and reporting requirements as detailed herein.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to §§ 56-89 and 56-90 of the Code, Cascade Mountain Property Owners Association, Incorporated, is hereby granted authority to convey to Cascade Mountain Water Company, Inc., the water utility assets serving the Cascade Mountain Resort, as described in the joint application.
- (2) Cascade Mountain Water Company, Inc., is hereby granted authority to acquire from Cascade Property Owners Association, Incorporated, the water utility assets serving the Cascade Mountain Resort, as detailed in the joint application.
- (3) The granting of the above-referenced authority shall have no ratemaking implications.
- (4) The Company shall file with the Commission a Report of Action no later than 30 days after the transfer; such Report shall detail the date of the transfer, sales price, and accounting entries reflecting the transfer.
- (5) The Company's proposed rates, charges, fees, and rules and regulations of service are hereby approved.
- (6) Cascade Mountain Water Company, Inc., shall be granted a certificate of public convenience and necessity, Certificate No. W-312, authorizing it to furnish water service to the subdivision known as Cascade Mountain Resort in Carroll County, Virginia, all as shown on the map attached to the certificate, at the rates, charges, fees, and rules and regulations approved herein.
- (7) The Company shall correct its books and records to reflect Staff's accounting adjustments and booking recommendations as detailed herein.
- (8) This matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUE-2002-00305
JULY 31, 2003**

APPLICATION OF
WHITE OAK POWER COMPANY

For authority to construct and operate an electric generating facility

FINAL ORDER

On May 9, 2002, White Oak Power Company, LLC ("White Oak" or "Company"), filed with the State Corporation Commission ("Commission") an application for a certificate of public convenience and necessity to construct and operate an electric generating facility pursuant to §§ 56-46.1 and 56-580 D of the Code of Virginia ("Code"). White Oak proposes to construct a 680 MW peaking, electrical power generation facility and related piping at a site in Pittsylvania County, near Dry Fork ("Facility"). The Facility will consist of four simple-cycle combustion turbine units ("CTs"), each with a nameplate rating of 170 MW.

The primary fuel for the project will be natural gas, with fuel oil low in sulfur and nitrogen as a back-up fuel source. In its application, the Company committed to limit its total annual operating hours to 10,000 hours on natural gas, or an average of 2,500 hours per CT, and 2,000 hours on fuel oil, or an average of 500 hours per CT. The Facility will obtain its natural gas from Transcontinental Gas Pipeline Company ("Transco"), which has a natural gas pipeline located about 3,000 feet from the proposed site. The Company plans to build a new lateral natural gas pipeline ("Lateral") to connect the site with Transco. Approximately one-half, or 1,500 feet, of the 3,000-foot Lateral will be located on White Oak's property (*i.e.*, "on-site portion").

On June 21, 2002, the Commission entered an Order for Notice and Hearing, requiring White Oak to provide notice of its application, establishing a procedural schedule, scheduling an evidentiary hearing, and assigning this matter to a hearing examiner. On July 16, 2002, Columbia Gas of Virginia, Inc. ("Columbia"), filed a Notice of Participation.

The evidentiary hearing was convened on October 24, 2002. Patrick A. O'Hare, Esquire, appeared on behalf of White Oak. James S. Copenhaver, Esquire, appeared on behalf of Columbia. Arlen Bolstad, Esquire, and Joseph Lee, Esquire, appeared on behalf of the Commission's Staff ("Staff"). Two public witnesses, William D. Sleeper, County Administrator for Pittsylvania County, and Robert Myers, President of the Virginia State Building Trades Council, testified at the hearing.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

On March 31, 2003, Hearing Examiner Alexander F. Skirpan, Jr., entered a Report ("Report") summarizing the record and analyzing the evidence and issues in this proceeding. The Hearing Examiner issued a ruling correcting the Report on April 3, 2003. The Examiner made 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 Facility advances the goal of electric competition in the Commonwealth;
3. The Facility will have no adverse effect upon the rates paid by customers for electric, natural gas, water, or sewer service from any regulated public utility in the Commonwealth;
4. The Facility will have no material adverse effect on any threatened or endangered plant or animal species, any wetlands, air quality, water resources, or the environment generally;
5. The Facility will have a positive impact on economic development;
6. Construction and operation of the Facility will not be contrary to the public interest;
7. Any certificate issued by the Commission in this case should be conditioned to reflect White Oak's commitment to fund any necessary system upgrades;
8. Any certificate issued by the Commission in this case should include a requirement that White Oak report to the Clerk of the Commission the name and corporate affiliation of any company entering a tolling agreement for the Facility;
9. Any certificate issued by the Commission in this case should include a sunset provision that calls for the certificate to expire if construction has not commenced within two years from the date of issuance;
10. Any certificate issued by the Commission in this case should require White Oak to comply with all recommendations of the Department of Environmental Quality ("DEQ") as agreed to by White Oak during this proceeding;
11. The Commission should enjoin White Oak from constructing the Lateral to connect with Transco's interstate pipeline; and
12. Any certificate issued by the Commission in this case should be conditioned on the receipt of all permits necessary to operate the Facility, and White Oak should provide a complete list to the Commission's Division of Energy Regulation.

On April 21, 2003, Columbia filed comments on the Report. Columbia requests that the Commission enjoin White Oak from constructing the proposed 3,000-foot Lateral until the Company obtains a certificate of public convenience and necessity pursuant to the Utility Facilities Act, § 56-265.1 et seq., of the Code. If the Commission determines, however, that § 56-580 D of the Electric Utility Restructuring Act applies to the on-site portion of the Lateral, Columbia still requests that the Commission enjoin construction of the entire Lateral due to, among other things, White Oak's failure to supply information to enable the Commission to determine the Company's ability to construct, operate, and maintain the Lateral.

On April 21, 2003, White Oak filed comments on the Report. The Company asserts that the entire Lateral is an "associated facilit[y]" under § 56-580 D of the Code. White Oak states that it included the entire Lateral as part of its application and that it provided necessary information regarding the Lateral. Accordingly, the Company requests that the Commission approve the entire Lateral as part of the certificate it requests herein. If the Commission determines, however, that an additional application and approval is necessary for some portion of the Lateral, White Oak requests that the Commission not withhold its approval of the application for the remainder of the Facility. The Company explains that construction of most of the Facility will take more than a year, whereas construction of the Lateral can be completed in a matter of weeks.

NOW THE COMMISSION, having considered the record, the pleadings, the Hearing Examiner's Report, and the applicable law, is of the opinion and finds that a certificate of public convenience and necessity to construct and operate the Facility, including the on-site portion of the Lateral, should be granted to White Oak.

As we have indicated in previous Orders,¹ the Code establishes six general areas of analysis applicable to electric generating plant applications: (1) reliability;² (2) competition;³ (3) rates;⁴ (4) environment;⁵ (5) economic development;⁶ and (6) public interest.⁷ We have evaluated the Facility according to these six areas.

¹ See, e.g., 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, Final Order at 6 and n. 3 (Jan. 9, 2003); Application of Old Dominion Electric Cooperative, For a certificate of public convenience and necessity for electric generation facilities in Louisa County, Case No. PUE-2001-00303, Final Order at 6 and n. 1 (July 17, 2002).

² Va. Code §§ 56-46.1 A and 56-580 D(i).

³ Va. Code § 56-596 A.

⁴ Va. Code § 56-580 D(ii). See also 20 VAC 5-302-20 14; Commonwealth of Virginia, At the relation of the State Corporation Commission, Ex Parte: In the matter of amending filing requirements for application to construct and operate electric generating facilities, Case Nos. PUE-2001-00313 and PUE-2001-00665, Order Adopting Rules and Prescribing Additional Notice, 2001 S.C.C. Ann. Rep. 585, 586 (Dec. 14, 2001).

⁵ Va. Code §§ 56-46.1 A and 56-580 D.

⁶ Va. Code §§ 56-46.1 and 56-596 A.

We find that the Facility will have no material adverse effect upon reliability of electric service provided by any regulated public utility. We further find that the Facility is not otherwise contrary to the public interest in that, among other things, rates for the regulated public utility will not be impacted. In addition, we find that the Facility will provide economic benefits.

As noted above, the certificate granted herein encompasses the on-site portion of the Lateral. Staff testified that it did not oppose granting a certificate under § 56-580 D of the Code for the Facility, including the Lateral to the extent that the Lateral was on White Oak's property. The Hearing Examiner found that if § 56-580 D of the Code is applicable to the Lateral, then it is applicable only to the on-site portion. The Examiner also found that if § 56-580 D of the Code is applicable to the Lateral, then the Lateral should be approved as part of the Facility. We find that the on-site portion of the Lateral is an associated facility under § 56-580 D of the Code and that the Company has satisfied the applicable statutory requirements for the certificate granted herein to include this associated facility.

We agree with the Examiner that the 1,500-foot portion of the Lateral that will not be located on White Oak's property (i.e., "off-site portion") remains subject to the requirements of the Utility Facilities Act. The Examiner explained that in cases granting certificates for generating facilities subsequent to the enactment of § 56-580 D of the Code, natural gas laterals have been completely on-site or have been constructed, owned, and operated by the interstate natural gas pipeline or the local natural gas distribution company. We also agree with the Examiner that White Oak has failed to provide adequate support in this proceeding to grant a certificate under the Utility Facilities Act.

We find that White Oak must obtain a certificate under the Utility Facilities Act prior to constructing the 1,500-foot off-site portion of the Lateral. We also find, however, that it is unnecessary to issue an injunction prohibiting the Company from constructing the off-site portion until it obtains such certificate. There is no evidence in this proceeding suggesting that White Oak intends to violate this Order and construct the off-site portion of the Lateral without the necessary certificate from the Commission as required herein.

As agreed to by the Company and as a condition of the certificate, White Oak will be required to fund any necessary system upgrades to interconnect the Facility with the transmission grid. In addition, the certificate will expire two years from the date of this Order if construction on the Facility has not commenced.

Sections 56-580 D and 56-46.1 A of the Code direct us to give consideration to the effect of the proposed Facility "on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact." In this regard, the 2002 General Assembly passed legislation to amend §§ 56-580 D and 56-46.1 of the Code "to avoid duplication of governmental activities" effective July 1, 2002. These statutes provide, among other things, that any valid permit or approval regulating environmental impact and mitigation of adverse environmental impact, "whether such permit or approval is granted prior to or after the Commission's decision," shall be deemed to satisfy the requirements of §§ 56-46.1 A and 56-580 D of the Code "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."

In this proceeding, DEQ reported that its South Central Regional Office approved a permit for the Facility that combines the requirements of a Prevention of Significant Deterioration permit with the preconstruction permit requirements of the State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution. DEQ also requested in this proceeding that White Oak comply with the following eight recommendations, which DEQ stated pertain to matters that are not governed by permits:

1. Take precautions to avoid and minimize indirect impacts and temporary impacts to wetlands;
2. Conduct field surveys to identify undocumented intermittent and perennial streams;
3. Reduce solid waste at the source, re-use it, and recycle it to the maximum extent practicable;
4. Coordinate with the Department of Game and Inland Fisheries concerning planting guidelines to enhance wildlife habitat;
5. Continue to work with the Department of Historic Resources to develop mitigation measures to address visual and noise impacts on significant architectural resources;
6. Follow the principles and practices of pollution prevention to the maximum extent practicable;
7. Limit the use of pesticides and herbicides as recommended; and
8. Protect any mature, individual trees that remain on the project site.

White Oak agreed to comply with these eight recommendations as part of this proceeding. The record in this case does not establish that any of these recommendations: (1) are governed by a permit or approval issued by a governmental entity; or (2) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval. We will require the Company to comply with these eight recommendations by DEQ as a condition of the certificate granted herein.

Further, we will condition the certificate granted herein upon the Company's receipt of all environmental and other permits necessary to construct and operate the Facility.

As noted above, given the amendments to §§ 56-580 D and 56-46.1 of the Code that became effective July 1, 2002, we must approve the construction and operation of the proposed facility. A majority of the Commission does so because the issues that would cause us to deny the application without further data, analysis, and explanation are within the jurisdiction of the DEQ and other agencies rather than this Commission.

⁷ Va. Code § 56-580 D(ii).

We note our concern and mounting alarm at the apparent failure of the Commonwealth to address adequately the impact of power plants on the environment of the Commonwealth and the health of her citizens. The environmental studies, analyses, and reviews that have been presented to us, including, in some cases, copies of filings with the DEQ, are not as thorough as they should be, particularly with respect to levels of particulate matter and ozone.

With approval of this application, this Commission has approved the issuance of certificates of public convenience and necessity for eight electric generating facilities since April 19, 2002. The eight planned facilities, if constructed, will add 4,769 MW to Virginia's electricity generation capacity, which is nearly 24% of the approximately 20,000 MW existing in this Commonwealth.

None of the eight applications before this Commission provided data showing what the effect of the planned operation of the proposed facility will have upon the eight-hour ozone standard or the PM_{2.5} standard adopted by the Environmental Protection Agency ("EPA"). Instead, data are provided with respect to the one-hour ozone standard and the PM₁₀ standard. In both cases, there is cause for serious concern that has not been addressed.

First, with respect to ozone, based on the one-hour standard, current levels are close to the National Ambient Air Quality Standard ("NAAQS") limit of 120 ppb. The existing background levels of ozone (before the consideration of any new source) representative of the eight plant locations range from 104 ppb to 120 ppb.⁸ These limits represent 86.67% to 100% of the NAAQS under the one-hour standard. This fact is important because even low levels of ozone can be dangerous to human health as well as flora; low levels can cause permanent lung damage and trigger a variety of human health problems including aggravated asthma, reduced lung capacity, and increased susceptibility to illnesses like pneumonia and bronchitis. In fact, EPA has concluded that there is no safe level of ozone.⁹

In its 1997 ozone review, EPA found that adverse health effects occurred at ozone levels allowed by the current one-hour standard.¹⁰ As a result of its review, EPA adopted a new, eight-hour, 80 ppb standard to reduce the risk of ozone impacts on public health.¹¹ Although the new eight-hour standard was adopted by EPA in 1997, the standard is not yet enforced. Data have been collected and "non-attainment" areas under the eight-hour standard are being identified. In the next few years, the new standard will replace the one-hour NAAQS.

Evidence of background levels of ozone under the eight-hour standard were not presented in a single one of the cases before us, including White Oak. The one-hour data can be converted to eight-hour data, but were never presented. As a result, we do not know whether the background levels of ozone at the eight plant locations involved are at, or even exceed, the NAAQS with the eight-hour test.

While we may not have data with respect to these specific locations, we do know that the new standard is more strict and it appears that it will create many more "exceedances" than the one-hour standard. Specifically, DEQ's internet site shows Virginia data for eight-hour ozone exceedances for 1990 – 2002, along with the exceedances under the one-hour standard for the period 1987 – 2002. While it has been generally understood that changing from the one-hour 120 ppb standard to the eight-hour 80 ppb standard would almost certainly increase the number of times the ozone standard would be exceeded in Virginia, the DEQ data may give an idea of the scale of the increase. On a statewide basis, the number of exceedances in Virginia under the one-hour standard totaled 74 in the five years from 1998 – 2002; using the eight-hour standard, there were 1,007 exceedances during the same period. Statewide, there were 121 exceedances in the ten years from 1993-2002 using the one-hour standard and 1,632 exceedances using the eight-hour standard.¹² When we know the ozone standard was tightened to protect the public health and see this indication of possible extraordinary increases of ten fold or more in exceedances as a result of the application of the revised standard, the people of the Commonwealth are entitled to the eight-hour data and an explanation. This is particularly true where, even without the impact of any new plants, background levels range from nearly 87% to 100% of the NAAQS for ozone under the one-hour standard at the sites proposed for the new plants.

The story with respect to particulate matter is similar to that for ozone. As with ozone, the new standard was adopted in 1997. In addition, the new standard was adopted because of particulate matter related public health effects in areas that were within the current NAAQS. Also, as with ozone, EPA has determined that there is no safe level of fine particulate matter, PM_{2.5}. Finally, like ozone, the new PM_{2.5} standards are not yet in effect, but will soon be a new standard.¹³

Unlike ozone, background levels of PM_{2.5} are not readily available in all areas of the Commonwealth. However, when PM_{2.5} has been discussed, we have been advised that the maximum annual concentration data available for Virginia indicates a range of between 12 and 15.1 µg/m³, while the new PM_{2.5} NAAQS is 15 µg/m³.¹⁴ This means that current background levels range from 80% to more than 100% of the new standard, before considering the

⁸ The one-hour ozone NAAQS of 120 ppb is codified at 40 C.F.R. §§ 50.9, 50.10 (1999). The one-hour background ozone levels have been reported to be 104 ppb for the Tenaska Fluvanna County plant (Case No. PUE-2001-00039), 104 ppb for the ODEC Louisa County plant (Case No. PUE-2001-00303), 104 ppb for the CPV Cunningham Creek plant (Case No. PUE-2001-00477), 120 for the ODEC Marsh Run plant (Case No. PUE-2002-00003), 117 for the Tenaska II Buckingham County plant (Case No. PUE-2002-00429), and 109 for the CPV Warren County plant (Case No. PUE-2002-00075). In this case, BEST Consulting has noted that the maximum ozone concentration recorded at the nearest monitoring location to the White Oak site during 2000 was 112 ppb. No data on ozone levels was provided for the Buchanan Generation plant (Case No. PUE-2001-000657).

⁹ National Ambient Air Quality Standards for Ozone: Final Rule, 62 Fed. Reg. 38,855 at 38,856, 38,863, 38,864, 638,867.

¹⁰ Id. at 38,859, 38,864.

¹¹ Id. at 38,856.

¹² See <http://www.deq.state.va.us/ozone/ozone-t3.html> for the chart "Eight-hour ozone exceedances (1990-2002)" and <http://www.deq.state.va.us/ozone/ozone-t2.html> for the chart "One-hour ozone exceedances (1987-2002)."

¹³ See National Ambient Air Quality Standards for Particulate Matter: Final Rule, 62 Fed. Reg. 38,651 (July 18, 1997)(codified at 40 C.F.R. § 50.7 (1999)).

¹⁴ Application of CPV Cunningham Creek, For approval of a certificate of public convenience and necessity pursuant to Va. Code § 56-265.2, for an exemption from Chapter 10 of Title 56, and for interim authority to make financial expenditures, Case No. PUE-2001-00477, Report of Deborah V. Ellenberg, Chief Hearing Examiner at 44-45; Application of CPV Warren, LLC, For approval of a certificate of public convenience and necessity pursuant

impact of any of the new plants. Again, Virginia and Virginians are entitled to an explanation and all the data available. Neither has been provided in any of these eight cases.

We note that the record in this case includes less data than a number of prior proceedings. The critical point, however, is that none of the applications before us have really addressed these new standards with respect to ozone and PM_{2.5}. There are no safe levels of either pollutant, and every plant approved will add to the already significant level of each pollutant currently in the atmosphere at the proposed sites of these plants. Virginia should look forward and address these issues before the plants are built and the health and welfare of Virginia and her citizens are further imperiled.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 56-580 D of the Code of Virginia, in accordance with the record developed herein, White Oak is hereby granted authority and a certificate of public convenience and necessity to construct and operate the Facility as described in this proceeding and this Order.
- (2) White Oak shall obtain a certificate under the Utility Facilities Act, § 56-265.1 *et seq.*, of the Code of Virginia, prior to constructing or acquiring the 1,500-foot portion of the proposed natural gas lateral that will not be located on White Oak's property.
- (3) The certificate granted herein shall be conditioned upon the receipt of all environmental and other permits necessary to construct and operate the Facility.
- (4) As a condition of the certificate granted herein and as agreed to by White Oak in this proceeding, White Oak shall comply with the eight recommendations made by the DEQ in this case.
- (5) As a condition of the certificate granted herein and as agreed to by White Oak in this proceeding, White Oak shall fund any necessary system upgrades to interconnect the Facility with the transmission grid.
- (6) The certificate granted herein shall expire in two years from the date of this Order, if construction of the Facility has not commenced.
- (7) 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.

MORRISON, Commissioner, Concurring Opinion

I agree that White Oak Power Company should be granted authority and a certificate of public convenience and necessity to construct and operate the proposed facility, and that it should comply with the directions and conditions contained in the ordering paragraphs hereof.

I must disassociate myself from that portion of this Order consisting of its last ten (10) paragraphs immediately preceding the concluding ordering paragraphs.

In the first of these paragraphs, the Majority correctly recognizes that this Commission has no jurisdiction over ". . . the issues that would cause us to deny the Application without further data . . ." Thereafter follows a lengthy discussion of matters which are none of our jurisdictional business.

That discussion suggests a serious failure to protect public health by unnamed branches, departments or agencies of government. The Majority's "concern and mounting alarm" may be justified, but there are more constructive channels through which to communicate with those who hold the authority to correct the shortcomings in public policy perceived by the Majority. To do so instead through the medium of a Commission order smacks of unseemly judicial activism.

to Va. 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-2002-00075, Report of Alexander F. Skirpan, Jr., Hearing Examiner at 32.

**CASE NO. PUE-2002-00322
MARCH 25, 2003**

APPLICATION OF
THE POTOMAC EDISON COMPANY D/B/A ALLEGHENY POWER

To revise its cogeneration tariff pursuant to PURPA § 210

FINAL ORDER

On June 12, 2002, the Potomac Edison Company d/b/a Allegheny Power ("AP" or "Company") filed with the State Corporation Commission ("Commission") an application, written testimony and exhibits to support its proposal for the year 2002 to change its cogeneration and small power production rates under its Schedule CO-G. Schedule CO-G establishes payments, based on the Company's avoided costs for energy and capacity, for purchases from cogenerators and small power producers with a design capacity of 100 kW or less. The Company proposes to revise its Schedule CO-G to replace its currently approved administratively-determined avoided cost pricing methodology with a market-based pricing methodology for determining the Company's payments to qualifying generating facilities for electricity purchased under § 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA").

By order issued August 15, 2002 ("Order"), the Commission established this proceeding, and set a procedural schedule whereby it provided interested persons an opportunity to file comments and/or requests for hearing on the application on or before September 17, 2002, and directed the

Commission Staff to file a report or testimony on or before October 18, 2002. No comments or requests for hearing were filed. Pursuant to the Order, the Staff filed the testimony of Jarilaos Stavrou of the Commission's Division of Economics and Finance on October 18, 2002. On February 6, 2003, Hearing Examiner Howard P. Anderson, Jr. issued his report in this proceeding.

The Company proposes to change the methodology it presently uses to calculate payments to its QFs under Schedule CO-G, eliminate capacity payments, revise contract duration terms, and revise certain customer and metering charges. At the present, the Company employs the Differential Revenue Requirements ("DRR") methodology to forecast its avoided costs. The Company has restructured and no longer owns generating facilities. By Order dated July 11, 2000, the Commission approved Potomac Edison's plan to transfer its generating units to an affiliate in Application of The Potomac Edison Company d/b/a Allegheny Power, For Approval of a Functional Separation Plan, Case No. PUE-2000-00280, 2000 S.C.C. Ann. Rep. 530.

The new Schedule CO-G proposes to utilize market-based pricing to determine the Company's avoided costs, rather than the traditional DRR methodology. The Company proposes an avoided cost energy payment to cogenerators and small power producers based on market-determined firm energy prices from the PJM Interconnection wholesale electric market region. The Company states that it will purchase from the market the energy and capacity it requires to supply its customers, and therefore, the Company's future avoided costs will be determined by the cost of its avoided market purchases of power. AP proposes to revise and update its cogeneration rates annually hereafter based on current projections of forward energy prices. The Company also proposes to eliminate a separate capacity payment component. AP states that QFs that qualify under Schedule CO-G have too small a design capacity to have significant value in the PJM capacity market and further that PJM prices used to estimate its avoided costs already contain an intrinsic capacity payment component.

This proceeding concerns wholesale payments AP will make to cogeneration facilities and small power producers under PURPA. Under PURPA, this Commission, as well as other states commissions, are granted the authority to establish utility payments to PURPA-qualified cogeneration facilities and small power producers ("qualifying facilities" or "QFs") on the basis of costs avoided by AP by obtaining power from these QFs, rather than acquiring such power from other sources.

AP states in its application that Virginia's energy markets have gone through significant changes since the Commission last reviewed AP's cogeneration rates in Case No. PUE-1998-00055.¹ The Company emphasizes that it no longer owns generating facilities, nor does it plan to build or purchase new generation in the future, but purchases electric generation supply under contract to meet its default service obligations. Currently there are no QFs or pending applications from QFs, in the Company's Virginia jurisdictional service territory, to which AP's Schedule CO-G applies.

Staff's testimony states given that the Company expects to purchase energy for its regulated customers in the PJM market, and that its forecasting methodology will be refined as more data become available, that the methodology employed by the Company in this proceeding to forecast firm energy prices was acceptable for the purposes of the Company's instant application. The Staff recommends that as the Company refines its forecasting methodology, it should obtain market price data from the sources listed in the Commission's Final Order in Case No. PUE-2001-00306, and as modified by its Final Order of October 11, 2002, and perform calculations consistent with the calculations set forth in the Final Order of October 11, 2002. Staff further recommends that when appropriate, the market price information should be adjusted to reflect the fact that the electrical production will take place in the Company's Virginia service territory rather than at the price points reflected in the market data.

The Staff also found that the avoided energy cost estimates proposed by the Company to be used in setting the cogeneration tariff rates were reasonable. Staff also supports the Company's proposal to offer contracts with a maximum duration of three years and update avoided cost rates annually using market prices, because it will allow the Company more flexibility in adapting its costs to market conditions. The Staff also accepts the Company's proposed updates to metering and customer charges, including the proposal to eliminate simple time-of-use meters. Staff believes these charges are cost-based.

In his Report the Hearing Examiner found based on the evidence that the Company's proposed methodology was appropriate for this case, and its proposed avoided energy costs and other proposed changes were reasonable. The Hearing Examiner further adopted the Staff's recommendations relative to the Company updating its pricing methodology and Schedule CO-G.

NOW THE COMMISSION, in consideration of this matter, finds that the findings and recommendations included in Hearing Examiner Howard P. Anderson's Report dated February 6, 2003, should be adopted in full.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations set forth in the Hearing Examiner's February 6, 2003, Report are hereby adopted and approved.
- (2) This matter is dismissed from the Commission's docket of active cases.

¹ Application of The Potomac Edison Company, To revise its cogeneration tariff pursuant to PURPA § 210, 1998 S.C.C. Ann. Rep. 394.

**CASE NO. PUE-2002-00364
DECEMBER 18, 2003**

APPLICATION OF
WASHINGTON GAS LIGHT COMPANY
and
SHENANDOAH GAS DIVISION OF WASHINGTON GAS LIGHT COMPANY

For general increase in natural gas rates and charges and approval of performance-based rate regulation methodology pursuant to Va. Code § 56-235.6

FINAL ORDER

On June 14, 2002, Washington Gas Light Company ("Washington Gas" or "WGL") and the Shenandoah Gas Division ("Shenandoah") of WGL (hereafter collectively referred to as the "Company" or the "Applicant") filed an application with the State Corporation Commission ("Commission") for a general increase in rates and charges for natural gas. In its application, the Company requested an increase of \$23,809,086 in WGL's and Shenandoah's combined annual operating revenues, based on a test year for the twelve months ended December 31, 2001.

According to the Company, one of the purposes of its application is the merger of the rates, terms and conditions, and purchased gas charges ("PGCs") of WGL and Shenandoah. However, as explained in its application, the Company proposes a single set of rate schedules applicable to all customers but different rates for customers of Washington Gas and former customers of Shenandoah where these rates have not been completely merged.

Also, as part of its application, the Company proposes to combine the Risk Sharing Mechanism ("RSM") and Margin Sharing Mechanism ("MSM") provisions of WGL and Shenandoah into a single RSM based on the combined interruptible cost of service of WGL and Shenandoah. This Company proposal incorporates the provision in Shenandoah's MSM to exclude revenues from new interruptible customers.

WGL and Shenandoah propose to merge their PGC provisions so that former customers will be charged their pro rata share of all system resources. The Company proposes to recover carrying charges on prepaid storage gas inventory through the PGC and to remove storage gas inventory from rate base. Additionally, the Applicant proposes to include in the PGC carrying charges associated with the month-to-month over- or under-collection of purchased gas costs as well as carrying charges on the Actual Cost Adjustment ("ACA") balances outstanding.

In accordance with § 56-235.6 of the Code of Virginia, the Company requested approval of an incentive rate plan ("IRP"). As explained by the Company's application, this plan would permit a 50/50 sharing of Virginia-regulated, weather-normalized earnings 100 basis points above, and a 50/50 sharing of responsibility for an earnings deficiency 100 basis points below, the midpoint of the Company's authorized return on equity range, while maintaining the PGC and ACA mechanisms. The Company also proposed an earnings sharing mechanism to implement the sharing of excess earnings or an earnings deficiency under its incentive rate plan.

On July 10, 2002, the Commission issued its Order for Notice and Hearing in which, among other things, it docketed the application, found that the complexity of the issues presented in the application did not support a conclusion that the increases were likely to be justified upon full investigation and hearing, and determined that the proposed tariff revisions, other than those related to the incentive rate plan, should be suspended pursuant to § 56-238 of the Code of Virginia, to and through November 11, 2002. The Commission specifically noted in its Order that until it made the findings required under Subsection B of § 56-235.6 of the Code of Virginia, the Company had no authority to implement an incentive rate plan form of regulation and the associated earnings sharing mechanism to provide for the sharing of excess earnings or earnings deficiencies.

The Commission assigned the application to a hearing examiner to conduct all further proceedings in the matter and to issue a final report therein, directed the Company to give notice of its application, and established a procedural schedule providing for the participation of interested parties, and the filing of testimony by the Company, respondents, and Staff. The Commission set the matter for hearing on December 16, 2002, before a hearing examiner.

In a November 4, 2002, letter filed with the Commission, the Company gave notice of its intent to place its proposed rates in effect on an interim basis, for service rendered on and after November 12, 2002. In its letter, the Applicant represented that it had removed proposed provisions relating to the incentive rate plan from the tariff it proposed to implement. The Company further advised that it proposed to implement and prorate the revised PGC effective, on an interim basis, for service rendered on and after November 12, 2002.

In her November 8, 2002, Ruling, Deborah V. Ellenberg, Chief Hearing Examiner ("Hearing Examiner" or "Examiner") accepted the Company's bond, accepted the interim tariff for filing, and authorized the Company to implement and prorate the revised PGC effective, on an interim basis, for service rendered on and after November 12, 2002. The Hearing Examiner further directed the Company to keep accurate records of all amounts received under the interim rates in the event the Commission modified or rejected the Company's proposed rates.

On the appointed day, the application was heard by the Examiner. Counsel appearing were Donald R. Hayes, Esquire, and Paul S. Buckley, Esquire, counsel for the Company; Frann Francis, Esquire, and Timothy B. Hyland, Esquire, counsel for the Apartment and Office Building Association of Metropolitan Washington ("AOBA"); Dennis R. Bates, Esquire, counsel for the Board of Supervisors of Fairfax County ("Fairfax County"); Raymond L. Doggett, Jr., Esquire, counsel for the Division of Consumer Counsel, Office of the Attorney General ("Consumer Counsel"); and Sherry H. Bridewell, Esquire, and Rebecca W. Hartz, Esquire, counsel for the Commission Staff ("Staff").

During the hearing, the Company requested leave to withdraw its IRP subject to certain provisions identified in a partial stipulation accepted into the record as Exhibit 1. This partial stipulation provided that the Company agrees to withdraw its IRP proposal for consideration in this proceeding, and that Staff and the interested parties (AOBA, Consumer Counsel, and Fairfax) "agree to meet with the Company within six months following the issuance of a Final Order in this proceeding and the submission of an alternative plan by the Company to discuss issues related to performance-based rate plans and service quality standards."¹ The partial stipulation provided that these discussions would not bind the Staff or any party to support the final proposal for a performance-based rate plan that may be developed through the process.

¹ Exhibit 1.

The partial stipulation also provided that the Company could submit actuarial studies supporting the reasonableness of the updated pension and other post-employment employee benefits ("OPEB") expenses proposed by the Company, and that Staff, the Company, and the parties would be permitted to supplement the record related to pension and OPEB expenses, through written comments or additional public hearings, if necessary.

Finally, the partial stipulation provided that the Company agreed to revise its Interruptible Delivery Service tariff, Rate Schedule No. 7, to state that any customer who is eligible for interruptible sales service under Rate Schedule No. 4 is also eligible for interruptible delivery service under Rate Schedule No. 7.

The Hearing Examiner granted the Company's request to withdraw its IRP and received the partial stipulation into the record.

Two public witnesses appeared in the proceeding. Both witnesses appeared on behalf of entities that were associated with AOBA. David C. Farmer, a utilities administrator for Grady Management, Incorporated testified that his firm operates over 11,000 rental units of residential apartment units and 400,000 square feet of office space in the Washington metropolitan area. Mr. Farmer expressed his concern about the magnitude of the increase proposed by the Company for interruptible delivery service accounts and the Company's practice of charging nontariffed rates for the installation of equipment that would allow interruptible delivery service customers to obtain information regarding gas usage on a real time basis. Mr. Farmer requested that the Commission either regulate the charges for these services or allow competitors to install such equipment.

Mr. Alan F. Molleur, Director of Energy and Engineering for Southern Management Corporation of Vienna, Virginia, testified that his firm was a member of AOBA and operates over 25,000 residential apartment units and a few hundred thousand square feet of office space in the Washington metropolitan area. Mr. Molleur expressed concern over the magnitude of the interruptible delivery service rate increase and the charges being levied by the Company for the installation of usage data gathering devices. He complained about the cost of WGL's installation of real time usage monitoring devices and that WGL was no longer allowing independent contractors to install such devices. Mr. Molleur requested the Commission to regulate the charges for these services or allow other contractors to perform work on a competitive bid basis.

On January 16, 2003, the Company filed a motion to reduce its miscellaneous service charges. The Applicant requested leave to substitute miscellaneous charges consistent with the recommendations made by Staff witness Henderson for those that became effective on an interim basis on November 12, 2002. According to the Company, the new miscellaneous service charges reflect reductions in several of the charges from the levels that had been in effect, on an interim basis, since November 12, 2002. Counsel for the Company represented that none of the parties opposed the Company's request.

The Hearing Examiner granted the Company's January 16, 2003, Motion in her Ruling dated January 21, 2003.

On September 16, 2003, the Hearing Examiner issued her Report. In her Report, among other things, she found that:

- (1) The use of a test year ending December 31, 2001, is proper in this proceeding;
- (2) The Company's test year operating revenues, after all adjustments, were \$340,109,078 for WGL and \$26,440,551 for the Shenandoah division.
- (3) Test year operating revenue deductions, after all adjustments, were \$297,318,943 for WGL and \$22,590,526 for the Shenandoah division.
- (4) Test year adjusted net operating income, after all adjustments, were \$42,670,445 for WGL and \$3,841,915 for the Shenandoah division;
- (5) Current rates produce a return on adjusted rate base of 7.57 percent for WGL and 10.18 percent for the Shenandoah division;
- (6) Current rates produce a return on equity of 8.80 percent for WGL and 13.93 percent for the Shenandoah division;
- (7) The Company's current cost of equity is within a range of 10.00-11.00 percent, and rates for WGL and for the Shenandoah division should be established based on the 10.50 percent midpoint of the equity range;
- (8) The Company's overall cost of capital, using the midpoint of the equity range and the capital structure as proposed by Staff, is 8.44 percent;
- (9) The Company's adjusted test year rate base is \$563,487,126 for WGL and \$37,722,914 for the Shenandoah division; and
- (10) The Company requires \$6,846,439 in additional gross annual revenues to earn a reasonable return on rate base for WGL, and a reduction of \$1,136,591 in gross annual revenues for the Shenandoah division.

Additionally, the Examiner accepted the Staff's recommendation regarding the Company's capital structure. She found that it is based on known and measurable data, while incorporating known and recent changes. That actual capital structure as of March 31, 2002, includes long-term debt of 39.721 percent, short-term debt of 6.423 percent, preferred stock of 1.802 percent, common stock of 50.957 percent, and investment tax credits of 1.097 percent.

The Examiner accepted Staff's cost rates of 7.010 percent for long-term debt and 1.868 percent for short-term debt. The Company had proposed use of 6.89 percent for long-term debt and 2.23 percent for short-term debt. The Examiner found Staff's recommendation to be more reasonable because it is based on known, updated information and not speculative estimates of financing rates in the future.

With regard to the Company's return on equity, the Examiner determined that the record supports a cost of equity in the range of 10.00 percent to 11.00 percent with the mid-point of 10.50 percent to be used for calculating the revenue requirement.

The Examiner found that it was reasonable to analyze the cost of service separately for WGL and Shenandoah, especially since the cost of service studies for the two divisions do not tie back to the combined cost of service study because of allocation differences. The Hearing Examiner found that the conservation adjustment proposed by the Company should be rejected as speculative and, instead, accepted the Staff's adjustment based on lower usage patterns for customer additions. The Hearing Examiner accepted the Company's calculations for establishing transportation revenue challenged by AOBA. Based on the Staff late-filed Exhibit 50 and Staff's filed comments, the Hearing Examiner accepted Staff's revised adjustment to the Company's pension and OPEB as reasonable, known and measurable, and not speculative.

The Examiner also accepted the Company's proposed adjustment for insurance expense of \$1,513,246. The Examiner found that the Company had recorded an expense related to the Company's settlement of costs to investigate and remediate environmental contamination attributable to a manufactured gas plant in the City of Alexandria, observing that WGL had recorded the expense prior to the test year ending December 2001, and that these expenses have already been incorporated in previous Annual Informational Filings ("AIFs") in Virginia and filings in its Maryland and Washington, D.C. jurisdictions.

As to the Company's mercury regulators replacement program costs, the Hearing Examiner accepted the Company's adjustment based on the replacement of 5,377 mercury regulators per year, or an average of 448 units per month. The Examiner eliminated costs related to the Company's Achieving Operational Excellence Program from the Company's cost of service. The Hearing Examiner found that the Company did not offer proof of savings associated with the cost of this program.

With regard to depreciation, the Hearing Examiner accepted Staff's adjustment regarding the Company's depreciation reserve deficiency, based on a finding that the Company's accumulated depreciation balances have been artificially lowered due to the inclusion in these balances of plant that no longer provide service. Finding that the Company's failure to file a timely depreciation study resulted in a large depreciation reserve deficiency, the Examiner accepted Staff's adjustment to reduce the Company's rate base.

The Hearing Examiner recommended that the Company commence recording depreciation expense using the new rates as of November 12, 2002, which is the date that the Company's proposed tariff went into effect in this proceeding on an interim basis.

The Hearing Examiner determined that the Company should investigate creating a separate small commercial schedule and large industrial schedule to serve the merged Commercial-Industrial Schedules, and also investigate the customer makeup of the interruptible delivery schedules. The Examiner accepted the Company's revenue apportionment and rate design.

AOBA proposed that the Company terminate interruptible sales service, asserting that the competitive market for the supply of natural gas service has matured to the point where that service was no longer necessary. The Hearing Examiner observed that no notice had been provided to interruptible sales customers that the supply of natural gas from the Company could be terminated. Consequently, the Hearing Examiner adopted Staff's recommendation that the Company should evaluate the necessity for continuing the commodity gas supplied to interruptible customers in its next rate case.

Further, the Hearing Examiner recommended that the Commission accept the revisions to the miscellaneous fees and charges proposed by Staff in Exhibit 34, Statement RMH-3 at 1. The Hearing Examiner found that these fees and charges supported by the Company, Staff, and Fairfax County were reasonable. She cited with approval the Staff's recommendation that no formal language permitting the Company to revise its PGC, ACA, and refund and RSM factors with prior notice to Staff was necessary.

The Examiner observed that AOBA and two public witnesses raised concerns about the charges imposed by the Company related to the installation of equipment that permits real-time monitoring of energy usage. The Examiner recommended that Staff investigate these complaints and initiate a complaint proceeding if the Company's treatment and pricing of the energy management equipment were not satisfactorily resolved.

The Hearing Examiner declined to adopt the Company's asset management sharing proposal, pursuant to which the Company would enter into an alliance with an unidentified asset manager, and share asset management revenues with its customers. The Hearing Examiner cautioned that if the Commission approves the Company's asset management program, it must address the sharing of revenue. The Company proposed that asset management revenues be shared equally by ratepayers and shareholders. Staff proposed that if the asset management program is approved, 90 percent of the revenues go to firm ratepayers through the ACA in recognition of the Company's unknown alliance and its benefits to the ratepayers.

With regard to the weather normalization adjustment, the Examiner found that the Company should be required to continue to prepare separate adjustments for the WGL and Shenandoah operations based on the measuring locations now used to record degree-day data as rates continue to be merged. The Examiner noted that there are substantial differences in the degree days for these two measuring stations reflecting regional differences.

With regard to various booking and accounting classification changes, the Examiner found that the Company should seek approval from other jurisdictions in which it provides service to make the booking changes recommended by Staff and advise the Staff when these changes are completed.

The Examiner recommended that the Commission enter an order that adopts the findings in her Report, grants the Company an increase in gross annual revenues of \$5,709,948, and dismisses the case from the Commission's docket of active cases. The Examiner invited the case participants to file comments responsive to her Report within four weeks of the Report's issuance because of the complexity of the issues presented by the application.

Comments responsive to the Report were filed by the Company, Staff, and Fairfax County.

NOW THE COMMISSION, having considered the record, the pleadings, the Hearing Examiner's Report, the comments thereon, and the applicable law, is of the opinion and finds that the analysis, findings, and recommendations of the Hearing Examiner's Report are reasonable, supported by the record, and should be adopted, except to the extent that we specify otherwise in the discussion below.

Capital Structure

We agree with the Hearing Examiner's recommendation that an actual capital structure should be accepted for this case.

AOBA's proposal that we adopt a five-quarter average through December 31, 2001, should be rejected because it includes a capital structure based on the consolidated parent of WGL operations, the Company, including unregulated operations.

The Company's proposal would adopt a pro-forma capital structure that includes adjustments for changes through February 28, 2003. The Hearing Examiner noted that the projections through February 28, 2003, included in the Company's proposal were not based on any publicly available data.

While the capital structure should be representative of the actual capital structure that will be in place during the rate-effective period, we have in the past rejected a hypothetical capital structure.² The Hearing Examiner found that Staff's recommended capital structure is based on known and measurable data and incorporates known and recent changes. A capital structure that is objectively grounded on known, certain and observable data at the end of the test period is preferable to alternatives that may rely on speculative projections. Therefore, we adopt the Hearing Examiner's finding on this issue.

Return on Equity

The Company initially requested a return on equity of 12 percent to 12.5 percent. In its response to the Hearing Examiner's Report, the Company asserts that the evidence supports a return on equity of at least 11.0 percent. AOBA recommended a return on equity not to exceed 9.70 percent. Fairfax County recommended a return on equity in the range of 10 to 11 percent with a midpoint of 10.5 percent, based on a discounted cash flow analysis for WGL Holdings and a group of comparable companies. Fairfax County witness Sinclair observed that since the Commission last established WGL's cost of equity at 11.5 percent in 1995, interest rates have declined significantly.

Staff conducted a discounted cash flow analysis that produced an equity return range of 9.47 percent to 10.37 percent for the Company's parent, WGL Holdings, and 9.85 percent to 10.71 percent for a group of comparable companies. Other risk premium analyses conducted by Staff produced cost of equity estimates within a range of 10.09 percent, 9.90 percent, 10 percent, and 9.37 percent. Staff supports a return on equity range of 9.5 percent to 10.5 percent, with a midpoint of 10.0 percent used to establish rates.

Witnesses for the Company, Fairfax County, and Staff each used discounted cash flow analyses for the Company's parent and comparable companies, in addition to other corroborative methods. In its rebuttal testimony, the Company criticized Staff's inclusion of Northwest Natural Gas ("NNG") in the group of comparable companies on grounds that NNG has been considered a takeover target.³ The Hearing Examiner noted that when Staff witness Owens' analysis of comparable companies is conducted without NNG, the resulting range increases to 10.2 percent to 11.05 percent. The Hearing Examiner also concluded that Company witness Dr. Olson failed to use a growth rate in dividends as part of his discounted cash flow analysis in estimating the cost of equity capital for the Company. Moreover, the Hearing Examiner observed that Dr. Olson's risk premium analysis overstates the level of risk that should be associated with the Company.

Based on these factors as well as the downgrading of the rating of the Company's senior debt securities by Moody's Investor Services from Aa3 to A2 in December 2002 and other analyses, the Hearing Examiner agreed with Fairfax County's conclusion in determining that the record supports a cost of equity in the range of 10.0 percent to 11.0 percent, and recommended that the revenue requirement be established based on the midpoint of the cost of equity range, or 10.5 percent. The midpoint of this range does not differ greatly from the range for comparable companies of 10.43 percent to 10.95 percent derived by Company witness Dr. Olson before considering other factors. We adopt the Hearing Examiner's recommendation on this issue.

Separate or Combined Revenue Requirement

The Company proposed a tariff, Va. S.C.C. No. 9, in order to merge the previously separate tariffs of WGL and Shenandoah. While the Company's request for rate relief is based on the combined cost of service of WGL and Shenandoah, it includes separate cost of service studies for the two entities. Staff observed that individual revenue shortfalls for the two entities do not match the combined revenue requirement requested by the Company. This discrepancy exists because the results of the two separate cost of service studies for WGL and Shenandoah do not match the results of the combined study.

Staff recommended that the prospective merger of WGL's and Shenandoah's books and accounting records be conditioned on the preparation of separate weather normalization studies and retention of the billing determinants for the formerly distinct companies. The Company urges this Commission to approve the merger of the books and accounting records of WGL and Shenandoah going forward for all AIFs and rate cases.

The Hearing Examiner found that it was reasonable to analyze the cost of service separately for WGL and Shenandoah. We adopt the Hearing Examiner's finding. To the extent that the matters are not within the scope of the Hearing Examiner's finding, we direct that in subsequent AIFs and expedited rate applications, the Company should prepare separate weather normalization studies, retain the billing determinants for the formerly distinct entities, include an initial column on its cost of service studies, rate of return statements and rate base statements, showing total Company operations, and include a separate column to exclude non-utility items.

Conservation Adjustment

The Company has proposed an adjustment to test year volumes to reflect a forecasted reduction in gas usage by current customers resulting from the use of increasingly efficient gas appliances. In its response to the Hearing Examiner's Report, the Company asserts that the conservation adjustment is no

² See Application of Roanoke Gas for a general increase in rates, Case No. PUE-1992-00017, 1992 S.C.C. Ann. Rep. 324, 325; Application of Roanoke Gas to revise its tariffs in an expedited proceeding, Case No. PUE-1989-00055, 1990 S.C.C. Ann. Rep. 291.

³ Company's Comments at 28.

more speculative than weather-normalization usage data used in setting rates.⁴ The conservation adjustment would increase the Company's revenue requirement by nearly \$2.3 million.

Staff contends that lower usage patterns, based on recent customer additions, are incorporated into Staff's customer growth adjustment. Consumer Counsel agrees with Staff that relying on the most recent known and certain information would be the more logical approach, because the adjustment may result in increased rates based on a projection of a future that may not develop as the Company predicts.

We will adopt the Hearing Examiner's finding that the conservation adjustment proposed by the Company should not be accepted. The proposed adjustment is duplicative, in part, of Staff's customer growth adjustment, which already captures customer conservation arising from the use of more energy efficient appliances. The Company's proposed adjustment also ignores any off-setting productivity gains. The Hearing Examiner's acceptance of Staff's adjustment is reasonable, and we adopt the Examiner's recommendation on this issue.

Insurance Expense

The Hearing Examiner accepted the Company's proposed approximately \$1.5 million adjustment for insurance expense. The Company asserted that this increase was justified by increases in insurance premiums. In its original application, the Company sought an increase in going level insurance expense of approximately \$1 million. The Company subsequently sought an increase of \$0.5 million based on rebuttal testimony stating that the Company had been informed that it should expect Directors and Officers liability insurance premiums to increase by well over 100 percent from 2002 to 2003, and property insurance premiums to increase by 15 percent to 37 percent.

We do not accept this recommendation of the Hearing Examiner and agree with Staff that this adjustment does not satisfy the "known and certain" standard set out in § 56-235.2 of the Code of Virginia. Staff properly uses the latest actual insurance premiums from fiscal year 2002, which is based on known and certain information. We find that the going level adjustment to insurance expense should be \$987,202 for WGL and \$60,186 for Shenandoah.

Alexandria Manufactured Gas Plant Environmental Settlement Costs

The Hearing Examiner recommended denial of the Company's proposed going level adjustment to reflect expenses related to the settlement of issues relating to the investigation and remediation of environmental contamination at its Alexandria manufactured gas plant. The Company recorded the expense prior to the test year ending December 2001. These expenses have been incorporated into prior AIFs in Virginia and filings in Maryland and the District of Columbia. In short, the Company has recovered these expenses. We adopt the Hearing Examiner's recommendation on this issue.

Mercury Regulators Replacement Program Costs

The Company's proposal to increase expenditures on replacing mercury regulators by \$1.0 million is based on the expectation that the regulators will be replaced ratably over a 10-year period, or 448 per month. Staff proposed an increase of \$0.7 million based on the Company's actual pace of regulator replacement, or 333 per month. The Hearing Examiner accepted the Company's adjustment based on the replacement of 448 mercury regulators per month over the duration of the ten-year program. While we find that the Hearing Examiner's recommendation is reasonable, we further find that it is appropriate to monitor this program. We therefore direct Staff to monitor the Company's expenditures and rate of regulator replacement, and make adjustments accordingly.

Achieving Operational Excellence Program

Both Staff and the Company recognize merit in treating the cost of the Achieving Operational Excellence ("AOE") Program as a regulatory asset and amortizing it over future years. Staff recommends that 50 percent of the utility portion of the consulting contract be treated as a regulatory asset and amortized over a three year period. Staff's proposal estimates that the Company will benefit from savings equal to at least 50 percent of the study's cost. This is a conservative estimate of savings, considering the Company's statement that it "would not have embarked on such an effort had it not believed the benefits would outweigh [sic] the costs."⁵

The Company contends that the full amount of its expense on the AOE Program should be treated as regulatory asset and amortized over a three year period.

The Hearing Examiner recommended that the proposed adjustment to recover expenses for the AOE Program be rejected until the Company offers evidence of savings to net against the Program's cost.

We agree with the Hearing Examiner's finding that the costs associated with the AOE Program may be treated as a regulatory asset.⁶ However, we do not adopt the Hearing Examiner's recommendation that cost recovery of this item be denied in this case. We find that 50 percent of the utility portion of the consulting contract should be treated as regulatory asset and amortized over a three year period. Historically, when we have considered the treatment of management study costs we have allowed the costs to be recovered through the actual savings the utility realizes each year as a result of the study. Thus, the savings pay for the study and savings accrue to the ratepayers only after the utility recovers the costs of the study. Since the savings are realized over time, the costs of the study should be recovered, albeit over an extended period in some cases.

⁴ Response of Company at 47.

⁵ Pre-filed testimony of Staff witness Armstrong at 32 (quoting Rebuttal testimony of Frederic M. Kline before the Maryland Public Service Commission, In the Matter of the Application of Washington Gas Light Company for Authority to Increase its Rates and Charges for Gas Service and to Implement an Incentive Rate Plan, July 16, 2002, Case No. 8920, at 50).

⁶ We note that amortization of a regulatory asset allows the return of the deferred amount, but does not allow a return on the unamortized balance.

This proceeding is distinguishable because the Company asserts that it is not able to quantify or track any savings as a result of the management study. The Company has, however, represented that the management study will produce significant savings. Staff assumed that the cost of the AOE Program would produce savings at least equal to 50 percent of its cost.

While such management studies should not be discouraged, the benefits resulting from such studies should not accrue only to the utility's shareholders. Until the next rate case, such would be the result if current ratepayers were required to bear all of the costs of the study and the savings are realized in future years.

In this instance, Staff has assumed that one half of the cost of the AOE Program would be covered by savings. We find that this assumption is reasonable.⁷ However, if the Company files information in a future AIF or rate case establishing that the savings are less than 50 percent of the study's cost, an appropriate adjustment may be in order in such proceeding. In order to establish grounds for such an adjustment, the Company must show that, after implementing the AOE Program, the savings, over time, will be less than 50 percent of the study's cost.

Depreciation Issues

The Company conducted depreciation studies based on depreciable plant balances as of December 31, 2000. Following Staff review, two adjustments to the studies were accepted by the Company with the understanding that the depreciation rates would be updated to reflect investments and depreciation reserves as of December 31, 2001. A 2002 technical update was submitted on May 5, 2002. The Company and Staff are in agreement regarding the rates and depreciation expense resulting from the study. However, the Company objected to two of Staff's recommendations regarding the implementation of the new depreciation rates. First, Staff proposes that the Company's rate base be reduced to eliminate the effect of the depreciation reserve imbalance. Second, Staff proposes that the Company begin recording depreciation expense using the new rates effective as of the January 1, 2002, technical update.

With respect to the first issue, the depreciation study revealed that the Company has a large depreciation reserve imbalance. This imbalance, which is the amount by which the theoretical reserve or Staff's calculated reserve exceeds the Company's per books depreciation reserve, results in an increase to rate base. Staff proposed a reduction to the Company's rate base to eliminate the effect of the Company's depreciation reserve imbalance.

The 2002 technical update includes a computation of the theoretical reserve based on plant in service as of December 31, 2001. Comparing the theoretical reserve to the Company's per books accumulated reserve for depreciation results in a reserve deficiency of approximately \$40.5 million for WGL and \$2.9 million for Shenandoah. The Company is proposing to make no adjustment to its rate base as a result of the deficiency. Accordingly, the Company would recover the reserve deficiency over more than thirty years and have the opportunity to earn a return on the unamortized balance of the deficiency during this period.

The discrepancy between the per books accumulated reserve for depreciation, when compared to either the theoretical reserve or Staff's calculated reserve, is described by the Hearing Examiner as "enormous."⁸ The per books accumulated reserve for depreciation was underaccrued by 14.67 percent. Staff witness Pate proposed that the lower of either the Staff's calculated reserve or the theoretical reserve be substituted for the per books recorded reserve. Using this approach, Staff recommended that WGL's rate base be adjusted by \$39.9 million to increase the per books accumulated reserve for depreciation. Staff also increased Shenandoah's accumulated depreciation balance by \$2.8 million based on the theoretical reserve. Staff characterized the accumulated reserve deficiency as a regulatory asset, and proposed that the Company be allowed to recover this deficiency through the approved depreciation rates. However, Staff recommends that the Company not receive a return on the amount of the accumulated reserve deficiency.

While early and late retirements of plant, changes in its useful lives, and use of estimates to accrue for net salvage mean that there will almost always be small reserve deficiencies or excesses, these variances should be minimized. Staff states that large reserve deficiencies, such as the one in this case, can and should be avoided by performing depreciation studies every few years. The Company had not performed a depreciation study for more than twenty years.

Staff explains that when depreciation rates are less than they should be, such as in this case, ratepayers are paying a return on capital for a longer period than they should. Staff adds that a large reserve deficiency can have the effect of ratepayers paying a return on assets that are no longer used and useful (because they have been retired) and also paying a return on the replacement for the retired plant component. The Company responded that this was incorrect. The Company correctly states that when plant is retired from service, the physical plant is removed from plant in service. The Company failed to discuss, however, that the full original cost of the retired plant is not only deducted from plant in service, it is also deducted from the depreciation reserve, thus bringing rate base up to the pre-retirement level. The value of the undepreciated plant is still in rate base; not in the plant account, but instead as a reduction to the depreciation reserve. If plant is removed from service at the moment it is fully depreciated, everything works perfectly. For example, if plant in service is reduced by \$100, and depreciation reserve is also reduced by \$100, there is no change in the total rate base for ratemaking. Then, when the cost of replacement plant is added to the plant in service, it is clear that ratepayers are providing a return only on the new replacement plant and not on the retired plant.

In the present case, there is a significant reserve deficiency, which means that the depreciation reserve is not as large as it should be. Using the same example, if the \$100 plant is only \$70 depreciated when the plant is retired, \$100 is still deducted from plant in service and the depreciation reserve. If plant is reduced by \$100 and the depreciation reserve of \$70 is also reduced by \$100, the result is a net of \$30 on which the Company can earn a return. As a result, net rate base still includes, in effect, \$30 of the cost of retired plant. When replacement plant valued at \$110 is added to the \$30 in rate base, ratepayers will pay rates that provide a return of and on the total of \$140.

The failure to revise depreciation rates has two primary detrimental impacts. First, ratepayers are providing a return on invested funds for a longer period than they should. Second, the practical effect of substantial variations, such as presented here, is to require current and future ratepayers to

⁷ If a proper management study had not been able to identify any savings that the Company could achieve as a result of the study, the Company may be allowed to recover its expense without regard to matching up the costs with resulting savings. In this instance, the Company has stated that it expects to receive benefits that will outweigh the costs, but is unable to quantify these benefits at the present time.

⁸ Report at 30.

support not only the plant needed to serve them, but also plant that was used to serve at an earlier time and is no longer in service. Optimal rates will reflect the cost of providing current service.

The Company provides basically two responses. First, the expenditures for plant were prudently incurred and the Company is entitled to a return of and on the investment, regardless of its failure to perform timely depreciation studies. Second, Company witness White states that by far the most significant portion of the reserve deficiency is attributable to a change in only one of the 366 parameters that he estimated in performing the depreciation study. The Company asserts that Dr. White has demonstrated that the reserve imbalance is "not necessarily" attributable to any unreasonable delay by the Company in conducting a depreciation study, and that the magnitude of the reserve imbalance is "not necessarily" related to the length of time between depreciation studies.⁹ The term "not necessarily" is informative. Dr. White did not state, or even suggest, that a single, unexpected event caused the change in the depreciation rates in question. A depreciation study every few years would, of course, answer the question. While the Company may be correct that much of the reserve deficiency is attributable to a change in one parameter (future net salvage rate on services), the Company did not show that a timely depreciation study would not have mitigated most of the imbalance. The Company is responsible for having accurate and up-to-date depreciation studies. It might be argued whether a depreciation study should be performed every two, four, or even five years, but every 20 years is clearly unreasonable.

The Company's failure to perform timely depreciation studies appears to be an oversight rather than an attempt to game the ratemaking procedure. Nevertheless, the reserve deficiency is large, and the resulting problems noted earlier are real. At the same time, there has been no showing that the investments in plant were imprudent.

We will treat the reserve deficiency of approximately \$42 million as a regulatory asset; it will be amortized over the remaining life of the plant. Like other regulatory assets, it will be subject to the earnings test and be subject to reduction by any earnings over the mid-point of the range of the allowed return on equity (10.5 percent). Unlike other regulatory assets, however, we will allow the Company an opportunity to earn a return on the unamortized balance of the asset. This allows the Company recovery of, and an opportunity to earn a return on, this plant while also attempting to protect ratepayers from providing an excess return. The Commission acknowledges that it is unusual to allow a utility to earn a return on the unamortized balance of a regulatory asset, but we find that the unique aspects of this proceeding warrant such result in this instance.

We further expect the Company and other utilities to file depreciation studies at least every five years, unless they are able to demonstrate a valid reason for not so doing. We direct Staff to monitor this expectation, in order to avoid the disturbances that can result from the failure to conduct timely depreciation studies. In addition, Staff should examine any reserve imbalance during the course of its review of these depreciation studies.

The second depreciation-related issue concerns the date that the Company should commence recording depreciation expense using the new rates. Staff recommends that the new rates be used effective as of the January 1, 2002, technical update. The Company proposed to begin using the new depreciation rates concurrent with the effective date of the interim rates established in this proceeding, November 12, 2002. The Hearing Examiner concluded that the implementation of new depreciation rates on January 1, 2002, would be unfair to either the ratepayers or the Company's shareholders, depending on whether new depreciation expense increases or decreases from current levels reflected in rates. Staff's proposal of using January 1, 2002, as the commencement date was also seen as creating practical problems for the Company's preparation of its financial statements in accordance with Financial Accounting Standard Board Statement No. 71, because the Company prepared and filed financial statements in 2002 prior to the approval of the new depreciation rates on October 2, 2002. The Company's financial statements included depreciation accruals based on rates that had been approved by this Commission.¹⁰ The Company also asserts that the "retroactive" implementation date proposed by Staff would increase the depreciation reserve and reduce rate base without allowing for the recovery of increased depreciation expense from January 1, 2002, through November 11, 2002. Such "retroactive" implementation would affect rate base and deprive the Company of a return of, and on, a portion of its investment in plant.

The Hearing Examiner adopted the Company's position. Staff's comments on the Hearing Examiner's Report assert that allowing the Company to delay the implementation of its new depreciation rates until the date it implemented its new tariff rates results in the application of inappropriate accounting recognition of costs by the Company. The delayed implementation of a change in depreciation rates until there is a change in base rates also offers the opportunity for abuse. Staff cites the fact that eight years have lapsed between WGL's two most recent rate cases, and the Company failed to file a depreciation study for nearly 20 years.¹¹

We find the Staff's arguments persuasive. New depreciation rates are calculated to commence correcting any imbalances in existing rates and prevent future positive or negative imbalances. Reserve balances are amortized over the remaining life of the depreciable plant, measured at the time the depreciation study is conducted. The Company's proposal would result in implementing depreciation rates almost two years beyond the original study, and nearly a year beyond the technical update. This is too long, and would allow distortions to develop and would create a new reserve deficiency. Moreover, the National Association of Regulatory Utility Commissioners' manual on public utility depreciation practices states that rates should be implemented coincident with the depreciation study date.¹² Staff also observes that giving utilities latitude to commence new depreciation rates on a date other than the depreciation study date may allow a utility to manipulate earnings, and may cause intergenerational equity issues. Companies are free to schedule their depreciation studies and rate cases so that the impact of depreciation changes can be coordinated with rate changes. Further, implementing new depreciation rates as of the effective date of the study does not constitute retroactive implementation, but rather proper accounting and ratemaking. We find that the recommendations of the Hearing Examiner with regard to this issue should not be adopted, and we direct that the new depreciation rates be implemented effective with the January 1, 2002, technical update.

Installation of Energy Management Equipment

Two persons associated with members of AOBA, David C. Farmer and Alan F. Molleur, expressed concern at the hearing with WGL's charges for installing equipment that permits real-time monitoring of gas usage. They stated that the Company's charges exceed those of any competitor, but WGL

⁹ Response of Company to the Report of the Hearing Examiner, October 13, 2003, at 14, 17.

¹⁰ Report at 29.

¹¹ Staff's Comments at 13-14.

¹² Report at 27.

no longer allows competitors to do such installations. The Company asserts that there is not a sufficient record to resolve this issue and advises that it will notify Staff and the parties of its final policy decision.

The Hearing Examiner recommended that Staff investigate this issue and initiate a proceeding if the issue of the Company's treatment and pricing of installing energy management equipment is not satisfactorily resolved. In its comments to the Hearing Examiner's Report, the Company states that it has discussed this matter with AOBA's counsel in connection with a rate case pending before the Washington, D.C. Public Service Commission. The Company states in its comments to the Report that it has submitted a proposed tariff provision in that proceeding and plans to file the same tariff provision in this proceeding, and consequently no further action is required by Staff or this Commission with respect to this issue.¹³

Staff has not had an opportunity to respond in this proceeding to the Company's comments regarding the tariff provision and notice of the tariff provision has not been provided to the public. The Commission finds that the Hearing Examiner's recommendation on this issue is proper but should be expanded. We direct the Commission's Division of Utility and Railroad Safety to participate in the Staff's investigation and address issues related to the installation of the equipment. If there is no approved tariff for this procedure, competitors should be given the option of doing such work. If safety issues make it appropriate for installations to be performed only by the Company, the charges related thereto should be subject to regulation by this Commission.

Asset Management Contract

The Company has proposed an incentive sharing arrangement, with a duration of five to fifteen years, whereby asset management revenues would be shared evenly by the Company's ratepayers and shareholders. The customer portion of the shared revenues would be passed through under the ACA of the Company's PGC provisions.

The Company asserts that this proposal is justified by six years of Company experience with asset management activities; the need to enhance the returns of its interstate contract assets in a challenging market; and this Commission's approval of an asset sharing mechanism for Virginia Natural Gas in Case No. PUA-2000-00085 ("VNG Case").¹⁴ The Company states that it is exploring ways to increase available capacity that on certain days is not otherwise needed to serve firm customers, and that active management may increase the amount of capacity available to generate revenues without negatively affecting its firm customers.

AOBA recommended that the asset management plan be rejected because it is not obvious that ratepayers would benefit from the proposal. The group also contends that it is not clear that providing asset management by the Company internally would not be more cost-effective than partnering with an outside firm.

Staff asserts that the Company's proposal is different from that approved in the VNG Case. Moreover, delivery service customers who are not subject to the PGC would pay for the facilities that would be involved in this arrangement through base rates, and the Company has not identified how these customers will receive a portion of the revenues.¹⁵ Staff suggests that if the Commission finds it appropriate to provide an incentive for the Company to enter into an asset management contract, the revenues should be shared so that 90 percent goes to the ratepayers through the PGC and 10 percent to the Company.

The Hearing Examiner determined that there did not appear to be a compelling reason to accept the Company's proposal. She observed that the asset management proposal approved in the VNG Case was distinguishable from the proposal made by the Company. In the VNG Case, a specific and known contract was presented to the Commission for review, the partner was known, the assets were known, the benefit to the ratepayer was shown, and the compensation parameters were clear. The Hearing Examiner noted that these elements are not present in this proceeding. She agreed with Staff witness Henderson's testimony that there does not appear to be a compelling reason to reward the Company for normal oversight of a contract. The Company has an obligation to manage its assets in a cost effective manner; not every contract or effort to fulfill this obligation should be entitled to a greater reward than the opportunity to earn the allowed return on equity. The Hearing Examiner accordingly rejected the Company's sharing proposal. We adopt the Hearing Examiner's recommendation in this regard. We further find that the Company's General Service Provisions should be revised to include the expenses and revenues associated with off-system sales, as recommended by Staff.¹⁶

Weather Data Collection

With regard to the weather normalization adjustment, Staff recommended that the Company maintain two separate measuring stations, at Reagan National Airport and the Cedar Creek Gate station. The Examiner agreed with Staff's observation that the Company could continue to prepare separate adjustments for the Virginia and Shenandoah operations based on the measuring locations now used to record degree-day data as rates continue to be merged. However, the Hearing Examiner did not specifically recommend that the Company continue to maintain and report the differences in weather from these two sites. Staff has proposed that the Company be directed to continue to maintain its present distinct measuring locations for degree days, with Shenandoah's actual volumes being weather-normalized based on actual and normal weather as measured in Shenandoah's service territory. We agree, and find it appropriate to require the Company to maintain their existing capability to conduct weather normalization studies for its WGL and Shenandoah operations.

Booking and Accounting Classification Changes

Staff recommended that the Company change its method for booking and classifying accumulated deferred income taxes and gas costs in order to conform to the Uniform System of Accounts and to permit ready identification of invoice costs of gas, deferred gas expense, and storage gas expense. A

¹³ Company's Comments at 51.

¹⁴ Application of Virginia Natural Gas, Inc. and AGL Energy Services, For approval of an Energy Services Agreement under Chapter 4 of Title 56 of the Code of Virginia, Case No. PUE-2000-00085, 2000 S.C.C. Ann. Rep. 240.

¹⁵ Report at 40.

¹⁶ See Report at 40.

related recommendation to accounting practices addresses the booking of ground lease fees related to Maritime Plaza. The Company did not object to the Staff's recommendations, but advised the Hearing Examiner that it could not make the proposed accounting changes without the approval of regulatory bodies in Maryland and the District of Columbia.

The Hearing Examiner recommended that the Company should seek approval of the booking changes as recommended by Staff, as necessary, and advise Staff when completed. In its comments on the Hearing Examiner's Report, the Company reiterates its position that it cannot implement the recommended accounting changes until it has received approval from this Commission and other local regulatory commissions.

We agree that the Company should adopt the accounting changes recommended by Staff. While the Company may not want to keep the additional records that would be required if all jurisdictions do not agree to all of the accounting changes, the Company certainly can make the changes Staff proposes. Indeed the Company, like most utilities, already has differing accounting requirements for various jurisdictions. Financial Accounting Standards Board Statement No. 71 specifically allows regulated utilities to record costs on a jurisdictional basis. These requirements should not be burdensome. We do not adopt the Hearing Examiner's recommendation that implementation of these changes should be conditioned upon the actions of other regulatory bodies. We find instead that the Company should complete its implementation of the Staff's recommendations no later than April 1, 2004, when the Company files its FERC Form 2 with the Commission's Division of Public Utility Accounting.

Staff also recommended that the Company be required to change the presentation of its rate of return and rate base schedules filed with the Commission. Non-utility operations are currently excluded from the schedules filed by the Company. Staff contends that non-utility operations should be included in the per books data and excluded as non-jurisdictional. While the Company did not assert that this change would require approval of other jurisdictions, the Company agreed to review the ramifications of the proposals to determine what impact they may have on the Company's resources. It appears that the Hearing Examiner agreed with the Company's request for an opportunity to assess the ramifications of this recommendation.¹⁷ We do not adopt the recommendation of the Hearing Examiner on this issue. We find that the Company should be required immediately to comply with this Commission's Rules Governing Utility Rate Increase Applications and Annual Informational Filings that require incorporation of non-utility operations in the initial column of future filings with the Commission, so that the exclusion of non-utility items in column 2 can be verified.¹⁸

Withdrawal of Incentive Rate Proposal

As previously noted, during the hearing the Company requested leave to withdraw its IRP as provided in the partial stipulation. The Hearing Examiner granted the company's request to withdraw the IRP proposal. We find that the stipulation is reasonable and should be approved. As provided in the terms of the partial stipulation, we direct Staff and interested parties to meet with representatives of the Company within six months following the date of this Order, provided that the Company has submitted an alternative incentive rate plan during such period, to discuss issues related to performance-based rate plans and service quality standards. If the Company has not submitted an alternative incentive rate plan during such period, Staff and interested parties are directed to meet with representatives of the Company for such purpose within a reasonable time after the submission of the alternative incentive rate plan. Our directing Staff and interested parties to meet and discuss these issues shall not be construed as obligating them to reach any agreement or to support any proposal for a performance-based rate plan that may be developed through the process.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the Hearing Examiner, as modified herein, are adopted.
- (2) The Company's application for a general increase in natural gas rates and charges docketed as Case No. PUE-2002-00364 is granted to the extent discussed in this Order and is otherwise denied.
- (3) The Company's request to withdraw its application for approval of an incentive rate plan is granted.
- (4) The Company shall comply with the directives embodied in the body of this Order.
- (5) The Company requires \$10,795,695 in additional gross annual revenues to earn a reasonable return on rate base for WGL, and a reduction of \$866,971 in gross annual revenues to earn a reasonable return on rate base for Shenandoah.
- (6) Consistent with the findings herein, on or before January 15, 2004, the Company shall forthwith file with the Commission's Division of Energy Regulation schedules of rates and charges, and terms and conditions of service incorporating all modifications directed by this Order. Revised rates and charges designed to produce the additional gross annual revenues authorized herein shall use the methodology for apportioning the increase among classes of customers proposed by the Company and agreed to by the Staff.
- (7) On or before March 1, 2004, the Company shall recalculate, using the rates and charges prescribed by ordering paragraph (6) of this Final Order, each bill it rendered to customers that used, in whole or in part, the rates and charges that took effect, on an interim basis and subject to refund, on November 12, 2002. Where application of the rates prescribed by this Final Order results in a reduced bill, the Company shall refund the difference with interest.
- (8) Interest upon the ordered refunds shall be computed from the date payments of monthly bills were due to the date refunds are 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.
- (9) The refunds directed in ordering paragraph (7) may be credited to current customers' accounts (each refund category shall be shown separately on each customer's bill). Refunds of \$1 or more to former customers shall be made by check mailed to the last know address of such customers.

¹⁷ Report at 43.

¹⁸ See 5 VAC 5-20-10 et seq.

The Company may offset the credit or refund to the extent no dispute exists regarding the outstanding balance of a current or former customer. No offset shall be permitted for the disputed portion of an outstanding balance. The Company may retain refunds owed to former customers when such refund amount is less than \$1. The Company shall maintain a record of former customers for which the refund is less than \$1, and such refunds shall be made promptly upon request. All unclaimed refunds shall be subject to § 55-210.6:2 of the Code of Virginia.

(10) On or before May 20, 2004, the Company shall file with the Commission's Divisions of Public Utility Accounting and Energy Regulation a report showing refunds made pursuant to this final order and detailing the costs of the refund and accounts charged. Costs shall include, inter alia, computer costs, and the personnel hours, associated salaries, and costs for verifying and correcting the refunds directed in this Final Order. The Company shall bear all costs incurred in effecting the refunds ordered herein.

(11) There being nothing further to come before the Commission in this proceeding, this case shall be dismissed from the docket of active cases.

**CASE NO. PUE-2002-00373
JANUARY 7, 2003**

APPLICATION OF
ROANOKE GAS COMPANY

For a general increase in rates

FINAL ORDER

On June 17, 2002, Roanoke Gas Company ("Roanoke Gas" or the "Company") filed an application with the State Corporation Commission ("Commission") for a general increase in rates. Roanoke Gas requested an increase in the Company's annual revenues of \$1,276,206, with rates proposed to go into effect for service rendered on and after December 1, 2002.

On July 17, 2002, the Commission entered an Order for Notice and Hearing in this matter which docketed the application; directed the Company to publish notice of its proposed rate increase; scheduled a public hearing for December 10, 2002, to receive comments from public witnesses and evidence on the application; and established a procedural schedule for the filing of testimony and exhibits. The Commission authorized the Company to place its proposed rates into effect on an interim basis on December 1, 2002, subject to refund. The Commission appointed a Hearing Examiner to conduct all further proceedings in this matter.

On November 27, 2002, Roanoke Gas filed a Motion to Place Lower Rates into Effect ("Motion"). In its Motion, Roanoke Gas represented that the Company, Commission Staff and the Division of Consumer Counsel of the Office of the Attorney General ("Consumer Counsel") agreed to stipulate to an annual revenue increase of \$989,741, as well as changes to the terms and conditions in the Company's tariff. The Motion stated that the proposed Revenue Stabilization Factor, renamed the Weather Normalization Adjustment ("WNA"), had been modified to reflect Commission Staff and Consumer Counsel recommendations. The Company included tariff sheets reflecting the change to the proposed increase in rates and requested that the new rates be effective for service rendered on and after December 1, 2002. Roanoke Gas also included a bond in the amount of \$1,000,000 to secure the refund of any rates put into effect as of December 1, 2002, that the Commission later determines are not just and reasonable.

Hearing Examiner Michael D. Thomas granted the Motion in a Ruling entered on December 2, 2002. The Company's requested annual revenue increase of \$989,741, and the requested changes in its tariff, including the WNA, were placed into effect on December 1, 2002. The bond securing any possible refunds was accepted for filing. Finally, Roanoke Gas was directed to keep accurate detailed accounts of all amounts received under the increased rates and was advised that the Company would bear the cost of making any Commission directed refund.

On December 10, 2002, the public hearing was convened with appearances by Richard D. Gary, Esquire, on behalf of Roanoke Gas, Katharine A. Hart, Esquire, on behalf of Commission Staff, and C. Meade Browder, Jr. Esquire, on behalf of Consumer Counsel. No public witnesses appeared. For the Commission's consideration, Roanoke Gas presented a Stipulation entered into between the Company, Commission Staff, and Consumer Counsel that resolves all of the issues in dispute between the parties.¹

The Hearing Examiner filed his Report on December 13, 2002. A copy of the Stipulation was attached to the Report. After considering the testimony and exhibits admitted into the record, as well as the Stipulation, the Hearing Examiner found that the Company's \$989,741 annual increase in revenues is just and reasonable and should be approved by the Commission. Additionally, the Hearing Examiner found that the Company's tariff revisions, including the WNA, main extension policy, reconnection fee, credit card transaction fee, and specified rounding of billing units in each Rate Schedule, are reasonable and should be approved by the Commission. Finally, the Hearing Examiner found that the reporting requirements set forth in the Stipulation are reasonable. The Hearing Examiner recommended that the Commission enter an order adopting the findings of his Report and approving the proposed revenue increase and amendments to the Company's tariff as set forth in the Stipulation.

NOW UPON CONSIDERATION of the Company's application, the Hearing Examiner's Report, the Stipulation, and applicable statutes, the Commission is of the opinion and finds that the Hearing Examiner's findings should be adopted, and that Roanoke Gas' proposed revenue increase and amendments to the Company's tariff as set forth in the Stipulation should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The findings of the Hearing Examiner contained in his December 13, 2002, Report are hereby adopted.

¹ The Stipulation addressed, among other things, a \$989,741 revenue requirement, the WNA, certain filings to be made by Roanoke Gas, and changes in the Company's tariff.

- (2) The Stipulation entered into between Roanoke Gas, Commission Staff, and Consumer Counsel, is hereby approved and adopted.
- (3) Roanoke Gas' proposed revenue increase of \$989,741 and amendments to its tariff as set forth in the Stipulation are hereby approved and adopted.
- (4) 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-2002-00375
SEPTEMBER 3, 2003**

APPLICATION OF
VIRGINIA-AMERICAN WATER COMPANY

For a general increase in rates

ORDER ON HEARING EXAMINER'S REPORT

On June 24, 2002, Virginia-American Water Company ("Virginia-American" or "Company") filed with the State Corporation Commission ("Commission") an Application for a general increase in rates. In its application, Virginia-American sought to increase annual operating revenues for the Hopewell District by \$872,320 and for the Alexandria District by \$238,349. The Company did not seek an increase for the Prince William District. On July 8, 2002, Virginia-American filed several revised schedules to its application.

By order dated July 18, 2002, the Commission issued its Order for Notice and Hearing in which it directed the Company to publish notice and appointed a Hearing Examiner to conduct all further proceedings in this matter. The Commission's Order also permitted the proposed rates, which were designed to increase annual operating revenues by approximately 3.7%, to become effective November 22, 2002, subject to refund.

On December 18, 2002, a stipulation ("Stipulation") between the Company and Commission Staff ("Staff") was filed which provided for no change in the annual revenues for the Alexandria District.

The City of Hopewell ("City"), the Hopewell Committee for Fair Water Rates ("Committee"),¹ and Prince George County filed notices of participation as respondents. On November 14, 2002, the City filed a Motion for a Continuance, requesting that the evidentiary hearing scheduled for December 11, 2002, be rescheduled to December 20, 2002. On the same day, the Hearing Examiner granted the motion but retained the December 11, 2002, hearing date for the limited purpose of receiving testimony from public witnesses. No public witnesses appeared at the December 11, 2002, hearing.

The evidentiary hearing was convened on December 20, 2002. Richard D. Gary, Esquire, and Renata M. Manzo, Esquire, appeared on behalf of the Company. Edward L. Flippen, Esquire, appeared on behalf of the City. Cliona M. Robb, Esquire, appeared on behalf of the Committee. Wayne N. Smith, Esquire, and Joseph W. Lee, Esquire, appeared as counsel to the Staff. At the close of the evidentiary hearing, counsel for the City was granted permission to file a motion to dismiss the Application.

On January 24, 2003, the City filed its Motion to Dismiss, in which it alleged that the Company failed to comply with the Commission's Rules Governing Utility Rate Increase Applications and Annual Informational Filings ("Rate Case Rules")² because the Application was inaccurate and incomplete and its workpapers were misleading. The errors in the Application involved the Company's failure to note the impact of the closure of the Dominion Cogeneration facility in Hopewell. On January 27, 2003, the Hearing Examiner directed the parties to respond to the Motion to Dismiss.

On February 10, 2003, post-hearing briefs were filed by the Company, the Staff and the City. The Company's brief included a response to the City's Motion to Dismiss. It also contained a request for a waiver of the Rule 20 VAC 5-200-30 if that rule is deemed to have been violated by the Company.

On February 14, 2003, the City filed its Reply on its Motion to Dismiss. On the same day, the Company filed a Motion to Update the Record that sought to add to the record the actual audited costs of the Hopewell Regional Wastewater Treatment Facility expense. On February 18, 2003, the City filed its objection to the Motion to Update the Record. On February 25, 2003, the Company filed its response to the City's objection to its Motion to Update the Record.

On February 26, 2003, the Hearing Examiner denied the Company's Motion to Update the Record. Also on February 26, 2003, the City and Committee jointly filed a Motion to Reduce Rates and Order Refunds, which alleged that the revised schedules filed by the Company on July 8, 2002, showed that the Hopewell District required a total annual revenue increase of \$853,458, rather than the \$872,320 initially requested in the Application.

On March 3, 2003, the Company filed its Response to the joint Motion to Reduce Rates and Order Refunds and filed an Objection to the Hearing Examiner's ruling denying its Motion to Update the Record.

On May 14, 2003, Hearing Examiner Alexander F. Skirpan, Jr., entered a Report ("Report") summarizing the record and analyzing the evidence and issues in this proceeding. The Examiner made the following findings:

¹ The Hopewell Committee for Fair Water Rates is comprised of Goldschmidt Chemical Company, Hercules Incorporated, Honeywell, Hopewell Cogeneration Facility, James River Cogeneration, PraxAir, Inc., and Smurfit-Stone Container.

² 5 VAC 5-20-10 *et seq.*

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- (1) The use of a test year ending December 31, 2001, is proper in this proceeding;
- (2) Virginia-American's test year operating revenues, after all adjustments, were \$10,324,640 for the Alexandria District; \$5,253,740 for the Prince William District; and \$8,484,745 for the Hopewell District;
- (3) Virginia-American's test year operating revenue deductions, after all adjustments, were \$8,052,612 for the Alexandria District; \$3,909,159 for the Prince William District; and \$6,808,550 for the Hopewell District;
- (4) Virginia-American's test year adjusted net operating income, after all adjustments were \$2,265,285 for the Alexandria District; \$1,342,841 for the Prince William District; and \$1,672,885 for the Hopewell District;
- (5) Virginia-American's current rates produce a return on adjusted rate base of 8.407% for the Alexandria District; 7.785% for the Prince William District; and 6.013% for the Hopewell District;
- (6) Virginia-American's current rates produce a return on equity of 10.395% for the Alexandria District; 8.883% for the Prince William District; and 4.573% for the Hopewell District;
- (7) Virginia-American's current cost of equity is within a range of 9.3% - 10.3%, and Virginia-American's rates for the Hopewell District should be established based on the 9.8% midpoint of the equity range;
- (8) Virginia-American's overall cost of capital, using the midpoint of the equity range and the capital structure as proposed by Staff, is 8.162%;
- (9) Virginia-American's adjusted test year rate base is \$26,944,433 for the Alexandria District; \$17,248,475 for the Prince William District; and \$27,821,627 for the Hopewell District;
- (10) Based on the record and the Stipulation, Virginia-American requires no additional gross annual revenues to earn a reasonable return on rate base for the Alexandria District and the Prince William District, and \$950,444 in additional gross annual revenues for the Hopewell District;
- (11) Because the notice for the Hopewell District provided for an increase of \$872,320 in additional gross annual revenues, the increase in annual revenues for the Hopewell District is limited to that amount;
- (12) In accordance with the Stipulation, the Company shall file a depreciation study for the Alexandria and Prince William Districts with Staff on or before December 31, 2004; and
- (13) The interim rates for the Hopewell District should continue and be designated as permanent rates.

The Hearing Examiner also declined to increase rates to levels in excess of the rates noticed by the Company, and did not adjust the rates for the Hopewell District to reflect the loss of billing determinants resulting from the closure of the Dominion Cogeneration facility.

The Hearing Examiner recommended that this Commission enter an order adopting the findings in his report and dismissing the case from the active docket. The Examiner further directed that comments on the Report were to be filed within twenty-one days from the date of the Report, or on or before June 4, 2003. Comments on the Report were filed by the Company, by the Staff, and jointly by the Committee and the City.

NOW THE COMMISSION, having considered the record, the pleadings, the Hearing Examiner's Report, the responses thereto, and the applicable law, is of the opinion and finds that the analysis, findings, and recommendations of the Hearing Examiner's Report are reasonable, supported by the record, and should be adopted, except as stated below.

We are compelled to address three issues in this case: the calculation of the Company's cost of equity; affiliate costs; and the loss of Dominion Cogeneration as a significant customer of the Company's Hopewell District.³

Cost of Equity

Witnesses for the Company, the City, and Staff contend that their cost of equity recommendations satisfy the requirement that "the return to the equity owner should correspond with returns on investments in other businesses having corresponding risks, and the return 'should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and attract capital.'"⁴ As the Hearing Examiner observed, the differences in the cost of equity recommendations advanced by the parties "generally are related to the exercise of professional judgment as to the technical development and interpretation of the various costs of equity models."⁵

The Company contends in its exceptions to the Report that the Hearing Examiner made two errors regarding the cost of capital. First, it asserts that the Hearing Examiner erred in failing to make an upward adjustment to the cost of capital because Virginia-American is a small company for which the market has demonstrated that investors demand a higher rate of return. The capital asset pricing model used by the Company's witness included an adjustment to reflect Virginia-American's small size. The Hearing Examiner states that "[i]t seems selective or inconsistent to treat Virginia-American as a small company, entitled to a premium, when it is a subsidiary of a large holding company."⁶ As City witness James R. Haltiner testified: "To impose a cost

³ The curtailment of cogeneration operations at the Dominion Cogeneration facility that occurred in early 2002 reduced the billings for the facility's water usage from \$336,452 in test year to the minimum charge of \$1,000 per month.

⁴ Howell v. C & P Tel. Co., 215 Va. 549, 558 (1975) (quoting FPC v. Hope Natural Gas, 320 U.S. 591, 603 (1944)), appeal dismissed, 423 U.S. 805 (1975).

⁵ Report at 13.

⁶ Report at 16.

of equity premium to ratepayers in Virginia or any other jurisdiction, because each is a smaller part of the entire company is not only unfair, but it goes against financial theory.⁷ We concur, although in this case we do not find that the Company's adjustment would be required even if the Company was not affiliated with the holding company and was treated on a stand-alone basis.

Last year this Commission granted approval for Thames Aqua Holdings GmbH ("Thames Holdings") to acquire control of Virginia-American pursuant to a plan of merger involving American Water Works, Inc. (the Company's parent corporation), Thames Holdings, RWE Aktiengesellschaft (Thames Holdings' parent holding company), and Apollo Acquisition Company (a subsidiary of Thames Holdings). In the order approving the transaction under the Utility Transfers Act,⁸ the Commission observed that Staff concluded that benefits from the transaction include "the financial backing of a large company such as RWE."⁹ In that matter the petitioners stated

that the transaction will provide the American Companies with an enhanced ability to raise capital necessary to enable them to meet the demands placed on them with increasingly stringent water quality and environmental standards while rehabilitating and replacing aging water infrastructure and maintaining a reasonable capital structure. The financial resources and backing of RWE/Thames should enhance the American Companies' access to capital markets.¹⁰

Second, Virginia-American alleges that the recommended reduction in the Company's authorized return on equity from 10.74% to 9.8% "is an abrupt and drastic reduction that clearly violates the Commission's policy of gradualism."¹¹ As noted in the Report, however, in an order entered by this Commission in the Company's prior case in February 2002, the benchmark return on equity for future earnings test was set at 10.0%.¹²

We agree with the Hearing Examiner that Virginia-American's current cost of equity is within a range of 9.3% and 10.3%, and Virginia-American's revenue requirement should be established based on the midpoint, 9.8%, of the equity range.

Affiliate Charges

The City and Committee contend that the Hearing Examiner erred in finding that the Company's claimed affiliate charges were reasonable.¹³ American Water Works Service Company ("Service Company"), which is affiliated with Virginia-American, billed \$1,683,895.10 to Virginia-American for services. Company witness Patrick L. Baryenbruch prepared a report that sets out the results of his evaluation of the services provided by Service Company to Virginia-American. His study addresses the economic impact on the Company if it was to outsource all of the services it now receives from Service Company, and whether the services the Company receives from Service Company are necessary. His report concludes that: (i) the Service Company's hourly rates, on average, are 47% less than those of outside providers of similar services; (ii) if all of the Services performed by Service Company had been out-sourced during the test year period, the Company and its ratepayers would incur an additional \$777,708 in annual expenses; (iii) Service Company costs do not include any profit mark-up; and (iv) Service Company costs that cannot be charged directly to operating companies are allocated on the basis of the number of customers.

The City asserts that this evidence fails to meet the standard of proof for the reasonableness of affiliate expenses by failing to provide the Service Company's costs and to explain how they are allocated to Virginia-American and ultimately to the Hopewell District. The City further alleges that the Company has failed to comply with the Rate Case Rules.¹⁴

We do not find that the Company's evidence as to affiliate charges violates the Rate Case Rules. The instructions for Schedule 25 provide:

Cost records and market analyses supporting all affiliated charges billed to or by the regulated entity/division shall be maintained and made readily available for commission staff review. This shall include supporting detail of costs (including the return component) incurred by the affiliated interest rendering the service and the allocation methodology. In situations when the pricing is required to be the higher (lower) of cost or market and market is unavailable, note each such transactions and have data supporting such a finding available for commission staff review.¹⁵

As the Hearing Examiner properly noted, the requirement that cost records and market analyses be maintained and made readily available for Staff review does not render the failure to introduce such information as evidence in the record a violation of Rate Case Rule 20 VAC 5-200-30. There is no showing in this case that the Company failed to maintain, or make readily available for Staff review, such information.

⁷ Haltiner, Prefiled Testimony, Exhibit No. 16, at 12.

⁸ Chapter 5 (§ 56-88 *et seq.*) of Title 56 of Code of Virginia.

⁹ Joint Petition of American Water Works Company, Inc. and Thames Water Aqua Holdings GmbH, For approval under the Utility Transfers Act, Final Order, Case No. PUA010082 (April 4, 2002), at 7.

¹⁰ Staff Report, Case No. PUA-2001-00082, at 7.

¹¹ Company's Exceptions to Hearing Examiner's Report at 13.

¹² Application of Virginia-American, For a general increase in rates, Case No. PUE-2001-00312, Final Order, Attachment A, Stipulation ¶ 6 (February 19, 2002).

¹³ Comments of City and Committee to Report of Hearing Examiner at 7, 8.

¹⁴ City of Hopewell's Post-Hearing Brief at 7, 8.

¹⁵ 20 VAC 5-200-30, Appendix, Schedule 25.

The City also contends that the Company has failed to provide evidence supporting the reasonableness of its affiliate charges, and that such failure should preclude its recovery of those expenses from Hopewell. As this Commission has stated:

Where it is most economical for the utility to purchase the product or service from the market it should do so. Where it can save money by purchasing from an affiliate at the affiliate's cost, including a reasonable return for the affiliate on the sale, it should do that. Where the Company proposes that the Commission set rates based upon charges from an affiliate, the charges must be based on the affiliate's cost, including a reasonable return, so long as this cost does not exceed the market price.¹⁶

Virginia Code § 56-78 provides that in a proceeding involving the rates or practices of a public service company:

the Commission may exclude in whole or in part from the accounts of such public service company any payment or compensation to an affiliated interest for any services rendered or property or service furnished, as described above, under existing contracts or arrangements with such affiliated interest, if it shall appear and be established upon investigation that such payment or compensation or such contract or arrangement is not consistent with the public interest. In such proceeding any payment or compensation may be disapproved or disallowed by the Commission, in whole or in part, unless satisfactory proof is submitted to the Commission of the cost to the affiliated interest rendering the service or furnishing the property or service above described. (Emphasis added.)

The Commission is therefore permitted, but is not required, to disapprove or disallow such payments. We do not agree with the assertion that this Commission is required to disallow the affiliate charges in this case.

Virginia Code § 56-79 provides:

No proof shall be satisfactory, within the meaning of [§§ 56-77 and 56-78], unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or such abstract thereof or summary taken therefrom, as the Commission may deem adequate, properly identified and duly authenticated; provided, however, that the Commission may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts.

The Commission is again expressly authorized to approve such arrangements without the submission of the described records or accounts. In this case, we will allow the Company's affiliate charges. The methodology of the Baryenbruch study relied on by the Company has been accepted by this Commission in every rate case the Company has filed since 1995.¹⁷ This Commission has previously specifically approved the Service Company's methodology of allocating costs to operating companies based on direct assignment or on the number of customers.¹⁸

We realize that the Baryenbruch report does not put into evidence the amount of the total costs of the Service Company that are allocated among all affiliated entities, does not state how much of the cost is assigned directly and how much is assigned based on the number of customers, and does not state how the cost allocated to Virginia-American is sub-allocated among its operating districts. There is, however, no evidence this and other information was not available for review as required by our rules. As this Commission has found previously that the methodology of the Baryenbruch study is satisfactory, we decline today to find that the Company failed to meet its burden of proof regarding the reasonableness of the affiliate expenses. Virginia Code § 56-79 provides that we may approve such arrangements where reasonable, and we find that it is reasonable in this case to do so.

We find, however, that it would assist in our review of the reasonableness of the Service Company's charges in future cases if the Company provided additional information. Accordingly, we will require, in the future, that the Company provide information in its application itemizing: (i) the total cost to the Service Company of rendering service or furnishing property, and its return thereon; (ii) the total cost of the Service Company assigned to each of the Service Company's affiliated entities; (iii) a breakdown of Virginia-American's assigned cost sub-allocated to each of Virginia-American's operating districts; and (iv) supporting detail for allocation methodologies within Virginia-American.¹⁹

Also, we reiterate the standard with respect to costs incurred by a regulated utility for services. If the service is purchased from an affiliate, the utility may not collect through rates an amount that exceeds the least of three options: the utility's cost of providing the service in-house, the market price for the service, or the cost to the affiliate of providing the service, including a reasonable return.²⁰

¹⁶ Application of GTE South Incorporated, For revisions to its local exchange, access and intraLATA long distance rates, Case No. PUC-1995-00019, 1997 S.C.C. Ann. Rpt. 216, 218.

¹⁷ Case Nos. PUE-1995-00003, PUE-1997-00523, PUE-1999-00677, and PUE-2001-00312.

¹⁸ Application of Virginia-American Water Company, For a general increase in rates, Case No. PUE-1997-00523, 1999 S.C.C. Ann. Rpt. 388, 389.

¹⁹ We note also that the Rate Case Rules require that Schedule 25 of an application include a summary of affiliate transactions detailing costs by function for each month of the test period, and show the final Uniform System of Accounts account distribution of all costs billed to or by the regulated entity by month for the test period. See 20 VAC 5-200-30, Appendix, Schedule 25.

²⁰ See Application of GTE South Incorporated, For revisions to its local exchange, access and intraLATA long distance rates, Case No. PUC-1995-00019, 1997 S.C.C. Ann. Rpt. 216, 218.

Loss of Sales to Dominion Cogeneration

District: We find that the following facts are relevant to our consideration of the loss of Dominion Cogeneration as a customer of the Company's Hopewell District:

1. In December 2001, the operations manager for the Company's Hopewell District was notified that the Dominion Cogeneration facility would cease cogeneration operations around the end of January 2002.
2. On or about January 15, 2002, Roy L. Ferrell, Director of Rates and Planning for Service Company, working in Charleston, West Virginia, began preparing the Application.
3. As of January 19, 2002, the Dominion Cogeneration facility ceased operations and was placed into cold reserve.
4. On February 21, 2002, Dominion Cogeneration notified the Company that the facility workforce had been reduced and requested that one of its two meters be removed.
5. Commencing in February 2002, the Dominion Cogeneration facility's water usage dropped significantly.
5. Since March 2002, Dominion Cogeneration has been billed the minimum monthly charge of \$1,000 per month.
7. The cessation of Dominion Cogeneration facility operations reduces net annual revenue for the Hopewell District by approximately \$336,452, or 4% of the test year jurisdictional base rate revenues.
8. On June 24, 2002, the Company filed its Application, which did not disclose or address the effect of the closure of the Dominion Cogeneration facility.
9. On July 3, 2002, Staff filed in the Commission Clerk's Office its Memorandum of Completeness/Incompleteness, noting that the Application was complete.
10. On July 8, 2002, the Company filed revised schedules, additional workpapers to be included in a previously filed schedule, and revised pre-filed testimony pertaining to, among other issues, the loss of water sales to Prince George County, but which did not disclose or address the closure of the Dominion Cogeneration facility.
11. In July 2002, Mr. Ferrell learned that Dominion Cogeneration had curtailed its operations earlier in 2002, and some time that month Mr. Ferrell informed Staff by telephone that the Dominion Cogeneration facility had shut down.
12. On October 28, 2002, the City and the Committee prefiled the direct testimony of witnesses. The testimony of D. Wayne Trimble, witness for the City, states that he did not make a revenue adjustment to reflect the loss of sales due to the closing of the cogeneration facility,²¹ and acknowledges that the City was notified in November 2001 that the facility was expected to close by the end of March 2002.
13. On November 15, 2002, Staff filed testimony that included adjustments related to the lost sales to Dominion Cogeneration, including the elimination of \$336,452 in revenues and reductions in chemical expenses of \$15,997 and purchased power expenses of \$14,414.
14. The City was advised of the Staff's adjustment for the Dominion Cogeneration facility shutdown at most four weeks before the Staff filed its testimony, and the details related to the shutdown were not made available to the City until the Staff's filing on November 15, 2002.
15. The noticed rates went into effect on an interim basis, subject to refund, on November 22, 2002.
16. At no time did the Company file amendments to the Application that reflect the loss of revenue attributable to the closure of the Dominion Cogeneration facility.

The parties agree that the Application failed to reflect the closing of the Dominion Cogeneration facility and that the Company knew or should have known of the facility's closure prior to filing the Application. However, they disagree as to the implications of the Company's failure to include relevant data in the Application or in any subsequent Company filing.

The City asserts in its Motion to Dismiss that the Company knowingly filed inaccurate and misleading exhibits and schedules, which action clearly violated the Rate Case Rules and arguably constitutes a fraud under Virginia law. The City contends that the Company had actual knowledge of the loss of Dominion Cogeneration as a customer prior to filing the Application. The City further alleges that the Company failed to "verify the accuracy" of its exhibits as required by the Rate Case Rules, and that the Rate Case Rules would be rendered meaningless if a utility can comply with the Rules by merely placing one telephone call to the Staff in order to rectify an application that is materially inaccurate.²²

The Company counters that its error does not constitute a violation of the Rate Case Rules because the only party harmed by the omission is the Company; the omission was inadvertent; the Company official responsible for preparing the Application attempted to verify its accuracy; and it is common practice for Staff to make adjustments to a utility's rate case application based on information Staff obtains after the filing of the application. The Company also states that the Commission has the discretion to correct errors made by rate case applicants, and in this case Staff's November 15, 2002, report makes public the data about the effect of the facility's closure. The Company notes that in 2000 the Commission amended its Rate Case Rules to provide that its "rules do not limit the commission staff or parties other than the applicant from raising issues not addressed by the applicant for commission

²¹ Pre-filed testimony of Trimble, Exhibit No. 20, at 6.

²² Reply of the City of Hopewell at 4, 7.

consideration."²³ According to the Company, the Commission's discretion to decide and fix rates that are just and reasonable includes the ability to correct errors made by rate case applicants.

The Company's assertion that it is the only party harmed by the failure to reflect the loss due to the closure of Dominion Cogeneration deserves comment. This assertion is based on Staff's determination that, had information regarding the loss of the revenue from this customer been included in the Application, the actual revenue requirements for the Hopewell District would have exceeded the amount originally requested by \$78,124.²⁴ If it had correctly excluded the revenue from the Dominion Cogeneration facility, it is urged, its annual revenue requirement and interim rates would be larger than were requested in the Application.

The City disputes the assertion that it is unharmed by the omission of this information in the Application. The City was advised of the Staff's adjustment for the Dominion Cogeneration shutdown at most four weeks before the Staff filed its testimony. However, details of the adjustment were not made available to the City until the Staff's filing on November 15, 2002. The City asserts that this delay prevented it from challenging the rates that went into effect on an interim basis on November 22, 2002.²⁵

In this case, the Company never formally notified the Commission or other parties that the facility had shut down and never amended its schedules to reflect the loss of revenue from the closure of the Dominion Cogeneration facility. More importantly, the Company never notified other parties that data to make an adjustment for the closure of the facility was being provided to Staff.

The Hearing Examiner found that, by failing to reflect the loss of Dominion Cogeneration in its Application, the Company violated the Rate Case Rules. However, the Hearing Examiner found that the Company has shown good cause for the Commission to waive its Rate Case Rules regarding the loss of Dominion Cogeneration in this case. The Hearing Examiner properly observed that the holding in Virginia Committee for Fair Utility Rates v. Virginia Electric & Power Co., 243 Va. 320 (1992), is not controlling in this case. In 2000, the Commission's Rate Case Rules were amended to allow the Commission to waive any portion of the Rate Case Rules for good cause shown.²⁶

Based on the Staff's report, the Hearing Examiner found that the Company would require \$950,444 in additional gross annual revenues to earn a reasonable return on rate base for the Hopewell District. However, since the notice for the Hopewell District provided for \$872,320 in additional gross annual revenue, he recommended that the increase in annual revenues for the Hopewell District be limited to the noticed amount.

The Company states that no party other than Virginia-American has been harmed by the initial omission of the revenue loss adjustment from its Application. The Company's argument is based on the assumption that it would have been able to recover an additional \$78,124 through rates if it had not omitted the information from its Application.

We do not agree with the Company, the City and the Committee,²⁷ or the Hearing Examiner on this issue. First, this is not merely an oversight or a small adjustment that was overlooked and corrected when it was found. The adjustment to the requested increase amounts to more than \$300,000 and would have raised the rate request by more than a third. Second, the Company did not notify all parties of the error (or the data needed to make the new adjustment) as soon as those involved in the rate case became aware of the mistake in July. As a result, the City did not have the actual data upon which it could base a response to this adjustment until after the Staff filed its testimony on November 15, 2002. One may conclude that either the Company did not take adequate steps to "verify the accuracy of all data and calculations contained in and pertaining to every exhibit submitted" or, being aware of the loss of the customer, chose neither to seek rate relief nor to make appropriate changes to its cost of service study related to the customer loss.

The result of granting a waiver of a violation of the Rate Case Rules, as recommended by the Hearing Examiner, is to allow the Company to convert what would have been an increase of less than \$650,000²⁸ to an increase of the full \$872,320 originally requested, exclusive of the lost customer issue.²⁹ As a result, the Company would recover part of the revenue lost because of the closure of the Dominion Cogeneration facility. This cannot be allowed. First, the Protestants did not have an adequate opportunity to respond to the adjustment.³⁰ Second, while corrections and adjustments may be made as a rate case proceeds through discovery and hearing, the Company cannot directly, or through Staff, inject a new issue such as this. To do so would allow the Company to present a string of additional adjustments that could be used to support its original request. Also, while the original omission of the loss of

²³ 20 VAC 5-200-30(A)(10).

²⁴ This is the difference between the amount of additional gross annual revenue for the Hopewell District originally requested in the Application (\$872,320) and the amount that the Hearing Examiner found, based on the Staff's Report, would be required to earn a reasonable return on rate base (\$950,444).

²⁵ Reply of the City of Hopewell, February 14, 2003, at 2.

²⁶ 20 VAC 5-200-30(A)(11).

²⁷ The Committee and City jointly filed Comments to the Hearing Examiner's Report, in which they take issue with the Hearing Examiner's waiver of the alleged violation by the Company of the Rate Case Rules. Comments of the City and Committee at 1.

²⁸ This figure assumes that the original \$872,320 revenue increase requested for the Hopewell District would be reduced to reflect the cost of equity and other adjustments recommended by the Hearing Examiner.

²⁹ The Hearing Examiner's recommendation did not provide for a decrease in the billing determinants to adjust for the shutdown of the Dominion Cogeneration facility. It should be noted that if the revenues for the Hopewell District before the closure of this facility are compared to the revenues that could be anticipated after implementing the \$872,320 revenue increase recommended by the Hearing Examiner, its actual revenue would increase by less than the recommended \$872,320 increase because the Company would not collect either (i) payments that would have been due from Dominion Cogeneration had it continued full operations or (ii) the portion of the \$872,320 increase that was allocated to Dominion Cogeneration.

³⁰ It is not clear that granting a continuance in this case in November would have resolved the issue. As the parties had prepared their cases by that date, we cannot arbitrarily grant continuances in order to allow the Company to cure its own mistake, particularly where it failed to provide the necessary data when it became aware of the change.

most of the customer's consumption may well have been inadvertent, we must assume that the subsequent failure to provide detailed data to other parties in a timely fashion and to amend the application was deliberate. In short, on this issue, the Company will be held to its filing.

In addition, we note that even if this issue had been raised in the original filing, the rate increase related to the loss of a customer is far from automatic.³¹ For example, witness Trimble testified that the Company chose not to include a revenue adjustment to reflect the loss of sales due to the closing of the Dominion Cogeneration facility when they filed their case in June, 2002, and added that:

To include a sales adjustment of this magnitude would render most of the Company's Cost of Service Study, and the tariffs resulting from that Study, not only unreliable, but invalid. The Company's Cost of Service Study clearly identifies this facility . . . as a non-potable customer. As such, the loss in sales of non-potable water just as clearly has no effect to residential and commercial customers.³²

These issues certainly would need to be addressed. Also, evidence concerning the rate base devoted to the customer, the "benefits" the customer provided to the Company and to the various classes of customers, how long the entity had been a customer, and other facts and considerations should be provided to determine whether the risk of loss of a customer should all be borne by the remaining customers (and, if so, which classes of customers) or whether the stockholders should bear part or all of the risk.

The result in this case is not intended to preclude Staff from making adjustments in other cases where the troublesome facts in this case, including the applicant's knowledge of the customer loss long before it filed the Application, the magnitude of the loss, and the failure to provide relevant data to other parties, are not present.

We find that it is appropriate to limit the increase in gross annual revenues for the Hopewell District to the amount that would have been allowed if the Company's requested revenue requirement for the Hopewell District (including the revised schedules to its Application filed by the Company on July 8, 2002) had not been adjusted for the lost sales to Dominion Cogeneration, but otherwise had been adjusted to reflect the recommendations regarding the cost of equity and other adjustments in the Hearing Examiner's Report. We will remand this issue, and this issue only, to the Hearing Examiner in order that he determine such amount of additional gross annual revenues for the Hopewell District.

The rates required to recover this amount of additional gross annual revenue will need to be set based on billing determinates without excluding Dominion Cogeneration.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the Hearing Examiner, as modified herein, are accepted.
- (2) The matter of the amount of additional gross annual revenues for the Hopewell District is hereby remanded to the Hearing Examiner for determination, as discussed herein. In connection therewith, the Hearing Examiner shall determine the Company's: (i) test year operating revenue deductions, after all adjustments, (ii) test year adjusted net operating income, after all adjustments, (iii) the return produced on adjusted rate base by current rates, (iv) return on equity produced by current rates, and (v) adjusted test year rate base, for the Hopewell District.
- (3) In accordance with the Stipulation, the Company shall file a depreciation study for the Alexandria and Prince William Districts with Commission's Divisions of Public Utility Accounting and Energy Regulation on or before December 31, 2004. In addition, the Company shall file a depreciation study for the Hopewell District with the Commission's Divisions of Public Utility Accounting and Energy Regulation on or before December 31, 2004.
- (4) This matter will be continued generally pending the results of the remand ordered herein.

³¹ In Commonwealth ex rel. Strock v. B&J Enterprises, we noted that it is not this Commission's responsibility to "ensure that [the Company] conducts its business in a manner that produces net operating income or net revenues." Case No. PUE-2001-00716, Final Order (June 27, 2003) at 31. See also Federal Power Commission v. Hope Natural Gas, 320 U.S. 591, 603 (1944)("regulation does not ensure that the business shall produce net revenues"). As the Supreme Court observed in Market St. Ry. Co. v. Railroad Commission, 324 U.S. 548, 567 (1945), "[t]he due process clause . . . has not and cannot be applied to insure values or to restore values that have been lost by the operation of economic forces."

³² Trimble, Direct Testimony, Exhibit No. 20, at 6.

**CASE NO. PUE-2002-00375
NOVEMBER 14, 2003**

APPLICATION OF
VIRGINIA-AMERICAN WATER COMPANY

For a general increase in rates

FINAL ORDER

On June 24, 2002, Virginia-American Water Company ("Virginia-American" or "Company") filed with the State Corporation Commission ("Commission") an Application for a general increase in rates ("Application"). In its Application, Virginia-American sought to increase annual operating revenues for the Hopewell District by \$872,320 and for the Alexandria District by \$238,349. The Company proposed no increase for the Prince William District.

By order dated July 18, 2002, the Commission issued its Order for Notice and Hearing in which it permitted the proposed rates, which were designed to increase annual operating revenues by \$1,110,669, or approximately 3.7 percent, to become effective November 22, 2002, subject to refund. The City of Hopewell ("City"), the Hopewell Committee for Fair Water Rates ("Committee"),¹ and Prince George County protested the Application. The City and the Committee asked the Commission to dismiss the Application on grounds that the Company's failure to reflect the lost sales constituted a violation of the Commission's Rules Governing Utility Rate Increase Applications and Annual Information Filings.

Alexander F. Skirpan, Jr., Hearing Examiner, held an evidentiary hearing on December 20, 2002. The Hearing Examiner issued his report on May 14, 2003. The Hearing Examiner recommended no increase for the Alexandria and Prince William Districts, and found that the Hopewell District required \$950,444 in additional gross annual revenues. However, because the notice for the Hopewell District provided for an increase of \$872,320 in additional gross annual revenues, the Hearing Examiner recommended that the increase in annual revenues for the Hopewell District be limited to that amount. The Hearing Examiner recommended that the Commission adopt the adjustment made by Commission Staff ("Staff") to the revenue requirement for the Hopewell District to make up for the loss of sales to a large customer of the Hopewell District that the Company failed to reflect in its application. In establishing rates, however, the Hearing Examiner's recommendation did not provide for a decrease in the billing determinants to adjust for the loss of sales.

On September 3, 2003, the Commission entered its Order on Hearing Examiner's Report ("Order"). The Commission found that the calculation of the revenue requirement for the Hopewell District should not include the lost sales. The Commission found that the increase in rates charged by Virginia-American for its Hopewell District should be limited to the amount that would have been allowed if Virginia-American's requested revenue requirement for the Hopewell District (including the revised schedules to its Application filed by the Company on July 8, 2002) had not been adjusted for the lost sales, but otherwise had been adjusted to reflect the recommendations regarding the cost of equity and other adjustments in the Hearing Examiner's Report. The rates required to recover this amount of additional gross annual revenue were directed to be set based on billing determinants without excluding the customer to whom the lost sales were attributable. The Commission remanded the proceeding to the Hearing Examiner to determine, with respect to the amount of additional gross annual revenues for the Hopewell District, the Company's: (i) test year operating revenue deductions, after all adjustments, (ii) test year adjusted net operating income, after all adjustments, (iii) the return produced on adjusted rate base by current rates, (iv) return on equity produced by current rates, and (v) adjusted test year rate base.

On September 5, 2003, the Hearing Examiner entered a ruling that directed Staff to file the required information to reflect the findings of the Commission's Order.

On September 17, 2003, Staff filed its revised schedules, which show a revised annual revenue requirement increase for the Hopewell District of \$646,989. This sum represents a decrease of \$225,331 from the \$872,320 revenue increase requested by Virginia-American.

On September 30, 2003, the Company and the Committee filed responses and comments on Staff's revised schedules. The Company concurred with the Staff's revised schedules and pledged to design rates on the basis of an annual revenue requirement for the Hopewell District of \$646,989 and to submit the revised proposed tariffs to Staff for its review. The Company also requested that it be granted four billing months to complete the refund process.²

The Committee's response supported making the Staff's revised schedules part of the record in the case. The Committee urged the Commission to allocate the \$225,331 revenue decrease between the residential/commercial classes and the industrial class in the same manner that the revenue increase was allocated by Virginia-American (32.7 percent of the decrease, or \$73,683.24, being allocated to the residential/commercial classes and 67.3 percent, or \$151,647.76, would be allocated to the industrial class.³ The City did not file comments.

On October 2, 2003, the Hearing Examiner issued a report recommending that the Staff's revised schedules be made a part of the record in this case, showing a revenue requirement for the Hopewell District of \$646,989, or \$225,331 less than the Company's request of \$872,320. He also found that the \$225,331 reduction should be apportioned consistent with Virginia-American's requested revenue apportionment, and the final rate design in this case should be comparable, but less, than Virginia-American's interim rate design.⁴

On October 23, 2003, the Committee filed comments to the Hearing Examiner's report. The Committee supports the basic approach to the apportionment of the refund adopted by the Hearing Examiner, and states that it is appropriate that rates be decreased in the same proportion to which they were increased when the increase is found to be inappropriate. The Committee agrees with the Hearing Examiner's recommendation that the reduction be apportioned so that it is consistent with Virginia-American's requested revenue apportionment, and that rates be comparable, but less, than Virginia-American's interim rate design.

NOW THE COMMISSION, having considered the record, the pleadings, the Hearing Examiner's Report of May 14, 2003, as modified by our September 3, 2003, Order on Hearing Examiner's Report, the Hearing Examiner's Report of October 2, 2003, and the applicable law, is of the opinion and finds that the analysis, findings, and recommendations of the Hearing Examiner's October 2, 2003, Report are reasonable, supported by the record, and will be adopted. The Commission further finds as follows:

- (1) Virginia-American's test year operating revenues, after all adjustments, was \$8,821,197 for the Hopewell District;
- (2) Virginia-American's test year operating revenue deductions, after all adjustments, was \$6,953,568 for the Hopewell District;
- (3) Virginia-American's test year adjusted net operating income, after all adjustments, was \$1,864,319 for the Hopewell District;

¹ The Hopewell Committee for Fair Water Rates is comprised of Goldschmidt Chemical Company, Hercules Incorporated, Honeywell, Hopewell Cogeneration Facility, James River Cogeneration, PraxAir, Inc., and Smurfit-Stone Container.

² Company's Response at 1.

³ Committee's Comments at 1.

⁴ Hearing Examiner's Report at 3-4.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- (4) Virginia-American's current rates produce a return on adjusted rate base of 6.699% for the Hopewell District;
- (5) Virginia-American's current rates produce a return on equity of 6.243% for the Hopewell District;
- (6) Virginia-American's adjusted test year rate base is \$27,828,151 for the Hopewell District;
- (7) Based on the record and the Order, Virginia-American requires \$646,989 in additional gross annual revenues for the Hopewell District;
- (8) The Company should file permanent rates designed to produce the revenues found reasonable herein using the revenue apportionment methodology discussed herein; and
- (9) The Company shall refund, within four billing months, with interest, all revenues collected under its interim rates in excess of the amount found just and reasonable herein.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the Hearing Examiner are adopted.
- (2) Consistent with the findings herein, and within 30 days following the entry of this order, the Company shall file with the Commission's Division of Energy Regulation a schedule of rates, charges, rules, and regulations designed to produce \$646,989 of additional gross annual revenue for the Hopewell District, which schedule shall bear an effective date of the first day of the first month following the Company's filing of the schedule required by this paragraph. The final rate design shall be comparable, but less, than the Company's interim rate design.
- (3) The reduction of \$225,331 in interim rates (which is the difference between the Company's request of \$872,320 and the approved \$646,989 in additional gross annual revenues) for the Hopewell District shall be apportioned consistent with the Company's proposed revenue apportionment for the Hopewell District and shall be apportioned between potable and non-potable service based upon the revenue responsibility proposed by the Company.
- (4) On or before the last day of the fourth month following the entry of this order, the Company shall recalculate, using the rates and charges prescribed by ordering paragraph (2) of this Order, each bill it rendered that used, in whole or in part, the rates and charges that took effect under bond and subject to refund on November 22, 2002. Where application of the rates prescribed by this Order results in a reduced bill, the Company shall refund with interest the difference.
- (5) Interest upon the ordered refunds shall be computed from the date payments of monthly bills were due to the date refunds are 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. The Company may offset the credit or refund to the extent no dispute exists regarding the outstanding balance of a current or former customer. No offset shall be permitted for the disputed portion of an outstanding balance. The Company may retain refunds owed to former customers when such refund amount is less than \$1. The Company shall maintain a record of former customers for which the refund is less than \$1, and such refunds shall be made promptly upon request. All unclaimed refunds shall be subject to § 55-210.6:2 of the Code of Virginia.
- (7) On or before the last day of the month following the month during which the Company is required to recalculate the bills for the Hopewell District as required by ordering paragraph (4) of this Order, the Company shall file with the Commission's Divisions of Public Utility Accounting and Energy Regulation a report showing refunds made pursuant to this final order and detailing the costs of the refund and accounts charged. Costs shall include, inter alia, computer costs, and the personnel hours, associated salaries, and costs for verifying and correcting the refunds directed in this Final Order.
- (8) This case shall be dismissed from the docket of active cases.

**CASE NO. PUE-2002-00414
MARCH 12, 2003**

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

ORDER OF SETTLEMENT

The Accountable Pipeline Safety and Partnership Act of 1996, 49 U.S.C. § 60101 *et seq.* ("Act"), formerly the Natural Gas Pipeline Safety Act, requires 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 Virginia 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

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

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 under § 56-5.1 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"),¹ charged with the investigation of each jurisdictional gas company's compliance with the Safety Standards, has conducted various inspections of construction, operation, and maintenance activities involving the Columbia Gas of Virginia, Inc. ("CGV" or "Company"), the Defendant, and alleges that:

(1) CGV is a public service corporation as that term is defined in § 56-1 of the Code of Virginia and, specifically a natural gas company within the meaning of § 56-5.1 of the Code of Virginia; and

(2) The Company violated the Commission's Safety Standards by the following conduct:

- a) 49 C.F.R. § 192.195 (a) – Failing to have a pressure relieving or pressure limiting device that meets the requirements of 49 C.F.R. §§ 192.199 and 192.201;
- b) 49 C.F.R. § 192.199 (g) – Failing on two occasions to install a regulator station such that a single incident would not affect the operation of both the overpressure protective device and the district regulator;
- c) 49 C.F.R. § 192.199 (h) – Failing to lock the regulator station bypass valve to prevent unauthorized operation;
- d) 49 C.F.R. § 192.303 – Failing to follow Company's Policy and Procedure Reference No. 644-3, Section 3, by not having a means to verify the temperature of a heating iron;
- e) 49 C.F.R. § 192.355 (b)(2) – Failing on several occasions to install service regulator vents away from openings into buildings;
- f) 49 C.F.R. § 192.605 (a) – Failing to follow Company's Policy and Procedure Reference No. 644-4, Section 1, General, by not installing a protective sleeve on the outlet of a service tee requiring socket fusion;
- g) 49 C.F.R. § 192.605 (a) – Failing to follow Company's Policy and Procedure Reference No. 654-4(38) 4, by not using trained personnel to inspect a regulator station;
- h) 49 C.F.R. § 192.605 (a) – Failing to follow Company's Policy and Procedure Reference No. 654-4(38)1.1.2(b), by not inspecting a regulator to determine that it is in good mechanical condition;
- i) 49 C.F.R. § 192.605 (a) – Failing to follow Company's Policy and Procedure Reference No. 654-4(38)1.1.2(c), by not inspecting a regulator to determine that it is set to function at the correct pressure;
- j) 49 C.F.R. § 192.605 (a) – Failing to follow Company's Policy and Procedure Reference No. 654-4(38)1.1.2(d), by not inspecting a regulator to determine that it is properly installed;
- k) 49 C.F.R. § 192.605 (a) – Failing to follow Company's Policy and Procedure Reference No. 445-4, Section 5, by not removing, or placing at a safe distance from the excavation, any known or potential source of ignition;
- l) 49 C.F.R. § 192.605 (a) – Failing to follow Company's Policy and Procedure Reference No. 640-7, Section 4, by failing to have and follow a written plan for the main tie-in and bypassing operation;
- m) 49 C.F.R. § 192.605 (a) – Failing to follow Company's Policy and Procedure Reference No. 445-4, Section 4(a), by not taking combustible gas readings prior to entering an excavation where gas or other combustibles could be present;
- n) 49 C.F.R. § 192.605 (a) – Failing to follow Company's Policy and Procedure Reference No. 445-4, Section 4(c), by not wearing an oxygen monitor in an excavation;
- o) 49 C.F.R. § 192.605 (a) – Failing on several occasions to follow Company's Policy and Procedure Reference No. 445-4, Section 4(d), by not wearing the proper personal protective equipment in an excavation where gas is likely to be introduced;
- p) 49 C.F.R. § 192.605 (a) – Failing to follow Company's Policy and Procedure Reference No. 445-4, Section 5, by not having one competent above ground attendant for each employee working in the excavation;
- q) 49 C.F.R. § 192.605 (a) – Failing to follow Company's Policy and Procedure Reference No. 640-7, Section 3, by not having a company representative on-site during the tie-in and bypass operation;
- r) 49 C.F.R. § 192.605 (a) – Failing to follow Company's Policy and Procedure Reference No. 640-7, Section 3, by not having a company representative on-site during the removal of the squeeze-off units;
- s) 49 C.F.R. § 192.605 (a) – Failing to follow Company's Policy and Procedure Reference No. 640-8, Section 3.3.a, by not providing a fire extinguisher at an activated vent point for purging the pipeline;

¹ Effective July 1, 2002, the Commission created the Division of Utility and Railroad Safety out of the Division of Railroad Regulation and part of the Division of Energy Regulation.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- t) 49 C.F.R. § 192.605 (a) – Failing to follow Company's Policy and Procedure Reference No. 640-10, Section 2.2, by not grounding cutting tools;
- u) 49 C.F.R. § 192.605 (a) – Failing to follow Company's Policy and Procedure Reference No. 640-10, Section 2.2, by not grounding squeeze-off units prior to performing the squeeze-off procedure;
- v) 49 C.F.R. § 192.605 (a) – Failing to follow Company's Policy and Procedure Reference No. 640-10, Section 4.3, by using squeeze-off units which do not have over squeeze protection built into the units;
- w) 49 C.F.R. § 192.605 (a) – Failing to follow Company's Policy and Procedure Reference No. 640-2, Section 26.2, by not grounding plastic pipe;
- x) 49 C.F.R. § 192.605 (a) – Failing to follow Company's Policy and Procedure Reference No. 640-7, Section 9 and Procedure Reference No. 640-10, Section 2.3, by not checking a section of main for leak through during a squeeze off operation;
- y) 49 C.F.R. § 192.605 (a) – Failing to follow Company's Policy and Procedure Reference No. 640-1, Section 9.2, by not inspecting coating on a steel main with a holiday detector;
- z) 49 C.F.R. § 192.605 (a) – Failing to follow Company's supplement to tie-in and by-pass plans, by not manning a fire extinguisher during the tie-in and by-pass operation;
- aa) 49 C.F.R. § 192.621 (b) – Failing to properly install overpressure protection at a regulator station;
- bb) 49 C.F.R. § 192.707 (c) - Failing to install a pipeline marker;
- cc) 49 C.F.R. § 192.707 (d)(2) - Failing on several occasions to have the company name and telephone number on a pipeline marker;
- dd) 49 C.F.R. § 193.2017 (a) – Failing to maintain at the Company's LNG plant all the plans and procedures required for the plant;
- ee) 49 C.F.R. § 193.2509 (a) – Failing to include procedures relative to keeping local officials advised of communication and emergency control capabilities at the Company's LNG plant;
- ff) 49 C.F.R. § 199.101 - Failing to follow a written drug plan by using employees that are not "covered employees" to perform covered tasks;
- gg) 49 C.F.R. § 199.115 (a) - Failing to ensure that the anti-drug requirements are complied with by contractor employees by allowing contractor employees that are not "covered employees" to perform covered tasks;
- hh) 49 C.F.R. § 199.202 - Failing to follow a written alcohol plan by using employees that are not "covered employees" to perform covered tasks; and,
- ii) 49 C.F.R. § 199.245 (b) - Failing to ensure that the alcohol plan requirements are complied with by contractor employees by allowing contractor employees that are not "covered employees" to perform 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 represents and undertakes that:

(1) The Company shall pay a fine to the Commonwealth of Virginia in the amount of \$162,650, of which \$152,650, shall be paid contemporaneously with the entry of this Order. The remaining \$10,000 is due as outlined in Paragraph (2), below, and may be suspended in whole, or in part, provided the Company tenders the requisite certification that it has completed specific remedial actions, as set forth below in Paragraph (2) on or before the scheduled date for completion of said remedial action. At the completion of all remedial actions described below, the Commission may vacate any outstanding amounts. 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;

(2) The Company shall take remedial actions pursuant to the following schedule:

- (i) The Company shall revise its operating and maintenance manuals within 30 days of the date of this Order, as follows:
 - a) Company Policy and Procedure Reference No. 640-2, Section 26.2, shall be revised to include provisions for the electrical grounding of plastic mains and services prior to performing any tapping operations, whether for service or tie-in and bypass operations.
 - b) Company Policy and Procedure Reference No. 640-7, Section 3, shall be revised to include provisions to require persons qualified in the work being performed are present during all main tie-in operations.
 - c) Company Policy and Procedure Reference No. 445-4, Section 4(a), shall be revised to include provisions for taking combustible gas indicator readings at least once per day before entering an excavation or trench containing live gas facilities.
 - d) Company Policy and Procedure Reference No. 445-4, Section 5, shall be revised, in part, to change the reference from Company Policy and Procedure Reference No. 445-4, Section 4(c) to Company Policy and Procedure Reference No. 445-4, Section 4(e).

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- (ii) The Company shall take the following corrective actions as follows:
- a) Within 30 days of the date of this Order, the Company shall relocate regulator relief vents to achieve adequate distance away from the nearest openings into the buildings in Woodland Park in Herndon, Virginia cited in Staff's pipeline safety report number 375.
 - b) Within 180 days of the date of this Order, all squeeze-off tools used by the Company must have over-squeeze protective devices installed.
- (iii) Upon completion of the items found in Paragraphs 2 (i)(a) through 2(i)(d) and 2(ii)(a) above, CGV shall tender to the Clerk of the Commission an affidavit within 45 days of the date of this Order, certifying that the Company has revised its operating and maintenance manuals to comply with this order.
- (iv) Upon completion of the item found in Paragraph 2 (ii)(b), CGV shall tender to the Clerk of the Commission an affidavit within 195 days of the date of this Order, certifying that the Company has completed the corrective actions necessary to comply with this order.
- (v) Upon timely receipt of said affidavits, the Commission may suspend up to \$10,000 of the fine amount specified in Paragraph (1) above. Should CGV fail to tender either affidavit or take the actions required by Paragraphs 2(i)(a) through 2(i)(d), or Paragraphs 2(ii)(a) and 2(ii)(b), a payment of \$10,000 shall become due and payable. The Company shall immediately notify the Division of the reasons for its failure to accomplish the actions required by these paragraphs specified herein and upon investigation, if the Division determines that the reason for said failure justifies a payment lower than \$10,000, it may recommend to the Commission a reduction in the amount due or suspension of the fine. The Commission shall determine the amount due or whether the fine should be suspended. Upon the Commission's determination of the amount due, the Company shall immediately tender to the Commission that amount.
- (3) Any fines 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 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.

The Commission, being fully advised in the premises of the foregoing and 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 CGV has made a good faith effort to cooperate with the Staff during the investigation of this matter; and that, the offer of compromise and settlement should be accepted.

Although we accept the offer of compromise and settlement, we have serious concerns regarding the severity, number, and nature of the alleged violations in this and prior proceedings. The Commission directs the Company to take the steps, and to devote the resources, necessary to comply with its policies and procedures and with Virginia law and regulations, including the Safety Standards.

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 compromise and settlement made by CGV be, and it hereby is, accepted.
- (2) Pursuant to § 56-5.1 of the Code of Virginia, CGV be, and it hereby is, fined in the amount of \$162,650.
- (3) The sum of \$152,650 tendered contemporaneously with the entry of this Order is accepted.
- (4) The remaining \$10,000 is due as outlined herein and may be suspended and subsequently vacated, in whole or in part, as provided on pages 6 and 7 herein.
- (5) The Commission shall retain jurisdiction over this matter for all purposes, and the matter is continued, pending further orders of the Commission.

**CASE NO. PUE-2002-00414
DECEMBER 4, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION
v.
COLUMBIA GAS OF VIRGINIA, INC.,
Defendant

ORDER SUSPENDING PAYMENT AND DISMISSING PROCEEDING

On March 12, 2003, the State Corporation Commission ("Commission") entered an Order of Settlement that, among other things, fined Columbia Gas of Virginia, Inc. ("Columbia" or the "Company") \$162,650 for certain alleged violations of the Commission's minimum gas pipeline safety standards. In accordance with the March 12, 2003, Order, \$152,650 was paid contemporaneously with the entry of the Order. Paragraph (1) of the Order provided that the remaining \$10,000 would be due as outlined in Paragraph (2) of the Order, but could be suspended in whole, or part, provided the Company tendered the requisite certification that it had completed the specific remedial actions set forth in Paragraph (2) of the Order on or before the scheduled due date for the completion of said action.

On November 24, 2003, Columbia, by counsel, filed a Motion with the Commission wherein the Company represented that it had performed the remedial and corrective actions required by the March 12, 2003, Order in a timely manner. However, Columbia advised that it had submitted the second

affidavit required by the March 12, 2003, Order within the time frame set forth in that Order to the Division of Utility and Railroad Safety ("Division") rather than the Clerk of the Commission. According to the Company, its affidavit was not timely filed with the Clerk of the Commission as a result of an administrative oversight on the Company's part. Columbia maintained that it had experienced a change in personnel during this time and had now implemented systems to ensure that such an oversight would not be repeated. Columbia affirmed that it had performed the remedial and corrective actions specified by the Settlement Order and reported its compliance to the Division in a timely manner. In its Motion, Columbia also requested that the Commission: (i) accept the late filing of the second affidavit, (ii) vacate the remaining \$10,000 of the payment imposed by the Commission in its Settlement Order, and (iii) dismiss the case from its docket.

On November 25, 2003, the Staff filed its Response to the Company's Motion. The Staff noted in its Response that the Commission had the discretion and authority to direct payment of the remaining \$10,000, but did not oppose Columbia's request because the Company performed the remedial actions set forth in the Commission's Order of Settlement in a timely manner.

NOW, UPON consideration of the foregoing, the Commission is of the opinion and finds that Columbia's November 24, 2003, Motion should be granted; that Columbia's Affidavit dated September 12, 2003, should be received out of time; that the remaining \$10,000 payment provided for in the March 12, 2003, Order of Settlement should be vacated; and that this case should be dismissed from the Commission's docket of active cases.

We note that although we have the discretion to require the payment of the remaining \$10,000, we have not exercised that discretion under the circumstances of this case. However, this Order should not be cited by Columbia or others as precedent in other cases. It is our expectation that the Company's new systems will prove effective in preventing the reoccurrence of such oversights.

Accordingly, IT IS ORDERED THAT:

- (1) The Company's November 24, 2003, Motion is hereby granted.
- (2) Columbia's Affidavit dated September 12, 2003, shall be accepted for filing out of time.
- (3) The remaining \$10,000 payment provided for in the March 12, 2003, Order of Settlement shall be suspended.
- (4) The captioned case shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be filed in the Commission's file for ended causes.

**CASE NO. PUE-2002-00416
NOVEMBER 26, 2003**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
VIRGINIA NATURAL GAS, INC.

ORDER SUSPENDING REMAINDER OF FINE AND DISMISSING PROCEEDING

On October 7, 2002, the State Corporation Commission ("Commission") entered an Order accepting an offer by Virginia Natural Gas, Inc. ("VNG" or the "Company") to settle certain alleged violations of the Commission's regulations, serving as minimum gas pipeline safety standards ("Safety Standards") adopted by the Commission in Case No. PUE-1989-00052.¹ Among other things, the October 7, 2002, Order of Settlement directed VNG to design a program to repair or replace all double cut services as needed by September 1, 2003. In addition, the Commission ordered VNG to tender an affidavit to be filed with the Clerk of the Commission on or before October 1, 2003, certifying that the Company had repaired or replaced all double cut services served by VNG and had submitted its inspection plan to the Division of Utility and Railroad Safety ("Division").

Paragraph (2) (A) (ii) of the October 7, 2002 Order provided that upon timely receipt of the affidavit, the Commission could suspend up to \$54,500, of the fine amount specified in Paragraph (1) of the Order. The Order further directed that should VNG fail to tender the affidavit or take the remedial actions required by the Order by October 1, 2003, a payment of \$54,500 "shall become due." The Order provided that the Company would immediately notify the Division of the reasons for the failure to accomplish the actions required by the Order, and upon investigation, if the Division determines that the reason for such failure justifies a payment lower than \$54,500, the Division may recommend to the Commission a reduction in the amount due.

On October 2, 2003, the Division, but not the Clerk of the Commission, received the Company's affidavit asserting that VNG had repaired and replaced all double cut services. VNG also submitted a procedure for the on-going inspection of these double cut services at five year intervals.

On November 21, 2003, the Division filed a Report on VNG's technical noncompliance with the Commission's October 7, 2002 Order. The Division noted that VNG had submitted a letter responding to the Division's inquiry concerning its failure to comply with the Commission's directives. The Division advised that it reviewed the Company's response and found that the Company had otherwise completed its remedial actions in a timely fashion. The Division therefore recommended that the remaining amount of the fine, \$54,500, be suspended, and the case dismissed from the Commission's docket of active proceedings.

¹ See Commonwealth of Virginia, At the relation of the State Corporation Commission, Ex Parte: In the matter of adopting gas pipeline safety standards and reporting procedures for public service corporations providing gas service under Commission jurisdiction through transmission and distribution facilities located and operated within the Commonwealth of Virginia and granting other authorizations pertaining to the Gas Pipeline Safety Program, Case No. PUE-1989-00052, 1989 S.C.C. Ann. Rep. 312.

NOW, UPON consideration of the foregoing, the Commission is of the opinion and finds that the Company is in technical noncompliance with Paragraphs (2)(A)(i) and (ii) of the October 7, 2002 Order of Settlement. We also find that the Company has completed the remedial actions required by our Order. Under these circumstances, we will exercise our discretion to suspend the remaining \$54,500 fine provided for by the October 7, 2002 Order. However, the Company is exhorted to pay greater attention to the directives set forth in our Orders.

Accordingly, IT IS ORDERED THAT:

- (1) The remaining \$54,500 balance of the \$92,000 fine is hereby suspended.
- (2) There being nothing further to be done herein, this case shall be dismissed from the Commission's docket of active proceedings.

**CASE NO. PUE-2002-00420
MARCH 14, 2003**

APPLICATION OF
MARYLAND GAS & ELECTRIC, LTD., T/A OPERATORS ENERGY SERVICES, LLP

For a license to conduct business as a natural gas competitive service provider

DISMISSAL ORDER

On August 1, 2002, Maryland Gas & Electric, Ltd., t/a Operators Energy Services, LLP ("Maryland Gas" or the "Company"), filed an application with the Virginia State Corporation Commission ("Commission") for a license to provide competitive natural gas services. This application sought authority to serve residential, commercial, and industrial customers in the natural gas retail access program of Washington Gas Light Company ("WGL").

On September 6, 2002, Staff filed its Report concerning Maryland Gas' fitness to provide competitive natural gas service. In its report, the Staff summarized Maryland Gas' proposal and evaluated its financial condition and technical fitness. Maryland Gas does not have audited financial statements or a credit rating. Therefore, Staff recommended that Maryland Gas provide additional security such as a security bond or letter of credit. Staff recommended that a license be granted to Maryland Gas contingent upon the provision of such financial security.

Maryland Gas filed a response to the Staff Report on September 12, 2002. In its response, the Company agreed to provide additional financial security in the form of a \$25,000 letter of credit. However, at that time the letter of credit had not been filed with the Commission.

By Order dated September 12, 2002, the Commission found that Maryland Gas was not a qualified applicant solely because of its financial status. The Commission deferred further action on the application until such time as it received the proposed \$25,000 letter of credit.

By letter dated March 4, 2003 ("Letter"), Maryland Gas advised that it wished to terminate its application for a license to conduct business as a natural gas provider in the State of Virginia. In its Letter, Maryland Gas stated that it had discontinued all gas service effective March 1, 2003.

NOW UPON CONSIDERATION of Maryland Gas' Letter and having been advised by its Staff, the Commission is of the opinion and finds that the Company's application should be dismissed.

Accordingly, IT IS ORDERED THAT:

- (1) Maryland Gas' application is hereby dismissed without prejudice.
- (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 NOS. PUE-2002-00421 and PUE-2002-00525
JANUARY 22, 2003**

PETITION OF
NORTHERN VIRGINIA UTILITY PROTECTION SERVICE, INC.
and
VIRGINIA UNDERGROUND UTILITY PROTECTION SERVICE, INC.

For waiver and extension of time

APPLICATION OF
NORTHERN VIRGINIA UTILITY PROTECTION SERVICE, INC.
and
VIRGINIA UNDERGROUND UTILITY PROTECTION SERVICE, INC.

For approval of notification call center performance standards

**ORDER ADOPTING NOTIFICATION CENTER PERFORMANCE
STANDARDS AND DISMISSING PROCEEDING**

On August 5, 2002, Northern Virginia Utility Protection Service, Inc. ("NVUPS"), and the Virginia Underground Utility Protection Service, Inc. ("VUUPS") (collectively, "Notification Centers" or the "Applicants") filed a Petition with the State Corporation Commission ("Commission") requesting a waiver of Rule 20 VAC 5-300-90 A 6 of the Commission's Rules governing certification, operation, and maintenance of notification center or centers ("Rules"). This Rule requires a center currently holding a certificate from the Commission to seek approval from the Commission of the center's proposed performance standards within 60 days of June 7, 2002; i.e., by August 6, 2002.

On August 14, 2002, the Commission issued its "Order on Waiver and Request for Extension of Time" in Case No. PUE-2002-00421. In that Order, among other things, the Commission directed NVUPS and VUUPS to file their proposed performance standards with the Commission by no later than September 5, 2002. Ordering Paragraph (2) of the August 14, 2002, Order provided that a separate docket be established for review of these performance standards when they were filed. The August 14, 2002, Order also directed that NVUPS file on or before September 5, 2002, the performance standards for its current vendor and itself for approval by the Commission.

On September 5, 2002, NVUPS and VUUPS filed their proposed performance standards with the Commission for approval. As part of their performance standards, the Applicants advised that they have recently created Virginia Utility Protection Service, LLC ("VUPS"), to provide primary notification center services for NVUPS and VUUPS. The documents filed in support of the performance standards advised that VUPS began providing primary notification services for VUUPS on July 1, 2002, and that it is anticipated the same center will provide primary notification center services for NVUPS beginning July 1, 2003.

The Applicants submitted three performance standards as a means of measuring their minimum standards of performance:

INDEX	PROPOSED PERFORMANCE STANDARD
Average Speed of Answer	45 seconds
Percent of Abandoned Calls	5% or less on calls with an average delay in queue greater than 60 seconds
Busy Signal Rate	Not to exceed more than 2% of total incoming call volumes

As explained by the Notification Centers, performance data will be accumulated and averaged over a calendar month and will apply only to incoming "live" calls for locate requests. Other calls will not be tracked for reporting purposes. The Applicants explained that the average speed of answer ("ASA") will be calculated from the time a caller completes an option from the initial automated attendant until a "live" operator is available to assist the caller. In the event an automated attendant is not utilized, the ASA will begin at the time the call arrives at the center's call switch. Any additional time required due to internal transfers of an incoming call, prior to determining the nature of the call, will be part of the calculation for the ASA. The ASA will be calculated during regular business hours 7:00 a.m. to 5:00 p.m. on business days (which excludes weekends and state and federal holidays). The Applicants explained that their proposed performance standards were designed for normal center operations.

In addition to the foregoing indices, the Applicants proposed certain procedures relative to measuring customer satisfaction and also addressed the frequency and periods for which reports concerning the Notification Centers' performance would be filed with the Commission.

On October 23, 2002, the Commission issued its procedural Order, docketing the performance standards and accompanying cover letter as Case No. PUE-2002-00525. The October 23, 2002, Order prescribed the notice to be published by the Applicants; directed the Applicants to serve a copy of their proposed performance standards and the procedural Order on their respective current vendors providing primary notification center services and local officials; invited interested parties to file comments or requests for hearing on the proposed performance standards; and directed the Staff to file a report on the proposed standards. This Order also directed the Applicants to file proof of the publication and service required by the Order on or before December 30, 2002.

On November 8, 2002, the Applicants filed a joint "Motion to Amend Procedural Order" ("Motion"). In that Motion, the Notification Centers, by counsel, requested that the October 23, 2002, Order be amended to permit the publication of a "classified" version of the prescribed notice without graphics and asked that the time for filing responses to written interrogatories be lengthened.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

On November 13, 2002, the Commission entered its Order on the Applicants' Motion in Case No. PUE-2002-00525. In its Order, the Commission authorized the Notification Centers to cause the notice prescribed by Ordering Paragraph (9) of the October 23, 2002, Order to be published on or before November 19, 2002, as classified advertising without graphics on one occasion in major newspapers of general circulation throughout the Commonwealth. The Commission also amended Ordering Paragraph (10) of the October 23, 2002, Order to require that the Notification Centers serve copies of their proposed performance standards, the October 23, 2002, Order, and the Order on Motion on their current vendors providing primary notification center service and on local governmental officials. Further, the Commission extended the time for filing responses to written interrogatories from five (5) calendar days to fourteen (14) calendar days after the receipt of such interrogatories.

On December 30, 2002, NVUPS and VUUPS, by counsel, filed their proof of publication and service, as required by the Commission's October 23, 2002, and November 13, 2002, Orders.

On December 11, 2002, Columbia Gas of Virginia, Inc. ("Columbia"), filed its Notice of Participation in this matter. Columbia advised that it did not intend to submit comments and reserved its right to participate fully in the proceeding. Columbia did not request a hearing but reserved its right to participate if a hearing were convened. No comments or other notices of participation were filed.

On December 23, 2002, the Staff filed its Report in this matter. In its Report, the Staff noted that the Applicants request approval of an ASA of 45 seconds and that this ASA is higher than the 30 seconds or less recommended by the Common Ground Study of One-Call System and Damage Prevention Report issued in 1999, by the U.S. Department of Transportation ("Common Ground Report"). Staff did not object to a proposed ASA of 45 seconds as a short-term performance level that the centers should not exceed in light of the intentions of VUUPS and NVUPS to use VUPS to provide primary notification service to the entire State, beginning July 1, 2003. Even with its planned preparation, VUPS could not predict precisely how much the transition to serving NVUPS' geographic service territory will impact its performance. Staff recommended that the Commission approve an ASA performance standard not to exceed 45 seconds through October 31, 2003. According to Staff, beginning November 1, 2003, the Notification Centers should be directed to achieve an ASA of 30 seconds or less.

Staff also addressed the abandoned call rate measure of performance; *i.e.*, a rate that identifies the number of calls abandoned and how long callers waited before they hung up. The Notification Centers proposed to adopt the Common Ground Report standard, which is an abandoned call rate of less than five percent by callers that waited more than 60 seconds. Staff did not object to adoption of the Common Ground Report standard for this index.

Additionally, Staff considered the Busy Signal Rate index proposed by the Applicants. This index measures how many of those who called the notification center received a busy signal. According to the Staff Report, the Common Ground Report recommends that the busy signals received by callers in a notification center not exceed one percent of the total incoming call volume. The Applicants proposed a busy signal rate of not more than two percent generally for the reasons discussed relative to their proposed ASA standard. Staff did not object to the use of a Busy Signal Rate performance index not to exceed two percent of total incoming call volumes through October 31, 2003. Effective November 1, 2003, Staff recommended that the Commission approve a Busy Signal Rate performance index not to exceed one percent of total incoming call volumes for the Notification Centers.

On the issue of customer satisfaction standards, the Staff noted that these standards measure how satisfied the users of the centers are with the service they receive. According to Staff, the Common Ground Report recommends a ninety-nine percent customer satisfaction rate. As Staff notes, the Notification Centers do not propose a specific customer satisfaction rate. Instead, they propose to attend damage prevention meetings and provide an opportunity for participants to identify and discuss their issues and needs with the Notification Centers. According to the Applicants, by attending and listening to the discussions and suggestions at these meetings, the centers can improve their performance. The Notification Centers also propose to conduct surveys at the Local Damage Prevention Committee meetings to critique call center performance. They propose to submit the survey results from attendees to the Commission on a quarterly basis.

In addition to the proposed actions by the Notification Centers to gauge customer satisfaction, Staff recommended that the Notification Centers prepare and follow a written complaint tracking and resolution procedure that will assist the centers in tracking issues, problems, and complaints received and the actions taken to resolve these matters. Staff also proposed that the Notification Centers design a survey form and provide it to the attendees of the damage prevention meetings; *i.e.*, Local Damage Prevention Committees, Advisory Committee, and user group meetings, to allow attendees to bring issues and problems to the centers in a more formal and organized fashion.

Finally, Staff recommended that the centers conduct periodic surveys of callers to determine customer satisfaction. In order to determine the Customer Satisfaction Rate, the centers should be required to develop and follow a statistically valid sampling program acceptable to Staff for such periodic surveys. Staff recommended that the Notification Centers should be required to achieve at least a ninety-nine percent Customer Satisfaction Rate, as recommended by the Common Ground Report.

Staff commented on the frequency for the Notification Centers' submission of periodic reports to the Commission. It noted that Rule 20 VAC 5-300-90 C 18 requires a Notification Center to provide to the Commission periodic reports, no less frequently than once a quarter, detailing the various performance standards attained by the center. This Rule also requires the center to compare its performance to the standards found in the Common Ground Report in effect at the time of the report. VUUPS and NVUPS propose to submit written quarterly reports to the Commission detailing the respective Notification Center's performance for the following periods: (i) January 1 - March 31; (ii) April 1 - June 30; (iii) July 1 - September 30; and (iv) October 1 - December 31. According to the Applicants, these reports would be postmarked or e-mailed no later than the 15th of the month following the end of each quarter. Staff did not object to the proposed reporting frequency for periods of normal operation of the Notification Centers.

By letter dated January 10, 2003, NVUPS and VUUPS advised that they have received the Staff Report and were prepared to implement the performance standards as recommended by the Staff, including the additions recommended by the Staff to these standards. The Notification Centers also noted that they were authorized by counsel for Columbia to state that Columbia does not object to the recommendations set out in the Staff's Report.

NOW, UPON CONSIDERATION of the foregoing, the Commission is of the opinion and finds that the recommendations set out in the December 23, 2002, Staff Report should be adopted; and that there being nothing further to be done in Case No. PUE-2002-00421 and PUE-2002-00525, these dockets should be dismissed from the Commission's docket of active proceedings.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Accordingly, IT IS ORDERED THAT:

- (1) The recommendations set out in the December 23, 2002, Staff Report are hereby adopted.
- (2) The Notification Centers' proposed ASA performance standard not to exceed 45 seconds shall be approved through October 31, 2003. An ASA performance standard not to exceed 30 seconds shall be approved as a performance measure for the Applicants, effective November 1, 2003.
- (3) The Notification Centers' proposed Abandoned Call Rate index of performance of five percent or less by callers that waited more than 60 seconds is hereby approved.
- (4) The Notification Centers' proposed Busy Signal Rate measure of performance not to exceed two percent of the total incoming call volumes shall be approved for performance through October 31, 2003. A Busy Signal Rate measurement of performance not to exceed one percent of total incoming call volumes shall be approved effective November 1, 2003.
- (5) The Customer Satisfaction Standards proposed by the Applicants are accepted with the following additions: (1) the Notification Centers shall develop a statistically valid sampling program acceptable to Staff, for periodic surveys of callers to determine their Customer Satisfaction Rate; (2) the Notification Centers shall prepare and follow a written complaint tracking and resolution procedure to assist the Notification Centers in tracking issues, problems, and complaints, and the actions taken to resolve the same; and (3) the Notification Centers shall design a survey form and provide the form to attendees of the various damage prevention meetings to allow attendees to bring issues and problems to the attention of the Notification Centers.
- (6) The Notification Centers shall achieve at least a ninety-nine percent Customer Satisfaction Rate, as recommended by the Common Ground Report.
- (7) Each Notification Center shall submit written reports to the Commission detailing the Notification Center's performance for the periods January 1 - March 31; April 1 - June 30; July 1 - September 30; and October 1 - December 31, for periods of normal operation. These reports shall be postmarked or e-mailed no later than the 15th of the month and shall be directed to the Director of the Division of Utility and Railroad Safety on behalf of the Commission.
- (8) There being nothing further to be done herein, Case Nos. PUE-2002-00421 and PUE-2002-00525 shall be dismissed from the Commission's docket of active proceedings, and the papers filed therein made a part of the Commission's files for ended causes.

**CASE NO. PUE-2002-00451
FEBRUARY 10, 2003**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
CENTRAL LOCATING SERVICE, LTD.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia, the Virginia 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 February 11, 2002, the City of Hampton damaged a three-quarter inch plastic gas service line operated by Virginia Natural Gas, Inc., located at or near 68 Mohawk Road, Hampton, Virginia, while excavating;
- (2) On or about May 23, 2002, V-C Enterprises damaged a one-half inch plastic gas service line operated by Virginia Natural Gas, Inc., located at or near 4 Gay Drive, Newport News, Virginia, while excavating;
- (3) On or about May 30, 2002, the City of Newport News damaged a three-quarter inch steel gas service line operated by Virginia Natural Gas, Inc., located at or near 6 Wilson Circle, Newport News, Virginia, while excavating;
- (4) On or about June 4, 2002, Denbigh Construction Company, Inc., damaged a three-quarter inch steel gas service line operated by Virginia Natural Gas, Inc., located at or near 264 Malden Lane, Newport News, Virginia, while excavating;
- (5) On the occasions set out in paragraphs (1) through (4) above, Central Locating Service, Ltd. ("Company"), failed to mark the approximate horizontal location of the 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 of Virginia;
- (6) On or about June 3, 2002, J. Sanders Construction Co. notified the notification center of plans to excavate at or near 427 Shirley Road, Yorktown, Virginia;
- (7) On or about March 25, 2002, May 1, 2002 and June 5, 2002, Philip Morley, homeowner, notified the notification center of plans to excavate at or near 294 Pelican Lane, Redville, Virginia; and

(8) On the occasions set out in paragraphs (6) and (7) above, the Company failed to mark the approximate horizontal location of the lines on the ground to within two feet of either side of the underground utility lines no later than 48 hours after receiving notice from the notification center, in violation of § 56-265.19 A 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.

As an offer to settle all matters before the Commission arising from the Division's allegations made herein, the Company represents and undertakes that it will pay a civil penalty to the Commonwealth of Virginia in the amount of \$7,250 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.

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 be, and it hereby is, accepted.

(2) The sum of \$7,250 tendered contemporaneously with the entry of this Order is accepted.

(3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2002-00488
MARCH 5, 2003**

PETITION OF
ADELPHIA COMMUNICATIONS CORPORATION

For application of § 56-466.1 of the Code of Virginia to pole attachment practices of Northern Virginia Electric Cooperative

ORDER OF DISMISSAL

On September 11, 2002, Adelphia Communications Corporation ("Adelphia") filed with the State Corporation Commission ("Commission") the above-captioned Petition against Northern Virginia Electric Cooperative ("NOVEC"). Adelphia petitioned the Commission's intervention in failed pole attachment rate negotiations with NOVEC and requested the Commission to invoke its authority pursuant to § 56-6 of the Code of Virginia ("Code").¹

On November 7, 2002, the Commission issued an Order Establishing Proceeding in this case and assigned the matter to a Hearing Examiner, consistent with 5 VAC 5-20-120 and the directives of that order.

Following unopposed motions for extension of time granted by the Hearing Examiner to complete settlement negotiations, Adelphia filed a Motion for Dismissal of Action by Nonsuit ("Motion") on January 24, 2003. On January 28, 2003, the Report of Alexander J. Skirpan, Jr., Hearing Examiner, was filed ("Report"). The Hearing Examiner's Report finds that Adelphia's Motion should be granted, based upon the pleadings and upon § 8.01-380 A and B of the Code of Virginia, and recommends that the Commission dismiss this case upon adoption of this finding.

No party has filed any comments to the Hearing Examiner's Report, pursuant to 5 VAC 5-20-120 C. The Commission now finds that the Hearing Examiner's Report should be adopted and this case dismissed upon Adelphia's Motion.

Accordingly, IT IS ORDERED THAT:

(1) The Hearing Examiner's Report is hereby adopted, and Adelphia's Motion is hereby granted.

(2) This case is hereby dismissed from the Commission's docket of active cases and the papers herein are passed to the file for ended causes.

¹ § 56-6 of the Code provides in part:

Any person or corporation aggrieved by anything done or omitted in violation of any of the provisions of this or any other chapter under this title, by any public service corporation chartered or doing business in this Commonwealth, shall have the right to make complaint of the grievance and seek relief by petition against such public service corporation before the State Corporation Commission, sitting as a court of record.

**CASE NO. PUE-2002-00495
SEPTEMBER 16, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.
CENTRAL LOCATING SERVICE, LTD. (CLS),
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia, the Virginia 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"), charged with the investigation of probable violations of the Act, has completed investigations of certain incidents between April 22, 2002, and August 18, 2002, listed in Attachment A, involving Central Locating Service, Ltd. (CLS) ("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 of Virginia;
- (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 and D of the Code of Virginia.
 - (b) Failing on certain occasions to mark within the time prescribed in the Act, in violation of § 56-265.17 B and § 56-265.19 A and D of the Code of Virginia.
 - (c) Failing on certain occasions to report to the notification center that lines had been marked or they were not in conflict with the proposed excavation, in violation of § 56-265.19 A, B, and 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.

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 10, 2002, 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 \$11,600 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.

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 be, and it hereby is, accepted.
- (2) The sum of \$11,600 tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2002-00497
APRIL 14, 2003**

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, the Virginia 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 ("Act"). 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 between June 20, 2002, and August 7, 2002, listed in Attachment A, involving Promark Utility Locators, Inc. ("Company"), and alleges that:

- (1) The Company is a contract locator as that term is defined in § 56-265.15 of the Code of Virginia;
- (2) During the aforementioned period the Company violated the Act by committing the following violations:

- (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 and D of the Code of Virginia.
- (b) Failing on certain occasions to mark within the time prescribed in the Act, in violation of §§ 56-265.19 A and D of the Code of Virginia.
- (c) Failing on certain occasions to report to the notification center that lines had been marked or they were not in conflict with the proposed excavation, in violation of §§ 56-265.19 A and 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.

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 10, 2002, 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 \$7,850 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.

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 be, and it hereby is, accepted.
- (2) The sum of \$7,850 tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2002-00517
MARCH 24, 2003**

APPLICATION OF
SOUTHWESTERN VIRGINIA GAS COMPANY

For an expedited increase in rates

FINAL ORDER

On September 23, 2002, Southwestern Virginia Gas Company ("SVGC" or the "Company") filed a rate application, supporting testimony and exhibits with the State Corporation Commission ("Commission") for an expedited increase in rates. The Company sought to increase its annual revenues by \$433,435, an increase of approximately 5%. The Company also proposed to increase its reconnection fee from \$30 to \$50, and requested that the increase in rates and the reconnection fee be allowed to go into effect for bills rendered on and after October 31, 2002.

The Company requested a waiver from reporting certain information for its parent, Southwestern Virginia Energy Industries, Ltd. ("Parent"), and the consolidated information of the Parent and the Company as required in the Commission's Rules Governing Utility Rate Increase Applications and Annual Informational Filings, 20 VAC 5-200-30, *et seq.*, on Schedules 1, 2, 6, and 7. The Company contends that: (1) the Parent has historically never contributed to the raising of capital for the Company; (2) 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; (3) the Parent is a closely held corporation and not traded publicly; and (4) the Parent does not have financial statements prepared for public distribution.

The Company further requested a waiver of the requirement to prepare a jurisdictional cost of service study. In support of that request, SVGC stated that it serves very few governmental non-jurisdictional customers; in fact, the Company states that the only non-jurisdictional customers – government offices and schools – represent less than 1.1% of the Company's customers and 2.8% of its gas throughput. According to SVGC, these non-jurisdictional customers pay for service on the basis of Commission-approved rates; thus, there is virtually no impact on the per customer cost of service and no economics justification to expend the money, time and effort to create a non-jurisdictional cost study.

By Order dated October 11, 2002, as amended on October 18, 2002, the Commission authorized the Company to place its proposed rates into effect on an interim basis subject to refund. The Commission also established a procedural schedule for the case, and set a hearing date for February 11, 2003, to receive evidence on the Company's application.

The hearing was convened as scheduled on February 11, 2003. Richard D. Gary, Esquire, appeared as counsel for the Company. Allison L. Held, Esquire, and Katharine A. Hart, Esquire, appeared as counsel for the Staff. No public witnesses appeared to offer comments on the application.

The Company and Staff offered a Stipulation at the hearing in which they proposed to offer the prefiled testimony into the record without causing the witnesses to come forward and be subject to cross-examination. The Stipulation sets forth the Company's and Staff's agreement that the record supports a fair and reasonable annual increase in revenues of \$339,052 based on the capital structure and cost of capital reflected in the Staff's testimony and exhibits. The increase is based on a return on equity of 10.3%, and a range of 9.8% to 10.80%.

At the hearing, the Company offered the prefiled testimony of Lance G. Heater, executive vice president-chief operating officer, and Bernadette J. Stowe, assistant treasurer. The Staff prefiled the testimony of John B. Barker, a senior public utility accountant with the Commission's

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Division of Public Utility Accounting, John R. Ballsrud, a principal financial analyst in the Division of Economics and Finance, and David A. Roberts, a utilities analyst in the Division of Energy Regulation. Pursuant to the Stipulation, all of the prefiled testimony was marked and entered into evidence without subjecting the witnesses to cross-examination.

In the Stipulation and at the conclusion of the hearing, counsel for the Company requested that SVGC be permitted to place the lower rates into effect, since the revenue requirement in the Stipulation is lower than the revenue requirement that rates now in effect on an interim basis are designed to recover. Such action would decrease the Company's ultimate refund liability.

On February 26, 2003, Chief Hearing Examiner Deborah V. Ellenberg issued a Report in which the Examiner summarized the record, and reviewed and analyzed the evidence and issues in this proceeding. In the Report, the Examiner granted the Company's request to place lower rates into effect for bills rendered on and after February 28, 2003. The Examiner's Report also included the following findings and recommendations:

- (1) The use of a test year ending June 30, 2002, is proper in this proceeding;
- (2) SVGC's test year operating revenues, after all adjustments, were \$8,633,532;
- (3) SVGC's test year operating deductions, after all adjustments, were \$8,411,737;
- (4) SVGC's current rates produce a return on adjusted rate base of 4.115%;
- (5) A reasonable return on equity for SVGC is in the range of 9.80% to 10.80%, and the midpoint of 10.30% should be used to calculate rates;
- (6) SVGC's adjusted test year rate base is \$5,232,579;
- (7) SVGC requires \$339,052 in gross annual revenues to earn a return on rate base of 8.127%, and a return on common equity of 10.30%;
- (8) SVGC's proposed increase in its reconnection fee from \$30 to \$50 is reasonable;
- (9) The Company should be directed to prepare a depreciation study within one year of the Final Order in this case and every five years thereafter; and
- (10) The Company should be granted a waiver of the rules requiring the report of information for its Parent, the consolidated information of the Company and its Parent, and a jurisdictional cost of service study.

The Examiner recommended that the Commission adopt the Stipulation and the findings in her Report, grant the waivers requested by the Company, and grant an increase in annual gross revenues of \$339,052, and an increase in the reconnection fee to \$50. The Examiner also recommended that the Commission direct the Company to refund with interest any excess revenues that have been collected, and to perform a depreciation study within one year of this Order and every five years thereafter.

On March 4, 2003, counsel for SVGC filed a letter stating that it has reviewed the Report and takes no exception to it.

NOW THE COMMISSION, having considered the record, the Stipulation, the Examiner's Report, and the applicable law, is of the opinion and finds that the recommendations of the Examiner should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the February 26, 2003, Hearing Examiner's Report are hereby adopted.
- (2) Rates reflecting the new revenue requirement will be billed to the Company's customers beginning with the February 2003 billing cycle.
- (3) On or before July 1, 2003, SVGC shall recalculate, using the rates and charges prescribed in Paragraph No. 2 above, each bill it rendered that used, in whole or in part, the rates and charges that took effect under bond and subject to refund on October 31, 2002. Where application of the new rates results in a reduced bill, SVGC shall refund the difference with interest as set out below.
- (4) 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.
- (5) The refunds ordered in Paragraph No. 3 above 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. SVGC 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. SVGC may retain refunds owed to former customers when such refund is less than \$1. SVGC 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.
- (6) On or before August 1, 2003, SVGC shall deliver to the Divisions of Public Utility Accounting and Energy Regulation a report showing that all refunds have been made pursuant to this Order and detailing the costs of the refund and the accounts charged.
- (7) SVGC shall bear all costs incurred in effecting the refund ordered herein.

(8) 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-2002-00521
JANUARY 21, 2003**

JOINT PETITION OF
PHILADELPHIA SUBURBAN CORPORATION
and
AQUASOURCE, INC.

For approval under the Utility Transfers Act

ORDER GRANTING APPROVAL

On October 4, 2002, Philadelphia Suburban Corporation ("PSC") and AquaSource, Inc. ("AquaSource") (collectively, "Petitioners"), filed a joint petition with the State Corporation Commission ("Commission") requesting approval, pursuant to § 56-88.1 of the Code of Virginia ("Code"), for the acquisition by PSC and the disposition by AquaSource of the stock of AquaSource Utility, Inc. ("Utility"). The Utility is a wholly owned subsidiary of AquaSource, and the proposed transaction will result in an indirect transfer of control of public utilities owned by Utility or its Virginia subsidiaries.¹

PSC, a corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, is an investor-owned water utility holding company serving approximately 2,000,000 residents in six states. Pennsylvania Suburban Water Company, the largest subsidiary of PSC, furnishes water and wastewater service to the public throughout Pennsylvania. Other subsidiaries conduct water and/or wastewater operations in Illinois, Maine, New Jersey, Ohio, and North Carolina. PSC's corporate headquarters and PSW's principal business office are located in Bryn Mawr, Pennsylvania.

AquaSource, a subsidiary of DQE, Inc. ("DQE"), is a Pennsylvania-based energy service company. Utility, a subsidiary of AquaSource, directly or indirectly through subsidiaries, owns and operates water and wastewater systems in 12 states, including Virginia. AquaSource's corporate headquarters is located in Pittsburgh, Pennsylvania.

PSC, Aqua Acquisition Corporation ("Acquisition")², and DQE, Inc., the parent holding company of AquaSource, entered into a Purchase Agreement dated July 29, 2002. Pursuant to the Purchase Agreement, PSC will acquire all of the issued and outstanding shares of common stock; 90% of the outstanding shares of preferred stock of Utility; all issued and outstanding shares of common stock of AquaSource Development Company; and all of the issued and outstanding common stock shares of The Reynolds Group, Inc.³ In addition, Acquisition will purchase certain non-regulated assets, consisting largely of contract operating agreements with various water and wastewater service providers.⁴ As such, the Virginia Utilities will remain first and second tier subsidiaries of Utility and will become second and third tier subsidiaries of PSC.

The Purchase Agreement provides for a target cash purchase price of approximately \$205 million. The final purchase price may be increased by up to \$10 million or decreased by up to \$25 million as various purchase price adjustments are applied. Such adjustments relate to the achievement of certain operating performance metrics, involving revenue, rate base, and projected customer connections. PSC and Acquisition intend to fund the purchase with cash from a combination of short-term debt, long-term debt, common stock, and/or securities convertible into common stock. The Petitioners represent that the ultimate funding decision will be driven by financial market conditions existing at the time the acquisition is consummated.

On October 23, 2002, the Commission issued its Order for Notice and Comment and Extending Time for Review wherein it extended the time for review from December 3, 2002, to February 1, 2003.

Pursuant to that Order, the Caroline County Department of Public works filed comments stating that it had no objection to the proposed transfer.

Staff filed its Report on December 19, 2002. Staff's inquiry of other jurisdictions where PSC acquired utilities revealed that such acquisitions have not resulted in rate increases, service deterioration, or changes in the regulated relationship of the companies acquired by PSC. Staff, therefore, found no indication that the proposed transaction would impair or jeopardize the provision of adequate service at just and reasonable rates and recommended approval of such transaction.

Staff concluded that there appeared to be some benefits that would result from such transaction. These include placing the water and wastewater operations of the Virginia Utilities in the hands of an experienced company whose focus is on the provision of high quality utility service at reasonable prices. The Virginia Utilities' customers will be served by a large, fiscally sound company that has the capability to finance necessary capital additions and has the capability for substantial economies of scale and scope through mass purchasing of certain goods and the provision of centralized services. The proposed acquisition also offers expanded opportunities to Virginia Utilities' employees for career advancement and professional growth. There was no indication that there are any financial problems that could filter down to Virginia Utilities.

¹ Utility owns, directly or indirectly, certificated utility companies regulated by the Commission and other companies that provide water and wastewater service in Virginia. Such companies are referenced herein as the "Virginia Utilities."

² Acquisition, a Pennsylvania corporation, is a wholly owned subsidiary of PSC, which was formed to effectuate the proposed transaction.

³ AquaSource Development Company and The Reynolds Group, Inc., are not incorporated in Virginia and do not transact business in Virginia. Approval to transfer their common stock is not required.

⁴ None of the contract operating agreements involves facilities or end-users located in Virginia, and, therefore, approval is not required.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Staff recommended approval of the proposed transaction but stated that such approval should not in any way be deemed to approve any acquisition adjustments associated with the transaction. Such adjustments should be addressed within the context of a future rate proceeding. Staff also recommended that a report be submitted to the Commission within 30 days of closing on the transaction wherein the Petitioners will provide certain detailed information referenced herein. Staff recommended that the Petitioners be required to track costs and savings associated with the merger and identify and quantify any portion of such costs and savings attributable to the Virginia Utilities' Virginia jurisdiction. Staff noted that there may be tax implications with respect to the proposed transaction that may be at issue in future rate making proceedings.

In a letter dated December 30, 2002, counsel for the Petitioners stated that the Petitioners do not object to the recommendations detailed in the Staff Report. In that letter, the Petitioners noted that Staff reserved some positions for decision in future proceedings. The Petitioners stated that they reserve their rights and the rights of AquaSource Utility, Inc., and its Virginia water company subsidiaries to assert, in future proceedings, any position on rate making issues or other regulatory matters as may be appropriate.

NOW THE COMMISSION, having considered the joint petition, representations of the Petitioners, Staff's Report, and applicable law, is of the opinion and finds that the above-described transfer of control will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved. This approval for transfer of control extends to all utilities owned by Utility and its Virginia subsidiaries providing water and wastewater service in Virginia.

Accordingly, IT IS ORDERED THAT:

1) Pursuant to §§ 56-88.1 and 56-90 of the Code, Philadelphia Suburban Corporation and AquaSource, Inc., are hereby granted approval for the proposed transfer of stock of AquaSource Utility, Inc. Such approval extends to the indirect transfer of control of Alpha Water Corporation, AquaSource SL, Inc., AquaSource Utility-Virginia, Inc., Blue Ridge Utility Company, Caroline Utilities, Inc., Earlysville Forest Water Company, Heritage Homes of Virginia, Inc., Indian River Water Company, James River Service Corporation, Lake Monticello Service Company, Land'Or Utility Company, Inc., Mountainview Water Co., Inc., Powhatan Water Works, Inc., Rainbow Forest Water Corporation, Reston/Lake Anne Air Condition Corp., Sydnor Water Corporation, Water Distributors, Inc., Sydnor Hydrodynamics, Inc., Ellerson Wells, Incorporated, and Mayfore Water Company, Inc.

2) The approval granted herein shall have no rate making implications.

3) The approval granted herein shall in no way be deemed to include approval of any acquisition adjustments related to the above-referenced acquisition.

4) The Petitioners shall be required to track costs to achieve the merger as well as savings achieved as a result of the merger and shall identify and quantify any portion of such costs and savings attributable to the Virginia Utilities' Virginia jurisdiction. Costs and savings shall be tracked for five years from the date of closing and shall be made available for Staff review.

5) The Petitioners shall file with the Commission a report of the action taken pursuant to the approval granted herein within thirty (30) days of such action taken, subject to extension by the Director of Public Utility Accounting. Such report shall include the date the acquisition took place and the actual price paid by PSC for the stock of AquaSource Utility, Inc.

6) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2002-00566
FEBRUARY 12, 2003**

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

v.

CENTRAL LOCATING SERVICE, LTD.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia, the Virginia 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 ("Act"). 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 between May 10, 2002, and September 16, 2002, listed in Attachment A, involving Central Locating Service, Ltd. ("Company"), and alleges that:

- (1) The Company is a contract locator as that term is defined in § 56-265.15 of the Code of Virginia;
- (2) During the aforementioned period the Company has violated the Act by committing the following violations:
 - (a) Filing 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 and D of the Code of Virginia.
 - (b) Failing on certain occasions to mark within the time prescribed in the Act, in violation of § 56-265.17 C and §§ 56-265.19 A and D of the Code of Virginia.
 - (c) Failing on certain occasions to report to the notification center that lines had been marked or they were not in conflict with the proposed excavation, in violation of §§ 56-265.19 A and 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.

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 15, 2002, 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 \$9,300 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.

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 be, and it hereby is, accepted.
- (2) The sum of \$9,300 tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2002-00567
MARCH 14, 2003**

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, the Virginia 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 ("Act"). 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 between April 18, 2002, and September 21, 2002, listed in Attachment A, involving Utiliquest, LLC ("Company"), and alleges that:

- (1) The Company is a contract locator as that term is defined in § 56-265.15 of the Code of Virginia;
- (2) During the aforementioned period the Company violated the Act by committing the following violations:
 - (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 and D of the Code of Virginia.
 - (b) Failing on certain occasions to mark within the time prescribed in the Act, in violation of and §§ 56-265.19 A, D, and H of the Code of Virginia.
 - (c) Failing on certain occasions to report to the notification center that lines had been marked or they were not in conflict with the proposed excavation, in violation of §§ 56-265.19 A and 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.

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 15, 2002, 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 \$22,400 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.

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 be, and it hereby is, accepted.
- (2) The sum of \$22,400 tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2002-00568
MARCH 14, 2003**

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, the Virginia 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 July 12, 2002, Casper Colosimo & Son, Inc. damaged a three-quarter inch plastic gas service line operated by Washington Gas Light Company ("Company") located at or near 6111 Beech Tree Drive, Alexandria, Virginia, while excavating;
- (2) On or about July 30, 2002, Arlington County damaged a one-half inch plastic gas service line operated by the Company located at or near 400 North Baron Street, Arlington, Virginia, while excavating;
- (3) On or about July 30, 2002, Mid Atlantic Cable Installation damaged a one-half inch plastic gas service line operated by the Company located at or near 9322 Raintree Road, Burke, Virginia, while excavating;
- (4) On or about August 6, 2002, Tazz Directional Boring, Inc., damaged a three-quarter inch plastic gas service line operated by the Company located at or near 12615 Misty Creek Lane, Fairfax, Virginia, while excavating;
- (5) On or about August 6, 2002, Magellan Telecommunications, L.L.C., damaged a one-quarter inch plastic gas light line operated by the Company located at or near 4311 Granby Road, Dale City, Virginia, while excavating;
- (6) On or about August 14, 2002, R.B. Hinkle Construction, Inc., damaged a one-inch steel gas service line operated by the Company located at or near 3100 North 10th Street, Arlington, Virginia, while excavating;
- (7) On or about August 16, 2002, Roese Contracting Company damaged a four-inch plastic gas main line operated by the Company located at or near 12814 New Parkland Drive, Franklin Farm, Virginia, while excavating;
- (8) On or about August 16, 2002, Directional Boring, L.L.C., damaged a three-quarter inch plastic gas service line operated by the Company located at or near 14221 Rock Canyon Drive, Centreville, Virginia, while excavating;
- (9) On or about August 20, 2002, CPH Utilities, Inc., damaged a one-half inch plastic gas service line operated by the Company located at or near 8415 Georgian Way, Annandale, Virginia, while excavating;
- (10) On or about September 5, 2002, John Driggs Company, Inc., damaged a one-half inch copper gas service line operated by the Company located at or near 13th Street and Herndon Street, Arlington, Virginia, while excavating; and
- (11) On the occasions set out in paragraphs (1) 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 lines, in violation of § 56-265.19 A 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.

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 \$5,050 to be paid contemporaneously with the entry of this Order. This payment will be made by cashier's check or money order, payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.
- (2) Any 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.

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 be, and it hereby is, accepted.

- (2) The sum of \$5,050 tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2002-00570
JANUARY 15, 2003**

APPLICATION OF
KENTUCKY UTILITIES COMPANY, d/b/a OLD DOMINION POWER COMPANY

Application for authority to acquire interest in four 152-megawatt combustion turbine generating units pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING AUTHORITY

On October 23, 2002, Kentucky Utilities Company d/b/a Old Dominion Power Company ("KU/ODP," "Applicant") filed an application with the State Corporation Commission ("Commission") under the Public Utilities Affiliates Act requesting authority to acquire at cost a sixty-three percent (63%) interest in four 152-megawatt combustion turbine generating units ("CTs") to be constructed and located in Trimble County, Kentucky. The application requires that Commission approval be obtained under the provisions of Chapter 4 of Title 56 of the Code of Virginia.

LG&E Capital Corporation ("LCC"), an unregulated affiliate of KU/ODP, originally purchased the CTs from General Electric ("GE") as part of a ten (10) unit package in 2000. Subsequent to Commission approval, construction on the four CTs will begin at Louisville Gas and Electric Company's ("LG&E") Trimble County Generating Station in Trimble County, Kentucky, and the CTs are expected to be in operation by the summer of 2004. The total budgeted construction cost for the project is \$227,392,000.

KU/ODP and LG&E (the "Utilities") jointly plan and provide for their capacity needs through the development of Joint Integrated Resource Plans ("IRP"). Their 2002 RE' shows that the Utilities will require between 701 and 849 MW of additional peaking capacity by 2007 to meet their service territories' growing demand while maintaining a target reserve margin of 14%. The Utilities assessed their capacity needs and alternatives through a Resource Assessment ("RA") issued October, 2002.

The Utilities sought and received 27 bids for purchased power contracts from 15 different energy marketers. The Utilities state that they did not seek bids from multiple CT vendors because only GE manufactures CTs with a NOx emissions rate guarantee that meets Kentucky's environmental standards without expensive modifications. The RA employed Monte Carlo simulation modeling and sensitivity analysis to compare the long-term costs of acquiring the four CTs against the costs of purchasing power from third party energy marketers. In every scenario, the Utilities found that the purchase of the four LCC CTs was the least cost alternative.

NOW THE COMMISSION, upon consideration of the application and representations of Applicant and having been advised by its Staff, is of the opinion and finds that the above-described transfer of interest in the CTs from LG&E Capital Corporation to KU/ODP at cost is in the public interest and should be approved.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code of Virginia, KU/ODP is hereby granted approval for the transfer from LCC to KU/ODP of the sixty-three per cent (63%) interest in the four 152-megawatt combustion turbines to be constructed at LG&E's Trimble County Generating Station in Trimble County, Kentucky, at cost.
- 2) The approval granted herein shall have no ratemaking implications.
- 3) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code of Virginia.
- 4) 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.
- 5) Within 30 days of the transfer, subject to extension by the Commission's Director of Public Utility Accounting, KU/ODP shall file a report with the Commission, such report to include all information filed with the Kentucky Public Service Commission including, but not limited to, information detailing the final determination of the cost of the turbines.
- 6) KU/ODP shall include the transfer approved herein in its Annual Report of Affiliate Transactions filed with the Commission's Director of Public Utility Accounting.
- 7) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then KU/ODP shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.
- 8) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2002-00571
APRIL 3, 2003**

APPLICATION OF
MASSANUTTEN PUBLIC SERVICE CORPORATION

For amendment of its certificates of public convenience and necessity pursuant to Va. Code § 56-265.3 D

FINAL ORDER

On October 24, 2002, Massanutten Public Service Corporation ("Massanutten" or the "Company") filed an application with the State Corporation Commission ("Commission") to amend its certificates of public convenience and necessity, Certificate Nos. W-252 and S-75, pursuant to § 56-265.3 D of the Code of Virginia. The Company seeks to have its certificates amended to include 30 parcels of property ("New Areas"), all of which are adjacent to the boundaries of the Company's current service area, according to Massanutten. The expected use of these properties is comparable to the development in Massanutten Village and the Newman Development, and includes single and multi-family residential units, commercial uses, and open spaces. The Company states that the total number of potential new connections is estimated to be approximately 1,904. It is expected that these properties will be developed over the next 10 to 15 years.

The Company represents that no other utility currently provides water or sewer service to the New Areas. Further, the Company states that the same rates for water and sewer services as contained in the tariffs on file with the Commission will apply to the New Areas and no change in those rates are being sought in connection with the application. The same availability fee for single family residential lots applied in the Company's current service area will also be applied in the New Areas.¹

Great Eastern Development Corporation ("Great Eastern"), one of the owners of the new property, has agreed to install and fund the costs of the necessary water and wastewater facilities at no cost to Massanutten.

On December 17, 2002, the Commission issued a procedural order docketing the case, directing the Company to give notice of its application, inviting interested persons to comment and/or request a hearing on the application, and directing the Staff to review the application and file a report. In that Order, we stated that we would also treat the application as a request for a certificate pursuant to § 56-265.2 of the Code of Virginia. Further, because Great Eastern will own the facilities until they are conveyed to the Company, we deemed the application as a request for approval of the acquisition of utility assets pursuant to § 56-89 of the Code of Virginia.

On December 19, 2002, Massanutten filed two amendments to the application. The first amendment revised the amount that the Company has agreed to reimburse Great Eastern from \$2.3 million to a maximum of \$2.7 million, based on the number of connections in the New Areas. The second amendment revised the total number of potential new connections to approximately 2,250.

The Commission entered an order on December 31, 2002, permitting the Company to amend its application, directing Massanutten to publish a revised notice, and extending the dates for interested persons to comment and/or request a hearing on the application.

On January 2, 2003, the Company filed proof of service on the Rockingham County Board of Supervisors, and filed proof of newspaper publication on January 29, 2003.

On January 28, 2003, the Board of Supervisors of Rockingham County filed a letter stating that it voted to support Massanutten's application. In the letter, the Board of Supervisors stated that the water and sewer services that the Company proposes to provide are critical for the approved development, and requested that the Commission approve the application.

On February 28, 2003, the Staff filed its report. In the report, the Staff recommends the following: (1) that the Commission approve the transfer of water and wastewater utility assets from Great Eastern to Massanutten pursuant to § 56-89 of the Code of Virginia; (2) that Massanutten file quarterly status reports with the Commission providing notice of transfers which have taken place, identifying the facilities transferred and the dates of transfers; (3) that Massanutten be required to maintain detailed records supporting the capital assets contributed by Great Eastern, and record such assets in accordance with the Uniform System of Accounts for Water and Wastewater Utilities, and file an Annual Informational Filing ("AIF") based on calendar year 2002 operations on or before July 31, 2003; (4) that the Commission grant Massanutten's request for amended certificates pursuant to § 56-265.3 D of the Code of Virginia permitting the Company to operate in the designated New Areas of Rockingham County, Virginia; and (5) that Massanutten be granted a certificate of public convenience and necessity pursuant to § 56-265.2 of the Code of Virginia permitting the acquisition of new water and sewer facilities in the designated New Areas.

On March 11, 2003, counsel for Massanutten filed a letter requesting that the Commission issue a final order granting the Company's application and the requisite approvals associated with that application.

NOW THE COMMISSION, having considered Massanutten's application, §§ 56-89, 56-265.3 D, and 56-265.2 of the Code of Virginia, and the Staff's report, is of the opinion and finds that the Company's requests should be granted. We find that the transfer of facilities from Great Eastern to Massanutten pursuant to the Utility Transfers Act will not impair or jeopardize adequate service at just and reasonable rates. We also find, pursuant to §§ 56-265.2 and 56-265.3 D of the Code of Virginia, that the public convenience and necessity require us to issue a certificate to Massanutten to provide water and sewer service to the New Areas in Rockingham County, Virginia.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the Utility Transfers Act, approval is hereby granted for the transfer of water and wastewater utility assets from Great Eastern to Massanutten as installed.

¹ Availability fees may be imposed only by agreement, such as through a contract or restrictive covenant.

(2) Massanutten shall file quarterly status reports with the Commission's Division of Public Utility Accounting providing notice of transfers that have taken place. Such reports should identify the facilities transferred and the dates of transfers.

(3) Massanutten shall maintain detailed records supporting the capital assets contributed by Great Eastern, record such assets in accordance with the Uniform System of Accounts for Water and Wastewater Utilities, and file an AIF based on calendar year 2002 operations or before July 31, 2003.

(4) Certificate Nos. W-252 and S-75 are hereby canceled.

(5) Massanutten shall be granted an amended certificate of public convenience and necessity, Certificate No. W-252(a), to furnish water service in Massanutten Village and the Newman (Hopkins) Development, as well as in the New Areas in Rockingham County, Virginia, all as shown on the map attached to the certificate, at the Company's current rates, charges, rules and regulations of service.

(6) Massanutten shall be granted an amended certificate of public convenience and necessity, Certificate No. S-75(a), to furnish sewer service in Massanutten Village and the Newman (Hopkins) Development, as well as in the New Areas in Rockingham County, Virginia, all as shown on the map attached to the certificate, at the Company's current rates, charges, rules and regulations of service.

(7) Massanutten shall submit for review and filing a revision to its tariff that specifically identifies connection fees for services located in the New Areas.

(8) There being nothing further to be done, this matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUE-2002-00572
JANUARY 27, 2003**

PETITION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For an exemption of transfers of equipment between affiliated generation companies from the filing and prior approval requirements of Chapter 4, Title 56 of the Code of Virginia or, in the alternative, prior approval of such transfers

ORDER GRANTING APPROVAL

On October 30, 2002, Virginia Electric and Power Company ("Dominion Virginia Power" or the "Company") filed a petition with the State Corporation Commission ("Commission") under Chapter 4 (§ 56-76, et seq.) of Title 56 of the Code of Virginia ("Code") for exemption from the prior approval and filing requirements thereof, or, in the alternative, for approval of Dominion Virginia Power's sales and/or purchases of inventoried materials, parts, and equipment ("Inventory") to and from affiliated generation companies.¹

Currently, Dominion Virginia Power consults, among other similar sources, the RAPID (Readily Accessible Parts Information Directory) system, an online database available to utilities, for the rapid procurement of needed equipment from other utilities and other companies for the maintenance and repair of generation facilities on an expeditious basis, including during forced and scheduled outages. The Company states that it must expeditiously obtain needed parts to prevent extensions of scheduled and forced outages, which may result in additional costs for power and decreased reliability. The Company plans to continue to use the RAPID system or other similar sources.

In addition, to maximize the availability of needed parts on an expeditious basis, the Company seeks to share Inventory, as it does with non-affiliated companies, with other affiliated generation companies. Such affiliated generation companies include the following: Armstrong Energy Limited Partnership, LLLP; Dominion Nuclear Connecticut, Inc.; Dresden Energy, LLC, Elwood Energy, LLC; Kincaid Generation, L.L.C.; Pleasants Energy, LLC; State Line Energy, L.L.C.; Troy Energy, LLC; and other Dominion Virginia Power generation affiliates.

Under the proposed sharing of Inventory, neither Dominion Virginia Power nor its generation company affiliates would be obligated to purchase and/or sell the Inventory under the proposed arrangement. Rather, Dominion Virginia Power seeks the option to purchase and sell the Inventory as part of a cooperative effort to improve the availability of needed parts in order to operate more efficiently and reliably and to lower the costs related to the purchase and storage of Inventory. Dominion Virginia Power represents that there is a recurring need for spare equipment and parts, as demonstrated by exchanges between the Company's own generation units.

Dominion Virginia Power is proposing to use the moving average cost of equipment, which is the average Inventory in stock, as its basis for calculating the price of the proposed transactions. The Company indicates that this method of pricing would apply to both sales and purchases of the Inventory for all generation affiliates, including Dominion Virginia Power. After discussion with Staff regarding moving average pricing, by letter dated January 15, 2003, counsel for Dominion Virginia Power proposed the following transfer pricing modifications:

(1) For items with a unit price of \$10,000 or less, the transfer should occur at the moving average cost;

(2) For items with a unit price of greater than \$10,000, the transfer should occur at the moving average cost if the moving average cost is within 10% of the last purchase price in Inventory and the last purchase made for the unit was within the previous six months; and

¹ On December 20, 2002, the Commission issued its Order Extending Time for Review in which it extended its time for reviewing the petition through January 28, 2003.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(3) If neither (1) or (2) applies, moving average cost is not deemed to equal market price for a particular transfer of the item, and market price must be independently obtained and documented (e.g., contact usual vendor(s) to obtain price(s)). Then, (a) sale of the item by Dominion Virginia Power to affiliated companies would be at the higher of cost or market (obtained by independent information) or moving average cost, or (b) purchase of the item by Dominion Virginia Power from affiliated companies would be made at the lower of the market price (obtained by independent information) or the moving average cost. If an item is obsolete and no current (within the last six months) market price can be obtained through usual vendor(s), then obsolescence would be documented, and the item would be transferred at the moving average cost.

THE COMMISSION, upon consideration of the petition and representations of the Company and having been advised by its Staff, is of the opinion and finds that the requested exemption should be denied. We believe, however, that the proposed sharing of inventory, subject to certain modifications made in the proposed transfer pricing of shared Inventory as detailed herein, is in the public interest.

We also believe that, should a generation affiliate decide to sell a part obtained from Dominion Virginia Power within 12 months of purchase and sells the part at a price higher than that paid to Dominion Virginia Power, the difference should benefit Dominion Virginia Power.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 56-77 of the Code, the requested exemption is hereby denied.
- (2) Pursuant to § 56-77 of the Code, Dominion Virginia Power is hereby granted approval for the proposed sales and/or purchases of inventoried materials, parts, and equipment to and from affiliated generation companies subject to the modifications to the proposed moving average cost transfer pricing as detailed herein.
- (3) Should an affiliate purchase a part from Dominion Virginia Power and then resell the part to a third party within 12 months of purchase at a price higher than that paid to Dominion Virginia Power, the difference shall be returned to Dominion Virginia Power.
- (4) Should there be any changes in the terms and conditions of the inventory sharing arrangement from those contained herein, Commission approval shall be required for such changes.
- (5) The approval granted herein shall have no ratemaking implications.
- (6) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.
- (7) The 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.
- (8) Dominion Virginia Power shall include the inventory sharing arrangement approved herein in its Annual Report of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting.
- (9) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then Dominion Virginia Power shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.
- (10) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2002-00573
JANUARY 21, 2003**

PETITION OF
VIRGINIA ELECTRIC AND POWER COMPANY
and
DOMINION ENERGY, INC.

For an exemption from the filing and prior approval requirements of Chapter 4 of Title 56 of the Code of Virginia or, in the alternative, approval of the transfer of inventory and Parts Reimbursement Agreement

ORDER GRANTING APPROVAL

On October 30, 2002, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company") and Dominion Energy, Inc. ("Dominion Energy") (collectively, the "Petitioners"), filed a petition with the State Corporation Commission ("Commission") under Chapter 4 (§ 56-76, et seq.) of Title 56 of the Code of Virginia ("Code") for exemption from the prior approval and filing requirements thereof or, in the alternative, for approval of transfer of inventory and Parts Reimbursement Agreement. More specifically, Dominion Virginia Power requests approval to transfer inventory from Dominion Virginia Power to Dominion Energy at the price it paid for it, \$23,864,473, and to enter into a Parts Reimbursement Agreement with Dominion Energy in connection with a maintenance and repair agreement with General Electric International, Inc. ("GEII"). The subject of the petition is a volume-based fleet agreement with GEII for repair and maintenance of electric generating units owned by Dominion Virginia Power and Dominion Energy and its affiliates.

Dominion Virginia Power and Dominion Energy purchased gas turbine generators from an affiliate of GEII and plan to purchase additional similar units in the future. Under the volume-based fleet agreement and individual agreements with Dominion Virginia Power and Dominion Energy, GEII will repair and maintain these generators. By including Dominion Virginia Power's generating units along with Dominion Energy's generating units under the agreements with GEII, Dominion Virginia Power and Dominion Energy have been able to negotiate significant discounts on costs for services and parts for both Dominion Energy and Dominion Virginia Power.

Agreement with GEII

On March 28, 2002, Dominion Energy entered into a Multi-Unit Master Contractual Service Agreement ("Master CSA") with GEII. Dominion Energy (through its subsidiaries) and Dominion Virginia Power have constructed six simple cycle generating facilities and are in the process of constructing three combined cycle electric generating facilities. Additional electric generating facilities are in the planning phase. Dominion Energy and Dominion Virginia Power purchased certain gas turbine generators (the "Covered Units") from an affiliate of GEII. Dominion Energy entered into the Master CSA with GEII for GEII to provide long-term maintenance services for the Covered Units.

Along with the Master CSA, the terms and conditions for GEII's long-term maintenance services to be provided to Dominion Virginia Power and the unregulated affiliates will be governed by individual Contractual Service Agreements (each a "CSA"), which each Dominion Resources, Inc. ("Dominion") subsidiary will (or has) executed individually with GEII. The individual CSAs will differ only in the entity that is a party to the agreement.

In order to fulfill its obligations under the Master CSA and the individual CSAs with Dominion subsidiaries, the Master CSA envisions the creation of an Initial Fleet Spares Inventory ("IFSI"). The IFSI is the inventory of parts that will be stored at a location designated by Dominion Energy and will be used by GEII to support and maintain the Covered Units.

IFSI

Dominion Virginia Power and Dominion Energy acquired the IFSI in December 2001 from GEII for \$26,500,000, which Dominion Virginia Power represents is significantly below market rates. More specifically, prior to the execution of the Master CSA, Dominion Virginia Power purchased \$23,864,473 worth of inventory, which was intended for use as part of the IFSI by Dominion Virginia Power and the various Dominion affiliates pursuant to the terms of the Master CSA. It was contemplated that, upon execution of the Master CSA, the IFSI would be transferred to an affiliate for administration of the IFSI in conjunction with the Master CSA. Dominion Energy purchased \$2,635,527 worth of inventory, which is currently stored in Elwood, Illinois. The Master CSA and the individual CSAs envision that the IFSI will be owned by Dominion Energy and managed by GEII. Company requests approval to transfer the IFSI at the price paid for it in December 2001.

Operation of the IFSI and the Parts Reimbursement Agreement

Dominion Energy will own, and GEII will manage the IFSI. GEII may use parts from the IFSI in the performance of Planned Maintenance, Unplanned Maintenance, and Extra Work as defined in the Master CSA. Dominion Energy, as owner of the IFSI, must be able to have an ongoing ability during the term of the agreements to transfer parts from the IFSI to GEII to be used on behalf of Dominion Virginia Power and to have Dominion Virginia Power pay Dominion Energy for those parts. Dominion Energy will then pay GEII. In order to conduct the necessary transactions, Dominion Virginia Power and Dominion Energy propose to conduct these sales pursuant to a Parts Reimbursement Agreement.

Under the Parts Reimbursement Agreement between Dominion Virginia Power and Dominion Energy, GEII may use parts from the IFSI for Planned Maintenance, Unplanned Maintenance, and Extra Work for Dominion Virginia Power's generation units. For Planned Maintenance, GEII may use the parts from the IFSI, but GEII must replace the parts at no additional expense to the Company. For Unplanned Maintenance or Extra Work, GEII may use the parts from the IFSI, and GEII must replace the parts. However, Dominion Virginia Power will pay the GEII price by reimbursing Dominion Energy for the price paid by Dominion Energy to GEII. Such price will be based on the discounted rates established in the Master CSA and the individual CSAs. Dominion Virginia Power represents that such discounts on initial spare parts and subsequent purchases of spare parts provided for in each CSA were achieved on a Dominion fleet volume basis to the benefit of Dominion Virginia Power and its affiliates.

Dominion Virginia Power states that both the transfer of inventory and the Parts Reimbursement Agreement are necessary for the successful implementation of the Master CSA between Dominion Energy and GEII and the CSA between Dominion Virginia Power and GEII. The Company further states that successful implementation of such transactions with GEII are in the public interest because they improve efficiency and reliability and reduce costs of Dominion Virginia Power's electric generating operations through the realization of discounts. In addition, Dominion Virginia Power's reliability of its Covered Units is improved because there are two complete sets of spare parts that are in possession of a Dominion entity, thereby reducing risk, cost, and time by significantly reducing reliance on outside sources for the spare parts.

As stated in the petition, Dominion Virginia Power will realize significant efficiencies and savings as part of the overall agreement with GEII. The transfer of the IFSI will be a one-time isolated transaction with such inventory being transferred at the exact cost that Dominion Virginia Power paid for it. Under the Master CSA, the individual CSAs, and the Parts Reimbursement Agreement, Dominion Virginia Power and its unregulated affiliates are all treated equally. Dominion Virginia Power states that there is a benefit to the Company and no advantage to the unregulated affiliates as the terms of the agreement with GEII apply equally to both the regulated and unregulated Dominion affiliates.

Furthermore, GEII is obligated under the contract to treat Dominion Virginia Power as a "preferred" customer, so it will obtain priority in terms of service and replenishment of parts. Financially, participation in the agreement with GEII is expected to reduce Dominion Virginia Power's costs significantly over the course of the contract. Further benefits, as represented by Dominion Virginia Power, are lower inventory costs, lower Unplanned Maintenance costs, and risk management strategies built into the contract.

Dominion Virginia Power's research and analysis of the consequences of Dominion Energy holding title to the IFSI versus Dominion Virginia Power holding title revealed that housing the inventory in Armstrong County, Pennsylvania, the site of the Armstrong Energy Limited Partnership, LLP merchant facility, is beneficial from both a physical proximity to the entire Dominion fleet of units as well as a tax liability standpoint. According to the Company's research, parts from the IFSI could be physically obtained from the Armstrong County, Pennsylvania, location and transferred to the Virginia location in about five driving hours.

In addition, it would be more beneficial for Dominion Energy to hold title to the IFSI. If Dominion Virginia Power were to hold title and house the inventory in Armstrong County, Pennsylvania, Dominion Virginia Power would incur significantly greater state tax liability in Pennsylvania than Dominion Energy.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Dominion Energy and the Company also considered housing the inventory in Virginia. However, this is a less central location for physical access to the IFSI for the Dominion fleet of units and would result in additional tax liabilities.

As a result, Dominion Virginia Power and Dominion Energy determined that the most current cost-effective option and the most central location are to house the IFSI in Armstrong County, Pennsylvania.

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 requested exemption from the filing and prior approval requirements of Chapter 4 of Title 56 of the Code is not in the public interest and should, therefore, be denied. We do believe, however, that the above-described transfer of inventory and Parts Reimbursement Agreement are in the public interest and should be approved.

We believe that the proposed transfer of inventory and Parts Reimbursement Agreement will enable Dominion Virginia Power to maintain a lower spare parts inventory and will allow it to realize savings through discounts from GEII as well as some tax savings. We believe, however, that Dominion Virginia Power should submit an analysis with the Division of Public Utility Accounting on an annual basis showing that benefits continue to accrue to the Company from participation in the Parts Reimbursement Agreement. We further believe that any approval granted herein should not in any way affect our decision in Dominion Virginia Power's functional separation case, Case No. PUE-2000-00584.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 56-77 of the Code, the Petitioners' requested exemption is hereby denied.
- (2) Pursuant to § 56-77 of the Code, Dominion Virginia Power and Dominion Energy are hereby granted approval for the proposed transfer of inventory from Dominion Virginia Power to Dominion Energy and for the proposed Parts Reimbursement Agreement under the terms and conditions and for the purposes as described herein.
- (3) Should there be any changes in the terms and conditions of the Parts Reimbursement Agreement from those described herein, Commission approval shall be required for such changes.
- (4) Dominion Virginia Power shall submit a report with the Commission's Division of Public Utility Accounting containing an analysis showing that Dominion Virginia Power continues to benefit from the Parts Reimbursement Agreement. Such report shall be submitted at the same time as Dominion Virginia Power submits its Annual Report of Affiliate Transactions.
- (5) The approvals granted herein shall in no way affect our decision in Dominion Virginia Power's functional separation case, Case No. PUE-2000-00584.
- (6) The approvals granted herein shall have no ratemaking implications.
- (7) The approvals granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.
- (8) The Commission reserves the authority to examine the books and records of any affiliate in connection with the approvals granted herein whether or not the Commission regulates such affiliate.
- (9) Dominion Virginia Power shall include the transfer of inventory and the Parts Reimbursement Agreement in its Annual Report of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting.
- (10) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then Dominion Virginia Power shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.
- (11) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2002-00575
APRIL 2, 2003**

APPLICATION OF
SHENANDOAH VALLEY ELECTRIC COOPERATIVE

Application for approval of retail access tariffs and terms and conditions of service for retail access

FINAL ORDER

On November 1, 2002, Shendandoah Valley Electric Cooperative ("SVEC" or the "Cooperative") filed an application for State Corporation Commission ("Commission") approval of the Cooperative's retail access tariffs and terms and conditions of service for retail access, as required by paragraph (11) of the Commission's Final Order approving the Cooperative's plan for functional separation issued on December 18, 2001, in Case. No. PUE-2000-00748 ("functional separation case"), and pursuant to the Virginia Electric Utility Restructuring Act ("the Act"), Chapter 23 of Title 56 (§ 56-576 et seq.) of the Code of Virginia.¹

¹ On November 1, 2001, SVEC, in association with the other electric cooperatives in Virginia, filed a Comprehensive Wires Charge Proposal, Case No. PUE-2001-00306, Ex Parte: In the matter of considering requirements relating to wires charges pursuant to the Virginia Electric Utility Restructuring Act, ("wires charge case"). The Commission rendered a decision in this case on May 24, 2002.

SVEC's filing included: (1) Unbundled Tariffs and Rate Schedules for All Classes for Competitive (Retail Access) Service; (2) Terms and Conditions of Service for Retail Access- General Rules and Regulations; (3) Competitive Service Provider Coordination Tariff, including, Competitive Service Provider Agreement, Electronic Data Interchange Trading Partner Agreement, Transmission Customer Designation Form, CSP Dispute Resolution Procedure, and Aggregator Agreement. On November 15, 2002, SVEC filed a Motion for Leave to Amend Application to Update Analysis and Updated Analysis, providing updated projected market prices and resulting wires charges to incorporate unadjusted base market prices contained in Dominion Virginia Power's ("DVP's") 2002 compliance filing.

On January 14, 2003, the Commission issued an Order Prescribing Notice And Inviting Comments And Requests For Hearing ("Order") in this proceeding, whereby it granted the Cooperative's motion, directed the Cooperative to publish notice of its application, and directed the Staff to investigate the application and file a report detailing its findings and recommendations. On February 27, 2003, the Cooperative filed its required proof of publication of notice and proof of notice to local governments, as required by the Order.

On March 4, 2003, the Staff filed its Report in this proceeding wherein it recommended that the Commission approve SVEC's tariffs and terms and conditions with the adoption of certain modifications recommended by Staff. Staff stated in its report that the methodology employed by SVEC in calculating projected market prices for generation applicable for the rate classes that will participate in retail choice was the methodology set forth in the electric cooperatives' Comprehensive Wires Charges Proposal, approved by Commission order issued May 24, 2002, in the wires charge case. The Staff further indicated that the Cooperative, through its amendment, employs up-to-date market information consistent with market prices in place for DVP's service territory. Staff found that the Cooperative's methodology for calculation of competitive transition charges ("CTCs") was appropriate, however, Staff further recommended that the value used for the fuel adjustment currently based on SVEC's October 2002 fuel factor should be updated to reflect the most recent actual monthly fuel adjustment available prior to its initiation of retail access in its service territory. The Staff accepted the Cooperative's proposal reflected in its filed commitment document for the allocation of wires charges revenue between SVEC and its electricity supply cooperative, Old Dominion Electric Cooperative ("ODEC"). Because the commitment agreement permits the parties to renegotiate the sharing ratios for the next year prior to December 31, 2003, and year-to-year thereafter, pursuant to Va. Code § 56-584, the Staff recommended that if the agreement is renegotiated after December 31, 2003, the renegotiated agreement must be submitted to the Commission for approval.

Staff further found that the proposed retail access schedules were consistent with the currently effective bundled service schedules and the rates proposed for each service class properly reflect the pricing approved by the Commission in SVEC's last rate case, Case No. PUE-2000-00747², and its functional separation case. SVEC proposes a bundled lighting service schedule in this proceeding. The Staff argued in its Report this provision of lighting service may conflict with Va. Code § 56-577 A 4, which provides that after January 1, 2004, retail customers may purchase electric energy from any supplier of electric energy licensed to sell retail electric energy in Virginia. Thus, Staff recommended that if the Commission determines that this service is not permitted as proposed by SVEC, the Cooperative should file retail access tariffs for this service using distribution rates established for this schedule in its functional separation case. In addition, the Staff recommended that historical summary usage information should be made available to a CSP as part of the mass list, consistent with the Retail Access Rules, 20 VAC 5-312-10 *et seq.*, specifically, Rule 20 VAC 5-312-60 B 1 (ix). Staff further recommended that SVEC amend its tariffs to conform with Rule 20 VAC 5-312 60 D. Rule 60 D requires the CSP to obtain customer authorization prior to requesting any customer usage information not included on the mass list from the local distribution company. The Staff further recommended that the Cooperative's proposed EDI exceptions should be addressed through the Virginia Electronic Data Transfer Working Group ("VAEDT"), and that the exceptions be removed from SVEC's proposed tariffs. Staff further accepted as cost-based the imposition of new fees for Technical Support ("IT"), Customer Service Representative ("CSR") and Wire Transfer. Staff accepted the Competitive Service Provider, Aggregator and Trading Partner Agreements, finding that they were consistent with the Retail Access Rules, and that the agreements may be expanded as agreed to between SVEC and the contracting CSP or aggregator, consistent with the Commission's Rules and directives. Finally, the Staff found that the proposed dispute resolution procedure was appropriate and should be accepted.

On March 17, 2003, SVEC filed its response to the Staff Report ("Response"). In its Response, SVEC agreed with the Staff that its CTC calculations are to be updated prior to commencement of retail access in its service territory to take into consideration the most current fuel factor adjustment. The Cooperative stated that it would make a compliance filing including amended rate schedules that would reflect the updated information. With regard to the wires charges, SVEC does not agree with Staff's position that under Va. Code § 56-584, the Commission is to determine the apportionment of the wires charges revenue between the distribution cooperative and its power supply cooperative. SVEC argues that wires charges are determined by the Commission according to a mathematical equation based on the Commission's determination of the applicable market rate and the generation rate cap, and are not attributed or related to any corresponding stranded cost or transition cost determination. The Cooperative argues, therefore, that there is no available statutory or regulatory basis for the Commission to allocate or apportion wires charge revenue. SVEC also takes issue with Staff's recommendation that its binding commitment must be approved by the Commission if renegotiated. The Cooperative states that it does not agree that it is necessarily precluded from ever again collecting wires charges in the event of termination or some other lapse in its agreement with ODEC. SVEC argues that if the binding commitment is renegotiated or renewed after a lapse, once SVEC provided evidence to the Commission that it had entered into a new binding commitment, the Commission should again establish and determine wires charges for the Cooperative.

The Cooperative also argues that it provides lighting service not as a separate energy service, but by supplying light from a Cooperative-owned light fixture, and as such, the Cooperative does not regard this as a sale and purchase of "electric energy" under Va. Code § 56-577 A 4. Furthermore, SVEC states that the Commission approved SVEC's lighting service rate schedules in Case No. PUE-2000-00747, and thus, they are the filed rate schedules in effect for this service.

In response to a recommendation in the Staff Report, SVEC offered to amend Section VII-G to reflect that load profiles may be made available to customers or authorized CSPs on the local distribution company's website or by other appropriate cost-effective electronic media, to conform that section with the Retail Access Rules. Furthermore, SVEC also proposed to amend Section 9.1.4 of the CSP Coordination Tariff to provide that the Cooperative will electronically provide customer summary usage information not included on the mass list, if available to a CSP if that customer authorizes the release of such information, in accordance with the Retail Access Rules. SVEC agreed to Staff's recommendation that the references to exceptions to certain EDI transactions be removed from its CSP Coordination Tariff if they are approved by the VAEDT. In addition, in taking issue with Staff's comments in its Report, SVEC requests specifically that the Commission afford the CSP, Aggregator and Trading Partner Agreements recognition as part of SVEC's filed and approved CSP Coordination tariff.

² Application of Shenandoah Valley Electric Cooperative for an increase in rates, 2001 S.C.C. Ann. Rep 507.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOW THE COMMISSION, having given due regard to the Cooperative's application, Staff's Report, SVEC's response, and applicable law, hereby approves SVEC's application, as recommended by Staff and subject to the modifications detailed herein.

We incorporate, by reference, our findings in the Wires Charge Case (Case No. PUE-2001-00306). The Cooperative's proposed CTC reflects the appropriate fuel adjustments and wires calculation. The wires charges established by this order are subject to the limitation of Va. Code § 56-583, which permits adjustments no more frequently than annually. Thus, these wires charges are effective for at least twelve months from the date the Cooperative commences retail access in the Commonwealth, in conformance with Ordering Paragraph (5) of the May 24, 2002, Order in the wires charge case. As discussed above, the value used for the fuel adjustment to base generation should be updated to reflect the most recent actual monthly fuel adjustment available prior to SVEC initiating retail access in its service territory.

With respect to SVEC's commitment document with ODEC to reflect the allocation of wires charge revenue, we accept the Cooperative's proposal, however, with the condition that if the commitment agreement is renegotiated to change the revenue sharing ratio, SVEC must submit the renegotiated agreement to the Commission for further approval. Virginia Code § 56-584 states, in pertinent part:

To the extent not preempted by federal law, the establishment by the Commission of wires charges for any distribution cooperative shall be conditioned up such cooperative entering into binding commitments by which it will pay to any power supply cooperative of which such distribution cooperative is or was a member, as compensation for such power supply cooperative's stranded costs, all or part of the proceeds of such wires charges, as determined by the Commission.

We find that the plain language of the statute specifies that the allocation of wires charges between a power supply cooperative and a distribution cooperative is established "*as determined by the Commission.*"

With respect to SVEC's proposed bundled lighting service schedule, we will accept the Company's proposed schedules. We have previously approved such schedules in Case No. PUE-2000-00747.

We accept the Cooperative's proposed amendments to Sections VII G and 9.1.4 of the CSP Coordination Tariff. We find that the revisions comply with the applicable provisions of the Retail Access Rules.

With respect to proposed exceptions to certain EDI transactions, we have been advised that the VAEDT has approved the Cooperative's proposals as part of the VAEDT Plan and Implementation Standards. We therefore direct the Cooperative to file, as soon as practicable, revised tariff sheets reflecting the removal from its tariffs all references to its proposed EDI exceptions.

With respect to the proposed new IT, CSR and Wire Transfer fees, we adopt these fees as proposed by SVEC.

With regard to the CSP, Trading Partner, and Aggregator Agreements, the Commission in Case No. PUE-2000-000584, included these same type of agreements as attachments to Virginia Power's CSP Coordination Tariff. SVEC proposes to treat them in the same manner, and we accept their inclusion as attachments to the CSP Coordination Tariff.

Accordingly, IT IS ORDERED THAT:

- (1) SVEC's tariffs and terms and conditions of service as recommended by Staff and subject to the modifications discussed herein are hereby approved.
- (2) SVEC shall file revised tariff sheets reflecting the removal of proposed EDI exceptions as soon as practicable after the date of this order.
- (3) SVEC may initiate retail choice in its service territory upon the filing required by paragraph (2) above.
- (4) This case is hereby dismissed, and the papers shall be placed in the file for ended causes.

**CASE NO. PUE-2002-00576
JULY 31, 2003**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
HARRY M. LANTZ
v.
MONTVALE WATER COMPANY, INC.

FINAL ORDER

By notice dated August 20, 2002, pursuant to the Small Water or Sewer Public Utility Act, §§ 56-265.13:1 *et seq.* of the Code of Virginia ("Code"), Montvale Water Company, Inc. ("Montvale" or the "Company"), notified its customers and the State Corporation Commission ("Commission") of its intent to increase its rates and fees effective for service rendered on and after November 1, 2002. By November 1, 2002, the Commission's Staff had received objections to that proposed rate increase from approximately thirty-two percent (32%) of Montvale's customers.

By Preliminary Order dated November 6, 2002, the Commission determined that a hearing should be scheduled on the Company's proposed rate increase; that the Company's proposed rates and fees should be declared interim and subject to refund; and that the Company should file certain financial information with the Commission's Division of Public Utility Accounting on or before December 2, 2002. By Order entered on November 19, 2002, the

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Commission scheduled the matter for hearing, appointed a Hearing Examiner to conduct all further proceedings, and directed the Company to give notice of its proposed rates and fees.¹

In a Ruling dated December 16, 2002, the Hearing Examiner granted the Company's "Motion to Amend Notice to Customers on Raising of Rates" to reflect accurately the Company's proposed changes in water usage rates.² The Company's proposed rates and fees, as corrected, are as follows:

	<u>Current</u>	<u>Proposed</u>
Minimum Charge	\$7.00 (3,000 gallons of water usage)	\$20.75 (2,000 gallons of water usage)
	Next 2,000 gallons \$2.50/1,000 gallons	Next 3,000 gallons at at \$2.25/1,000 gallons
	Next 5,000 gallons \$2.00/1,000 gallons	Next 3,000 gallons at at \$3.25/1,000 gallons
	Next 10,000 gallons at \$1.20/1,000 gallons	Over 8,000 gallons at \$5.00/1,000 gallons
	Over 20,000 gallons at \$1.00/1,000 gallons	
Connection Fee	\$750.00	\$1,500.00

A local public hearing was held in Bedford, Virginia, on March 18, 2003. Eight persons testified at that hearing, five of whom objected to the proposed rate increase. The primary objections were as follows: (1) the Company should not be serving the Montvale Elementary School and the County of Bedford's industrial park; (2) the Company's rates are quadrupling; and (3) the minimum monthly usage is decreasing from 3,000 to 2,000 gallons.

The hearing was resumed on April 16, 2003.

On June 30, 2003, Hearing Examiner Michael D. Thomas filed his Report. In his discussion of the issues raised by customers, the Hearing Examiner noted the need for system upgrades, insufficient capital to fund improvements, and revenues insufficient to attract the capital needed to make such improvements. The Hearing Examiner noted that the Company's current water rates are among the lowest in Virginia and that the Company had not strayed from its non-profit roots.

The Hearing Examiner commended the Company for obtaining the grant/loan package to fund the system upgrades. The Company has obtained almost \$1 million in grants, \$480,300.00 from the United States Department of Agriculture, Rural Development ("USDA") and \$500,000.00 from the County of Bedford ("County"), which the Company's customers do not have to repay. The remainder of the improvements will be paid from the proceeds of the USDA loan, payable over a 40-year period at an interest rate of 4.5%. The Hearing Examiner noted that, based on the Preliminary Engineering Report, attached to Montvale witness Karnes' pre-filed testimony, if Montvale had to fund the improvements solely through revenues, customers' rates would need to increase from \$7 per month to approximately \$44 per month.

With respect to the objections raised by the customers, the Hearing Examiner stated that Montvale's Articles of Incorporation show that the water company was initially formed to serve commercial and industrial customers and that there was nothing to preclude the Company from extending service to the Montvale Elementary School or the County's industrial park. In discussing the Company's proposed rates, the Hearing Examiner stated that customer bills will average between \$20.75 and \$23.00 per month based on the Company's customers' average monthly usage. He found that such rates were not unreasonable especially since the Company's customers will not have to pay for two-thirds of the cost of the system upgrades. He agreed that decreasing the monthly minimum usage from 3,000 to 2,000 gallons would provide greater revenue certainty for the Company.

Finally, the Hearing Examiner found that:

- (1) The Company's proposed increasing block rates and usage blocks are reasonable;
- (2) The Company's proposed \$1,500 connection fee is reasonable;
- (3) The Company should adopt Staff's booking recommendations;³

¹ The hearing date and the procedural schedule were subsequently extended pursuant to a Hearing Examiner's Ruling dated December 4, 2002.

² The Company did not implement its proposed increase in rates and fees on an interim basis until April 1, 2003.

³ Staff's booking recommendations, as detailed in Staff Witness Armistead's pre-filed testimony, are as follows: (1) maintain all invoices in the utility company's file that pertain to both expense and capital disbursement; (2) maintain property reports on capitalized plant items; (3) restate plant, accumulated depreciation, contribution in aid of construction ("CIAC"), and accumulated amortization of CIAC as of December 31, 2001, to levels reflected in Column (4) of Statement II of Staff Witness Armistead's pre-filed testimony; (5) book connection fees and contributed property to Account 271 (CIAC); and (6) amortize CIAC at a 3% composite rate over the life of the associated plant. Ex. 4 at page 9.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- (4) The Company should determine its tax status and make the appropriate filings with the Internal Revenue Service;
- (5) The Commission should require the Company to escrow the monthly loan payment of \$2,421, plus the reserve portion of \$242 a month, until such time as the USDA loan is disbursed and the funds are needed to make payments on the loan;
- (6) The Commission should require the Company to file quarterly reports with the Commission detailing the progress of the system upgrades and showing the escrow account balances until relieved of such responsibility by the Commission's Director of Public Utility Accounting; and
- (7) The Company should adopt Staff's recommended tariff.

The Hearing Examiner recommended that the Commission enter an Order that adopts the findings in his Report; grants the Company the requested increase in its rates and connection charges; directs the Company to escrow the monthly loan payment of \$2,421, plus the reserve portion of \$242 a month, until such time as the USDA loan is disbursed and the funds are needed to make payments on the loan; directs the Company to file quarterly reports with the Commission detailing the progress of the system upgrades and showing the escrow account balances until relieved of such responsibility by the Commission's Director of Public Utility Accounting; and dismisses this case from the Commission's docket of active causes and passes the papers herein to the file for ended causes.

By letter filed on July 7, 2003, counsel for Montvale stated that the Company took no exception to the Hearing Examiner's Report.

NOW THE COMMISSION, having considered the record, the Hearing Examiner's Report, and the comments filed thereto, is of the opinion and finds that the Hearing Examiner's findings and recommendations should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the Hearing Examiner's June 30, 2003, Report are hereby adopted.
- (2) Pursuant to the Small Water or Sewer Public Utility Act (§ 56-265.13:1 *et seq.* of the Code), Montvale Water Company, Inc., may implement its proposed increase in rates and connection fee on a permanent basis effective as of the date of this Order.
- (3) Within thirty (30) days from the date of this Order, the Company shall submit to the Commission's Division of Energy Regulation rates, rules, and regulations of service consistent with the terms of this Order.
- (4) The Company shall implement Staff's booking recommendations and the recommendation regarding the determination of Montvale's tax status and the appropriate filing thereof.
- (5) The Company shall escrow the monthly loan payment of \$2,421, plus the reserve portion of \$242 a month, until such time as the USDA loan is disbursed and the funds are needed to make payments on the loan.
- (6) The Company shall file quarterly reports with the Commission detailing the progress of the system upgrades and showing the escrow account balances until relieved of such responsibility by the Commission's Director of Public Utility Accounting. The first report covering the effective date of rates through June 30, 2003, shall be filed on or before August 30, 2003. Subsequent reports shall be filed no more than 30 days after each calendar quarter.
- (7) This case is hereby dismissed from the Commission's docket of active cases, and the papers placed in the file for ended causes.

**CASE NO. PUE-2002-00641
MAY 29, 2003**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
CENTRAL LOCATING SERVICE, LTD.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia, the Virginia 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 ("Act"). 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 between May 21, 2002, and September 13, 2002, listed in Attachment A, involving Central Locating Service, Ltd. ("Company"), and alleges that:

- (1) The Company is a contract locator as that term is defined in § 56-265.15 of the Code of Virginia;
- (2) During the aforementioned period the Company violated the Act by committing the following violations:
 - (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 and D of the Code of Virginia.
 - (b) Failing on certain occasions to mark within the time prescribed in the Act, in violation of § 56-265.17 C and §§ 56-265.19 A and D of the Code of Virginia.

(c) Failing on certain occasions to report to the notification center that lines had been marked or they were not in conflict with the proposed excavation, in violation of §§ 56-265.19 A and 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.

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 5, 2002, 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 \$11,800 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.

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 be, and it hereby is, accepted.
- (2) The sum of \$11,800 tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2002-00642
MAY 6, 2003**

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, the Virginia 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 "Act"). 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 between June 26, 2002, and September 25, 2002, listed in Attachment A, involving Utiliquest, LLC ("Company"), and alleges that:

- (1) The Company is a contract locator as that term is defined in § 56-265.15 of the Code of Virginia;
- (2) During the aforementioned period the Company violated the Act by committing the following violations:
 - (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 and D of the Code of Virginia.
 - (b) Failing on certain occasions to mark within the time prescribed in the Act, in violation of §§ 56-265.19 A, D and H of the Code of Virginia.
 - (c) Failing on certain occasions to report to the notification center that lines had been marked or they were not in conflict with the proposed excavation, in violation of §§ 56-265.19 A and 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.

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 2, 2002, 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 \$9,250 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.

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 be, and it hereby is, accepted.

- (2) The sum of \$9,250 tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2002-00643
FEBRUARY 5, 2003**

APPLICATION OF
SALTVILLE GAS STORAGE COMPANY, L.L.C.

For authority to receive initial capital contributions from an affiliated entity

ORDER GRANTING AUTHORITY

On November 14, 2002, Saltville Gas Storage Company, L.L.C. ("SGSC"), and Duke Energy Saltville Gas Storage, L.L.C. (the "Duke Member") (collectively, the "Applicants"), filed an application with the State Corporation Commission ("Commission") under Chapter 4 of Title 56 of the Code of Virginia requesting authority to receive a series of initial capital contributions from the Duke Member.

SGSC is a limited liability company whose principal office is located in Abingdon, Virginia. The Duke Member, a Delaware limited liability company, is one of two members of SGSC. Duke Energy Gas Transmission Corporation is the sole member of the Duke Member. The other member of SGSC is NUI Saltville Storage, Inc. (the "NUI Member"), a Delaware corporation with its principal place of business in Abingdon, Virginia. The NUI Member is wholly owned by NUI Corporation. Therefore, SGSC and the Duke Member are considered affiliated companies.

By Commission Orders dated August 6, 2002, and October 7, 2002, in Case No. PUE-2001-00585, the Commission approved SGSC's application for a certificate of public convenience and necessity ("CPCN") subject to certain conditions. Consistent with the information provided as a part of the CPCN proceeding, the Duke Member, as one of two members of SGSC and in keeping with the terms of the agreement creating SGSC, has agreed to make a series of initial capital contributions to SGSC of approximately \$16,300,000.

Under the terms of the agreement creating SGSC, within 18 months from the date SGSC is organized, or sooner as required by SGSC's budget, in order to match the in-kind contribution of the NUI Member, the Duke Member is obligated to make a series of cash capital contributions totaling \$16,321,397. SGSC states that these contributions are necessary for the Duke Member to maintain an ownership interest that is equivalent to the NUI Member in SGSC. Payments in the amount of \$8.7 million were made prior to SGSC filing an application for obtaining its CPCN. The remaining portion of \$7.6 million will subsequently be made by the Duke Member to SGSC. SGSC states that it requires the Duke Member's capital contributions to fund its development and construction activities required to complete caverns and related infrastructure for the underground storage of natural gas for which it obtained its CPCN.

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 requested receipt of capital contributions by SGSC from the Duke Member is in the public interest and, should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 56-77 of the Code of Virginia, SGSC is hereby granted authority to permit the Duke Member to make capital contributions to SGSC in the amount of approximately \$16,300,000 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 of Virginia hereafter.
- (3) The Commission reserves the authority to examine the books and records of any affiliate in connection with the authority granted herein whether or not the Commission otherwise regulates such affiliate.
- (4) The authority granted herein shall have no ratemaking implications.
- (5) The transactions authorized herein shall be included in SGSC's Annual Report of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting.
- (6) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then SGSC shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.
- (7) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2002-00645
JULY 24, 2003**

At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter concerning the provision of default service to retail customers under the provisions of the Virginia Electric Utility Restructuring Act

ORDER

Section 56-585 of the Virginia Electric Utility Restructuring Act ("Restructuring Act" or "Act"), (§ 56-576 *et seq.* of Title 56 of the Code of Virginia), directs the State Corporation Commission ("Commission") to determine the components of default service and establish one or more programs making such services available to retail customers.¹ Default service, as defined in the Act, means service made available to retail customers who (i) do not affirmatively select a supplier, (ii) are unable to obtain service from an alternative supplier, or (iii) have contracted with an alternative supplier who fails to perform.

In an Order dated December 23, 2002, the Commission directed the Staff to invite representatives of incumbent electric utilities, competitive service providers, retail customers and other interested parties to participate in a work group to assist the Staff in developing recommendations to the Commission in furtherance of its statutory obligations under § 56-585 of the Act. The Commission also sought input on a number of issues in order to frame the work group discussion. We directed the Staff to file its report by May 1, 2003, and interested parties to file comments or requests for hearing on the Staff's Report by May 16, 2003.

The Commission received comments from New Era Energy, Inc., Allegheny Power, Constellation NewEnergy, Inc., LG&E Energy Corp., Mirant Americas, Inc., Appalachian Power Company, Virginia Committee for Fair Utility Rates and Old Dominion Committee for Fair Utility Rates, Reliant Resources, Inc., Strategic Energy, LLC, Virginia Electric Cooperatives, Washington Gas Energy Services, Virginia Electric and Power Company, National Energy Marketers Association, Virginia Municipal League/Virginia Association of Counties, and Conectiv.

The Staff filed its report on May 1, 2003. In its report, the Staff stated that, pursuant to the Commission's Order, interested parties were invited to participate in a work group to assist in making recommendations to the Commission regarding the provision of default service. According to the Staff, the work group met twice during March 2003, and focused on the questions posed by the Commission in its December 23, 2003, Order regarding the characteristics and components of default service and the challenge of establishing the provision of default service by entities other than the incumbent utility during the capped rate period.

Although the Staff notes that the formal comments filed by parties in this proceeding reflect significant variations on the optimal long-term model for default service, most participants seemed to agree during the work group meetings that the definition and provision of default service will be a complex and evolving process that should be driven by competitive market development. The Staff states that, regarding the short-term, most participants believe that an initial determination of the components and characteristics of default service should maintain simplicity with the flexibility to modify such structure as market development provides new opportunities. For example, the Staff states that the majority of work group members favor initially viewing default service as a bundled service – i.e., generation or generation and transmission service, inclusive of all associated ancillary services. In other words, default service should consist of the same components as electricity supply service that may be provided by a competitive service provider at competitive prices or by the incumbent utility under capped rates.

The Staff also states that participants believe, at least during the capped rate period, that default service should conform geographically to the incumbent utility's service territory, and be compatible with customer rate classifications. Additionally, to mitigate initial complexity, the Staff states that the majority of work group participants believe that distinctions should not be made at present regarding types of default service customers (i.e., those who do not affirmatively select a supplier, those who are unable to obtain service from an alternative supplier, or those who have contracted with an alternative supplier who fails to perform).

The Staff believes that absent a significant change in the current capped rate/wires charge structure, there is substantial uncertainty as to the feasibility of an entity other than the incumbent utility providing default service until the end of the capped rate period. The Staff states that when it raised this issue during the work group discussion, no supplier attending the work group meeting was willing to represent that it could submit a competitive bid to provide default service in 2004. However, some participants indicated that the possibility of alternative default service providers, while probably not feasible in 2004, should not be precluded from consideration for 2005, since market conditions and other circumstances could change favorably.

In its report, the Staff states that it is not prepared to advise the Commission that the public interest will be served by the establishment of a competitive bidding process at the current time to designate one or more providers of default service. Accordingly, the Staff recommends that the Commission:

(1) Determine that effective January 1, 2004, and until modified by future order of the Commission, the components of Default Service include all elements of Electricity Supply Service as defined by the Commission's Rules Governing Retail Access to Competitive Energy Services; and

(2) Require Appalachian Power Company, Delmarva Power & Light Company, The Potomac Edison Company, and Virginia Electric and Power Company, effective January 1, 2004, and until modified by future order of the Commission, to provide default service to all retail customers requiring such service within their respective service territories under the rates, terms, and conditions of capped rate Electricity Supply Service.

¹ Pursuant to the provisions of § 56-577 A 4, retail customer choice of generation provider must be available in the service territories of all Virginia electric utilities by January 1, 2004. It should also be noted that pursuant to § 56-585 C 1, when default service is provided by incumbent utilities, rates for that service will be such incumbents' capped rates under § 56-582 of the Act until the expiration or termination of such capped rates.

By May 16, 2003, the Commission had received comments on the Staff Report from the National Energy Marketers Association ("NEM"), Allegheny Power ("AP"), Constellation NewEnergy, Inc. ("CNE"), the Division of Consumer Counsel of the Office of the Attorney General ("Consumer Counsel"), Dominion Virginia Power ("DVP"), and the VML/VACo APCo Steering Committee ("Steering Committee").

In its comments, NEM states that it disagrees with Staff and submits that for generation-related default service, the separate components of generation service to retail customers should be unbundled and treated as separate default services. NEM states that providing more competitive options will maximize the benefits of innovation, reduce prices, and provide higher quality service, while minimizing the economic distortions inherent in potentially cross-subsidized bundled default service prices. NEM further argues that default service does not need to conform geographically to the incumbent utility's service territory. It suggests that the default provider could be different by customer group since the cost to provide default service varies by customer group. NEM states that when suppliers focus their efforts on specific customer classes they can achieve economies of scale that can and should result in lower prices to consumers. NEM also urges the Staff and Commission not to interpret competitive provision of default service to mean competitive wholesale provision of supply to utilities for their retail customers as NEM believes that the law requires that competitive suppliers are to provide default service directly to retail customers, not on a wholesale basis to the utility as an intermediary. Finally, NEM agrees with Staff that the Commission should not foreclose any future opportunities for alternative default service providers, and encourages the Commission to permit alternative suppliers to provide default service as soon as practicable. However, NEM states that the provision of default service based on capped or subsidized rates will not foster the development of the competitive market.

AP supports the recommendations in the Staff Report. However, AP points out that default service will only be provided by the incumbent utility under the rates, terms, and conditions of capped rate electricity supply service until the expiration of the capped rate period. Also, AP recommends that additional action is necessary to facilitate the development of the competitive retail electricity supply market. AP offers its assistance and support in developing solutions to enhance market development during the remainder of the capped rate period. Regarding the competitive bidding process, AP supports Staff's position that it should not be required at this time. AP states that current statutory provisions, as well as market conditions in Virginia, make it unlikely that a wholesale supplier could provide electric supply at a price below the incumbent utility's price-to-compare during the rate cap period. However, AP states that should it, Staff or other stakeholders identify other alternatives that would enhance the development of the competitive retail electricity supply market, this issue should be revisited. AP also supports a wholesale competitive bidding model for default service, and suggests that the Commission, Staff and other interested parties should review the wholesale bidding model approved by the Maryland Public Service Commission in Case No. 8908, *Standard Offer Service*.

CNE largely concurs with the overall conclusions of Staff. Specifically, CNE agrees that the Commission does not need to take any specific action with respect to establishing default service for retail customers in the service territories of the electric utilities in light of the significant barriers to retail choice in Virginia during the existing transition period. CNE reiterates that the obstacles listed in the Staff Report need to be resolved before competitive markets will be able to offer meaningful alternatives to the incumbent utilities. Specifically, the capped rates, wires charge structure for the recovery of still unquantified stranded costs, lack of RTE membership, and the retail electricity supply cost components in Virginia need to be addressed in order for competition to flourish in Virginia. Therefore, CNE believes that discussions on default service should continue as these barriers to competition are removed over time. CNE states that while there is no reason to foreclose any future possibilities at the present time, as a matter of clarification, CNE notes that it does support the following characteristics for default service: (i) that some elements of default service will need to conform geographically to the incumbent utilities service territory, (ii) that default service needs to be compatible with customer rate classifications, (iii) that meaningful opportunities for competitively bid default service will be difficult until the utilities have been integrated into a RTE, and (iv) that consistency among the competitive procurement processes developed for each utility will promote regulatory and legal efficiencies and promote competition.

Consumer Counsel generally endorses the Staff Report and supports Staff's recommendations. Consumer Counsel states that given the currently negligible amount of competition in Virginia, the Report's simplistic, yet flexible, approach best serves consumers and the public interest. Further, according to Consumer Counsel, the bundled service approach will minimize customer confusion regarding the provision of default services, and it agrees that the Commission should not foreclose the possibility that it may be advantageous in the future to alter the components of default service.

DVP also supports the Staff's recommendations. DVP agrees with the Staff's observations and believes that the bundled default service model proposed by the Staff would achieve the stated objectives of simplicity and flexibility. Further, for purposes of conducting a competitive default service program, DVP believes this model would provide a consistent basis for bidders to submit, and for the Commission to evaluate, bids in response to an RFP for default service. DVP agrees with Staff, however, that as the market develops, the benefits and costs of unbundling or otherwise modifying the components of default service should be periodically evaluated. DVP also agrees that, until a competitive default service program becomes feasible and competitive suppliers are willing and able to submit competitive bids for default service, incumbent utilities should provide default service at capped rates during the rate cap period, as provided in the Act, effective January 1, 2004. DVP notes that its proposed competitive bid supply service pilot program will provide valuable insight into potential issues that may arise in the competitive bidding process for default service and will assist the Commission in developing rules and guidelines for a competitive default service bidding process. Also in its comments, DVP reiterates its position and further argues that the Act does not provide for a wholesale model for default service during the rate cap period.

The Steering Committee also agrees with Staff's recommendations. However, the Steering Committee interprets the Staff's second recommendation to extend default service to the Commonwealth and its municipalities to the extent that such entities are "retail customers", as defined by the Act.

NOW THE COMMISSION, having considered § 56-585 of the Code of Virginia and all other applicable statutes and rules, the Staff Report, and all comments received by interested parties and work group participants, finds that the Staff's recommendations are reasonable and should be adopted.

We believe the Staff's recommendations are consistent with the early stage of competitive retail and wholesale market development in Virginia, yet permit flexibility if the composition of the market changes in the future. We expect the establishment of a default service model to be an evolutionary process, one that will require the continued assistance of the work group and other interested parties. As the Staff continues its investigation, we encourage them and others to explore the various default service models adopted by other states, and draw on any experience gained from DVP's proposed competitive bid supply service pilot program, if approved by this Commission.

We also note that § 56-585 F of the Act assigns both the obligation and the right to each distribution electric cooperative, or one or more of its affiliates, to supply default services in its certificated service territory at capped rates during the capped rate period, and at the cooperative's prudently incurred cost thereafter.

Finally, we reserve judgment on the Steering Committee's interpretation of the Staff's second recommendation pending the receipt of comments from interested parties on that issue. The Staff Report did not address the application of § 56-585 to the Commonwealth and its municipalities, and the Steering Committee first raised this issue in its comments on the Staff Report. We request interested parties to respond to the Steering Committee's comments, and permit the Steering Committee to reply to any responses filed. Specifically, interested parties should comment on (i) whether the Commonwealth and its municipalities are "retail customers", as defined by the Act, and are entitled to default service pursuant to § 56-585 of the Code of Virginia,² and (ii) if so, how the Commission should determine default service rates for this class of customers.

Accordingly, IT IS ORDERED THAT:

(1) On January 1, 2004, and until modified by future order of this Commission, the components of default service shall include all elements of Electricity Supply Service as defined by the Commission's Rules Governing Retail Access to Competitive Energy Services.

(2) On January 1, 2004, and until modified by future order of this Commission, Appalachian Power Company, Delmarva Power & Light Company, The Potomac Edison Company, and Virginia Electric and Power Company shall provide default service to all retail customers requiring such service within their respective service territories under the rates, terms, and conditions of capped rate Electricity Supply Service.

(3) Pursuant to § 56-585 F of the Act, each distribution electric cooperative, or one or more of its affiliates, shall supply default services in its certificated service territory at capped rates during the capped rate period, and at the cooperative's prudently incurred cost thereafter.

(4) On or before August 4, 2003, interested parties may respond to the Steering Committee's comments of May 16, 2003 on the Staff Report. Such comments shall address (i) whether the Commonwealth and its municipalities are "retail customers", as defined by the Act, and are entitled to default service pursuant to § 56-585 of the Code of Virginia, and (ii) if so, how the Commission should determine default service rates for this class of customers. The Steering Committee may reply to any responses filed on or before August 13, 2003.

(5) This matter shall be continued generally for further orders of the Commission.

² We note that the Steering Committee cites § 56-581 C of the Code of Virginia as support for its position that the Commonwealth and its municipalities are entitled to default services pursuant to § 56-585 of the Code of Virginia. Section 56-581 C of the Code of Virginia provides that "[e]xcept for the provision of default services under § 56-585 or emergency services in § 56-586, nothing in this chapter shall authorize the Commission to regulate the rates or charges for electric service to the Commonwealth and its municipalities."

CASE NO. PUE-2002-00645 SEPTEMBER 3, 2003

At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter concerning the provision of default service to retail customers under the provisions of the Virginia Electric Utility Restructuring Act

ORDER

In our Order dated July 24, 2003, the State Corporation Commission ("Commission") determined that on January 1, 2004, and until modified by future order of this Commission, the components of default service shall include all elements of Electricity Supply Service as defined by the Commission's Rules Governing Retail Access to Competitive Energy Services, 20 VAC 5-312-10 *et seq.* We also directed that on the same date, and until modified by future order of this Commission, Appalachian Power Company, Delmarva Power & Light Company, The Potomac Edison Company, and Virginia Electric and Power Company shall provide default service to all retail customers requiring such service within their respective service territories under the rates, terms and conditions of capped rate Electricity Supply Service. Pursuant to § 56-585 F of the Virginia Electric Utility Restructuring Act ("the Act"), we directed each distribution electric cooperative, or one of more of its affiliates, to supply default services in its certificated service territory at capped rates during the capped rate period, and at the cooperative's prudently incurred cost thereafter.

The Commission reserved judgment on one issue raised by the VML/ VACo APCo Steering Committee ("Steering Committee"), pending the receipt of comments from interested parties. The Steering Committee interpreted the Staff's second recommendation¹ to extend the provision of default service to the Commonwealth and its municipalities to the extent such entities are "retail customers", as defined by the Act. In our July 24, 2003 Order, we requested interested parties to respond to the Steering Committee's comments, and permitted the Steering Committee to reply to any responses filed. Specifically, interested parties were asked to comment on (i) whether the Commonwealth and its municipalities are "retail customers", as defined by the Act, and are entitled to default service pursuant to § 56-585 of the Code of Virginia, and (ii) if so, how the Commission should determine default service rates for this class of customers.

¹ The Staff recommended that the Commission "[r]equire Appalachian Power Company, Delmarva Power & Light Company, The Potomac Edison Company, and Virginia Electric and Power Company, effective January 1, 2004, and until modified by future order of the Commission, to provide default service to all retail customers requiring such service within their respective service territories under the rates, terms, and conditions of capped rate Electricity Supply Service." May 1, 2003 Staff Report, p. 8.

On August 4, 2003, we received comments from Appalachian Power Company ("Appalachian"), the Virginia Energy Purchasing Governmental Association ("VEPGA"), the Virginia Electric Cooperatives ("Cooperatives")², Virginia Electric and Power Company ("Virginia Power"), and the Division of Consumer Counsel of the Office of the Attorney General ("Consumer Counsel"). With respect to the first question, the responding parties generally agreed that the Commonwealth and its municipalities are "retail customers" as defined by the Act, and in most cases are entitled to default service pursuant to § 56-585 of the Code of Virginia. Virginia Power commented, however, that it is premature to determine whether any particular customers are entitled to default service since that question can only be answered under particular factual situations in the future. According to Virginia Power, the Commission can no more authoritatively answer that question now than it can decide whether any particular residential customer will be eligible for such service at some later date. Virginia Power asserts that governmental customers may become entitled to default service depending upon their existing contract with the incumbent and as they meet the criteria of Va. Code § 56-585 A. According to Virginia Power, for so long as incumbents remain the supplier under those contracts or governmental customers receive electric supply service through contracts with competitive service providers, they will not require and will not be entitled to default service, because they already have a supplier and thus do not meet the criteria for default service set forth in Va. Code § 56-585 A.

Regarding the Commission's second question, the responding parties made clear that there is no need for the Commission to address the issue of default service rates for the Commonwealth and its municipalities at this time, given that contracts govern the provision of electric service to these entities through June 30, 2007. In its comments, Appalachian states that it is currently providing service to its Public Authority ("PA") and Commonwealth of Virginia ("CV") customers under contract and has been designated the default service provider in its service territory, so there is no reason for the Commission to address default services rates for Appalachian's PA or CV customers at this time. Similarly, VEPGA states that its members have a contract for electric service with Virginia Power that extends through June 30, 2007, and therefore knows of no controversy that requires a determination by the Commission as to how it should determine default service rates for municipalities. Consumer Counsel states that it may be appropriate to simply treat existing contract rates as "capped rates" for the purpose of determining rates for default service for the Commonwealth and its municipalities.

In the Cooperatives' view, since the Commission previously has not had the general authority to regulate the rates or terms and conditions for electric service to the Commonwealth and its municipalities, it should not broadly construe its new, limited authority over default service, and default service rates, to the Commonwealth and its municipalities.

Virginia Power observes that the Act does not provide a clear answer to whether and how the Commission should determine default service rates for governmental customers, at least during the capped rate period. According to Virginia Power, neither the rates in effect at the time capped rates were established, nor the rates established during any later rate case, would have included rates for governmental customers since such rates have long been "non-jurisdictional," and the Commission therefore had no authority to "establish" them under § 56-582 A. Thus, there are no Commission-approved capped rates for governmental customers. Virginia Power notes that after the end of the capped rate period, such rates can be set based on the competitive market standards set forth in Va. Code § 56-585 C.

On August 13, 2003, the Steering Committee filed its reply comments. In its comments, the Steering Committee notes that all of the responding parties generally agreed that the Commonwealth and its municipalities are "retail customers" as defined in the Act, and entitled to default service under at least some circumstances. The Steering Committee also concludes that, based on the comments filed by other parties, there is no controversy requiring the Commission to make determinations at this time concerning default service rates for the Commonwealth and its municipalities. Should circumstances change, the Steering Committee notes that a default service provider and/or a governmental retail customer could request that the Commission address the issue at that time.

NOW THE COMMISSION, having considered all applicable statutes and the comments filed by interested parties, finds that the Commonwealth and its municipalities are "retail customers", as defined by the Act, and therefore entitled to default service pursuant to § 56-585 of the Act if they meet the criteria set forth in Va. Code § 56-585 A. We agree with Virginia Power that governmental customers would be entitled to default service if and when they require such service and meet the criteria for such service set by the Act. We further find that there is no need to address at this time whether or how the Commission should determine default service rates for this class of customers, given that these entities are currently being provided electric service pursuant to contracts through the end of the capped rate period, or June 30, 2007.

Accordingly, IT IS ORDERED THAT:

(1) The Commonwealth and its municipalities are hereby determined to be "retail customers", as defined by the Act, and are therefore entitled to default service pursuant to § 56-585 of the Act if they meet the criteria set forth in Va. Code § 56-585 A.

(2) There being nothing further to come before the Commission, this matter shall be dismissed and the papers filed herein shall be placed in the file for ended causes.

² The Virginia Electric Cooperatives include A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Northern Virginia Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative and Southside Electric Cooperative, Inc., and the Virginia Maryland & Delaware Association of Electric Cooperatives.

**CASE NO. PUE-2002-00646
JULY 14, 2003**

JOINT APPLICATION OF
WASHINGTON GAS LIGHT COMPANY
and
COLUMBIA GAS OF VIRGINIA, INC.

For Amendment of Certificates of Public Convenience and Necessity Pursuant To Virginia Code § 56-265.3

ORDER PERMITTING WITHDRAWAL OF APPLICATION

On November 13, 2002, Washington Gas Light Company ("WGL") and Columbia Gas of Virginia, Inc. ("Columbia") (collectively, the "Companies") filed a joint application ("Application") with the State Corporation Commission ("Commission"), pursuant to § 56-265.3 of the Code of Virginia, requesting the Commission to amend certain certificates of public convenience and necessity which allot between the Companies all of Fairfax, Loudoun and Prince William Counties, Virginia, for the development of natural gas service. In the Application, the Companies proposed the provision of natural gas service throughout a single residential or commercial development by a single natural gas distribution company to promote the development of efficient gas service to the benefit of existing and future customers of both Companies. The Companies contend that such an action would be consistent with the purpose of the Utility Facilities Act, Chapter 10.1 (§ 56-265.1, *et seq.*) of Title 56 the Code of Virginia.

On June 23, 2003, the Companies requested authority to withdraw the Application and advised that they planned to file an administrative request for the service territory realignments directly with the Commission's Division of Energy Regulation in accordance with established practice for such matters.

NOW, upon consideration of the foregoing, the Commission is of the opinion and finds that the Companies' request should be granted; that the Companies should be permitted to withdraw the captioned Application; and that this case should be dismissed from the Commission's docket of active proceedings.

Accordingly, IT IS ORDERED THAT:

- (1) The Companies' request for authority to withdraw the captioned Application is hereby granted.
- (2) The Companies' Application may be withdrawn.
- (3) 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 files for ended causes.

**CASE NO. PUE-2002-00647
JANUARY 9, 2003**

APPLICATION OF
WASHINGTON GAS LIGHT COMPANY

For authority to participate in a tax sharing agreement between WGL Holdings, Inc., and its subsidiaries under Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING AUTHORITY

On November 20, 2002, Washington Gas Light Company ("WGL") filed an application with the State Corporation Commission ("Commission") pursuant to Chapter 4 of Title 56 of the Code of Virginia ("Code"). WGL requests authority to participate in an "Agreement for Filing Consolidated Income Tax Returns and for Allocation of Liabilities and Benefits Arising from such Consolidated Tax Returns between WGL Holdings, Inc. ["Holdings"], and [its] Subsidiary Companies" (hereinafter referenced to as the "Tax Sharing Agreement" or "TSA").

WGL is a public service company providing natural gas distribution service to more than 900,000 residential, commercial, and industrial customers in the District of Columbia, Maryland, and Virginia.

Holdings is a holding company established November 1, 2000, under the Public Utility Holding Company Act of 1935. Holdings owns all of the shares of common stock of WGL, Crab Run Gas Company, Hampshire Gas Company, and Washington Gas Resources Corporation ("WGRC") and holds a 50% equity investment interest in Primary Investors, L.L.C.

The Tax Sharing Agreement was entered into September 30, 2001, and is effective for tax years ending September 30, 2001, and thereafter. The TSA is in accordance with, and is consistent with, the requirements of Rule 45(c) of the Securities and Exchange Commission's General Rules and Regulations under the Public Utility Holding Company Act of 1935. Holdings and its subsidiaries (the "member companies") have authorized Holdings, as the common parent organization of an affiliated group of corporations as described in § 1504 of the Internal Revenue Code, to make and file a consolidated federal income tax return on behalf of the group.

The Tax Sharing Agreement apportions the consolidated federal income tax liability of the member companies by utilizing the "separate return tax" method. The member companies are assessed tax for the taxable income each company generates as a separate entity. A member company (excluding Holdings) that has negative taxable income and owes negative separate return tax ("tax benefit") receives a current payment from the affiliated group equivalent to the tax benefit to the extent that it has sufficient taxable income in its carryback period to utilize that tax benefit.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

According to the TSA, tax benefits that are not utilizable currently by a loss company are allocated temporarily to the positive separate return member companies, excluding Holdings, to reduce their tax payment obligation. The positive separate return member companies receive an allocation of these tax benefits based on the ratio of each member company's positive separate return tax to the total positive separate return tax. In the future, should the loss company generate sufficient positive taxable income to make use of the tax benefit, its current tax obligation is reduced, and the excess tax liability is allocated to the member companies that previously received the tax benefits.

The Tax Sharing Agreement states that any Holdings positive separate return tax will be one hundred percent (100%) allocated to Holdings. Any Holdings negative separate return tax ("tax benefit") will be allocated permanently to positive separate return member companies based on the ratio of each member company's positive separate return tax to the total positive separate return tax. Holdings may not utilize subsequently any of its tax benefits that have been allocated to the member companies.

In the event the consolidated return reflects tax benefits which cannot be utilized currently, the TSA apportions the unutilized tax benefits according to the general guidelines outlined above. When the tax benefits become realizable, the member companies originally denied the benefits receive allocations of the benefits for the year the benefits were generated.

The Tax Sharing Agreement states that, in the event of an amended return, any payments or refunds will be allocated as though the adjustments had been part of the original return.

According to the TSA, no subsidiary company shall be required to pay more than its separate return tax.

The Tax Sharing Agreement states that state income taxes will be allocated to the member companies doing business in that state using the "separate return tax" method, with consolidated state tax benefits allocated in the same way as federal tax benefits.

In the event that a member company leaves the consolidated group and, due to a statutory or regulatory provision, takes with it tax attributes that are different from those allocated previously, then the TSA states that the departing member will settle with the consolidated group. Any additional tax liabilities or benefits arising from the settlement will be apportioned to the remaining member companies in accordance with the general guidelines outlined above.

NOW THE COMMISSION, upon consideration of the application and representations of WGL and having been advised by its Staff, is of the opinion and finds that the above-described Tax Sharing Agreement is in the public interest and should be approved.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code of Virginia, Washington Gas Light Company is hereby authorized to participate in the Tax Sharing Agreement with WGL Holding, Inc., and its subsidiaries under the terms and conditions and for the purposes described herein.
- 2) Commission approval shall be required for any changes in the terms and conditions of the Tax Sharing Agreement.
- 3) The approval granted herein shall have no ratemaking implications.
- 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) The Commission reserves the right to examine the books and records of any affiliate in connection with the authority granted herein whether or not such affiliate is regulated by this Commission.
- 6) WGL shall include the Tax Sharing Agreement approved herein in its Annual Report of Affiliate Transactions submitted to the Director of Public Utility Accounting of the Commission.
- 7) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then WGL shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.
- 8) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2002-00648
FEBRUARY 11, 2003**

APPLICATION OF
VIRGINIA NATURAL GAS, INC.

For waiver of gas pipeline safety requirements of 49 C.F.R. Part 193

ORDER GRANTING MOTION TO WITHDRAW

On November 21, 2002, Virginia Natural Gas, Inc. ("VNG" or the "Company") filed an application requesting a waiver for a period of three years of certain gas pipeline safety standards found at 49 C.F.R. Part 193, which address Liquefied Natural Gas ("LNG") facilities. Specifically, the Company requested a waiver of 49 C.F.R. §§ 193.2057 and 193.2059 for three years for the construction and operation of a satellite LNG facility to be located in Chesapeake, Virginia, on VNG's property.

On November 25, 2002, the Company supplemented its application, providing additional details concerning this project.

On November 27, 2002, the Commission issued its procedural order in this matter. In that Order, the Commission directed the Company to publish notice of its application, required the Company to serve a copy of the order on local officials, and invited interested persons to file comments or requests for hearing on the application on or before December 20, 2002. The November 27, 2002 Order further directed the Commission Staff to file a report which could take the form of testimony, on VNG's application on or before December 30, 2002.

On December 20, 2002, the Virginia Industrial Gas User's Association ("VIGUA") filed a "Notice of Participation, Request for Hearing, and Motion to Consolidate and Expand Scope of Proceeding in this proceeding."

On December 30, 2002, the Staff, by counsel, filed a Response to VIGUA's Motion, urging the Commission to deny VIGUA's Motion.

On the same day, the Staff filed its Report in the matter. In its Report, the Staff recommended that the Commission grant the Company's request for a waiver of 49 C.F.R. § 193.2057 for the proposed facility and further recommended that the Commission require VNG to construct a fence along the southwest property line of VNG's Chesapeake Propane plant to ameliorate thermal flux concerns discussed in the Report. The Staff further recommended that the Commission direct VNG to install an alarm for the residents of adjacent mobile homes to alert these residents in case of an incident at the LNG plant and that the Commission require VNG to include procedures in the Company's emergency manual for the facility to educate nearby residents about the alarm and procedures for evacuation in case of an incident at the LNG facility. Staff concluded that a waiver of 49 C.F.R. § 193.2059 was unnecessary.

On January 6, 2003, VNG filed its Response to VIGUA's Motion, urging the Commission to deny the same.

VNG, by counsel, filed a Motion dated January 30, 2003, to withdraw the captioned application. In support of its filing, the Company advised that it had experienced difficulties in procuring the tanks that VNG's original design for the facility called for, and as a consequence, VNG intended to operate from tanker trucks during the current heating season. It noted that if any new design necessitates a waiver for future heating seasons, it would file a new application.

On February 4, 2003, VNG, by counsel, filed a Notice of Agreement in both the instant case and Case No. PUE-2002-00653, wherein VNG represented that counsel for VIGUA had no objection to the request for withdrawal.

NOW, UPON consideration of the Company's Motion to withdraw the foregoing application and the pleadings filed herein, the Commission is of the opinion and finds that VNG's Motion to withdraw Case No. PUE-2002-00648 should be granted, and that this matter should be dismissed from the Commission's docket of active proceedings.

Accordingly, IT IS ORDERED THAT:

- (1) VNG's Motion dated January 30, 2003, is hereby granted.
- (2) VNG is hereby granted leave to withdraw the captioned matter.
- (3) This application is dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be made a part of the Commission's files for ended causes.

**CASE NO. PUE-2002-00649
JANUARY 30, 2003**

PETITION OF
VIRGINIA ELECTRIC AND POWER COMPANY
and
DOMINION TRANSMISSION, INC.

For approval of a pipeline construction contract and pipeline operation and maintenance agreement under Chapter 4, Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On November 13, 2002, Virginia Electric and Power Company ("Dominion Virginia Power" or the "Company") and Dominion Transmission, Inc. ("DTI") (collectively, the "Petitioners"), filed a petition with the State Corporation Commission ("Commission") under Chapter 4, Title 56 of the Code of Virginia requesting approval to increase the maximum amount of costs that Dominion Virginia Power is authorized to reimburse DTI under the Pipeline Construction Contract associated with the gas pipeline for service to the Possum Point Power Station from \$24,275,000 to \$28,900,000.

Dominion Virginia Power is a Virginia public service corporation providing electric retail service to customers in its service territory in North Carolina and Virginia. Dominion Virginia Power is a wholly owned direct subsidiary of Dominion Resources, Inc. ("Dominion"). Dominion is a holding company as defined in the Public Utility Holding Company Act of 1935 and is subject to regulation by the Securities and Exchange Commission.

DTI is a Delaware corporation engaged in the ownership and operation of facilities for the transmission of natural gas in interstate commerce subject to regulation by the Federal Energy Regulatory Commission under the Natural Gas Act. DTI is a wholly owned, indirect subsidiary of Dominion.

In Case No. PUA-2001-00025 (PUA010025), on June 29, 2001, the Commission issued an Order Granting Approval of a Pipeline Construction Contract between Dominion Virginia Power and its affiliate, DTI, for the construction by DTI of natural gas pipeline facilities ("New Gas Facilities") needed to receive and deliver natural gas to Dominion Virginia Power's Possum Point Power Station. The Order Granting Approval provided that Dominion

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Virginia Power was authorized to pay DTI up to \$24,275,000 in construction costs and that, if DTI incurred additional costs, Dominion Virginia Power and DTI would need to file a new application for reimbursement of such costs detailing justification for those costs.

DTI has determined that its updated actual costs for services under the Pipeline Construction Contract are estimated to be as much as \$28,900,000. The original estimate was qualified to be within plus or minus 15%. The New Gas Facilities are nearing completion and may exceed the original cost projections of \$23,457,000 by approximately \$5,443,000, or 23.2%.

As stated in the petition, the increased overall cost *is* due in part to a longer than estimated pipeline route of 66,662 feet versus an actual length of 72,170 feet, representing an increase of approximately 8.3%. The Virginia Department of Game and Inland Fisheries required relocation of a portion of the pipeline route. This resulted in additional pipeline footage and required supplementary environmental evaluations. Other increases in estimates were due to increased right-of-way acquisition costs, increased construction cost due to the requirement to relocate a portion of the pipeline and, therefore, increasing the length of the route, and increased costs in engineering, permitting, procurement, and project management. The pipeline alignment was modified slightly at the request of homeowners, and the updated estimates were increased to include potential contractor costs to complete the horizontal directional drilling under the Occoquan Reservoir.

THE COMMISSION, upon consideration of the petition and representations of Petitioners and having been advised by its Staff, is of the opinion and finds that the above-referenced increase is in the public interest and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code of Virginia, Dominion Virginia Power is hereby granted approval to pay DTI up to \$28,900,000 under the Pipeline Construction Contract for the purposes as described herein.

(2) Dominion Virginia Power shall continue to pay DTI the lower of cost or market for services rendered under the Pipeline Construction Contract. Dominion Virginia Power shall file a new application for approval to reimburse DTI any amounts in excess of the maximum \$28,900,000 approved herein. Such application shall include, among other things, detailed justification for the increased costs.

(3) Should any terms and conditions of the Pipeline Construction Contract change from those approved herein and in Case No. PUA-2001-00025, additional Commission approval shall be required for such changes.

(4) Dominion Virginia Power shall bear the burden of proving, during any rate proceeding, that it paid DTI the lower of cost or market for services received under the Pipeline Construction Contract.

(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 authority to examine the books and records of any affiliate of Dominion Virginia Power, including DTI, in connection with the Pipeline Construction Contract approved herein whether or not the Commission regulates such affiliate.

(7) Dominion Virginia Power shall include the Pipeline Construction Contract approved herein in its Annual Report of Affiliate Transactions submitted to the Director of Public Utility Accounting.

(8) The approval granted herein shall have no implications for ratemaking purposes.

(9) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2002-00652
JANUARY 22, 2003**

PETITION OF
VIRGINIA ELECTRIC AND POWER COMPANY
and
CNG INTERNATIONAL CORPORATION

For exemption from the prior approval and filing requirements of the Affiliates Act or, in the alternative, for approval of transfer of furniture and office equipment pursuant to Chapter 4, Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On December 3, 2002, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company") and CNG International Corporation ("CNG International") (collectively, the "Petitioners") filed a petition with the State Corporation Commission ("Commission") for an exemption from the filing and prior approval requirements of Chapter 4, Title 56 of the Code of Virginia (the "Affiliates Act") or, in the alternative, for approval of the transfer of furniture and office equipment pursuant to the Affiliates Act. Specifically, the Petitioners request exemption or approval of a transfer of certain furniture and office equipment as described in the petition from CNG International to Dominion Virginia Power. The Petitioners propose to transfer the furniture and office equipment at the net book value as of October 31, 2002, of \$15,179.00.

CNG International is a direct subsidiary of Consolidated Natural Gas Company and an indirect subsidiary of Dominion Resources, Inc., and, therefore, is an affiliate of Dominion Virginia Power. Thus, the approval to transfer the furniture and office equipment requires Commission approval or an exemption under the Affiliates Act.

The Petitioners represent that CNG International no longer requires the furniture and office equipment that it wishes to transfer to Company as its business operations have diminished. Although Dominion Virginia Power is already using some of the furniture, the change in ownership and payment for the furniture will not occur until appropriate regulatory approvals are obtained. CNG International does not need the furniture and office equipment, and Company can efficiently reuse the furniture and office equipment that it will obtain from CNG International rather than purchase new furniture and equipment.

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 requested exemption from the filing and prior approval requirements of the Affiliates Act is not in the public interest. We believe that the transfer is in the public interest, however, we believe that the net book value that Dominion Virginia Power should pay to CNG International should be the actual net book value at the time of transfer rather than the proposed \$15,179.00, which represents the net book value of the furniture and office equipment as of October 31, 2002. Accordingly,

IT IS ORDERED THAT:

- (1) Pursuant to § 56-77 of the Code of Virginia, the requested exemption is hereby denied.
- (2) Pursuant to § 56-77 of the Code of Virginia, Dominion Virginia Power and CNG International are hereby granted approval to transfer certain furniture and office equipment as detailed in the petition at the net book value at the time of transfer.
- (3) 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.
- (4) 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.
- (5) The approval granted herein shall have no ratemaking implications.
- (6) Company shall include the transaction approved herein in its Annual Report of Affiliate Transactions to be submitted to the Director of Public Utility Accounting of the Commission by no later than May 1 of each year for the preceding calendar year, subject to extension by the Director of Public Utility Accounting of the Commission.
- (7) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then Dominion Virginia Power shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.
- (8) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2002-00653
FEBRUARY 7, 2003**

APPLICATION OF
VIRGINIA NATURAL GAS, INC.

For approval of a liquefied natural gas transportation agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On December 9, 2002, Virginia Natural Gas, Inc. ("VNG"), filed an application with the State Corporation Commission ("Commission") under the Public Utilities Affiliates Act requesting approval of a liquefied natural gas ("LNG") transportation agreement (the "Agreement").

VNG states in the application that demand growth has created a critical need for additional gas volumes to maintain pressure in the southern portion of its distribution system on design days. Historically, VNG has met its peak demand needs by contracting for upstream pipeline storage deliverability, operating local propane plants, contracting for LNG service, and operating satellite LNG facilities. In 1999, Virginia Gas Company canceled an agreement with VNG to supply up to 53,600 dekatherms in firm seasonal storage and transportation service to the southern portion of VNG's system. Since then, VNG has considered several gas pipeline expansion projects, but the projects have been too costly, delayed, or canceled.

The impending capacity shortfall has led VNG to seek a short-term solution until a gas pipeline project is completed. Over the next three winter heating seasons, VNG proposes to obtain LNG from Columbia Gas Transmission Company's LNG storage facility in Chesapeake, Virginia, and transport it to a temporary, portable LNG facility to be sited at VNG's existing propane air peak-shaving plant in Chesapeake, Virginia. There, the LNG will be vaporized into VNG's system.

VNG plans to use the portable LNG facility to serve firm sales and firm transport standby customers and, if possible, on-system Rate Schedule 10 customers. VNG represents that it will purge the LNG tanks at the end of the winter season by emptying them into VNG's distribution system.

VNG is seeking Commission approval for the Agreement with its sister affiliate, Southeastern LNG, Inc. ("SE LNG"), to provide the LNG transportation service from Columbia's LNG facility to VNG's Chesapeake site. VNG represents that SE LNG is an experienced LNG tank truck operator that owns tankers suitable for providing LNG transportation.

The initial term of the Agreement will commence upon the date of the Agreement's approval and end March 31, 2005, with year to year renewals thereafter. The proposed Agreement has a three-part fee structure. First, VNG will pay a fixed fee of \$14,000 per month to reserve four (4) LNG tankers to provide delivery from November through March of each heating season. Second, VNG will pay a mobilization fee of \$6,900 per winter period for

mobilizing and staging the tankers for service. Third, VNG will pay a trucking service fee of \$75 per hour per driver for the first 240 hours of service each winter period. After 240 hours, VNG will pay \$250 per hour of service.

Under the Agreement, SE LNG will carry general liability, automobile liability, and worker's compensation insurance. SE LNG plans to subcontract with an unaffiliated business to perform the actual LNG deliveries, and that company will be required to carry \$1 to \$4 million in liability insurance per occurrence. SE LNG will also indemnify and hold harmless VNG from any third party claims arising from the LNG transportation service.

VNG represents that SE LNG developed the proposed fee structure to cover its overall costs and provide a return component while remaining competitive with alternative proposals in a deregulated marketplace. Assuming 10 days (240 hours) of run time per winter period, SE LNG projects that it will earn an 8.9% after-tax return on assets from the Agreement. That is equivalent to the 8.91% cost of capital shown by VNG in its 2001 AIF (Case No. PUE-2001-00307). VNG compared the terms of the Agreement with quotes from two unaffiliated vendors and found the Agreement to be the least cost alternative. VNG plans to treat the LNG transportation service charges as a demand component of the cost of gas and will book the charges to Account 803 (Natural Gas Transmission Line Purchases).

On December 20, 2002, counsel for the Virginia Industrial Gas User's Association ("VIGUA") filed a Notice of Participation, Request for Hearing, and Motion to Consolidate and Expand the Scope of Proceeding ("VIGUA's Notice, Request and Motion") in this case and Case No. PUE-2002-00648 (Application of VNG for Waiver of Gas Pipeline Safety Requirements). Specifically, VIGUA sought to expand the scope of the consolidated docket to include other regulatory issues, including (a) why the new facilities and related contracts and expenses are necessary for the public convenience and necessity; (b) how VNG should treat its costs of such new facilities and related contracts for rate-making purposes; (c) who will manage the use of the new facilities - VNG or Sequent Energy Management, LLC ("Sequent"), pursuant to the asset management agreement between those affiliates; (d) whether it is proper and in the public interest to use such new facilities for making off-system sales; (e) whether VNG will and should use such new facilities as a basis for providing firm back-up sales service under regulated rates to industrial transportation customers, including, for example, under its Rate Schedules 6, 7, and 10; and (f) whether VNG should be required to offer firm standby gas service options under regulated rates to its industrial transportation customers at just, reasonable, and nondiscriminatory terms and rates, including from such planned LNG facilities.

On January 6, 2003, counsel for VNG filed a Response of Virginia Natural Gas, Inc., to VIGUA's Notice, Request and Motion. Counsel requested the Commission to deny VIGUA's request, reject VIGUA's claims, and grant relief to VNG as soon as possible.

On January 10, 2003, Staff, through counsel, filed a Response to VIGUA's Notice, Request, and Motion in Case No. PUE-2002-00653. Staff asserted that VIGUA's Notice, Request and Motion was beyond the scope of VNG's application under the Virginia Utility Affiliates Act and that the issues raised by VIGUA should be addressed in a separate proceeding. Therefore, Staff recommended that VIGUA's request for hearing and motion to consolidate and expand the scope of the proceeding be denied.¹

On February 4, 2003, counsel for VNG filed a Notice of Agreement wherein VNG advised the Commission that VIGUA no longer objects to the Commission's approval of this application.

NOW THE COMMISSION, upon consideration of the application and representations of Applicant and having been advised by its Staff, is of the opinion and finds that the above-described liquefied natural gas transportation agreement between VNG and SE LNG is in the public interest and should be approved.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code of Virginia, VNG is hereby granted approval to enter into a Liquefied Natural Gas Transportation Agreement with SE LNG under the terms and conditions and for the purposes as described herein.
- 2) The approval granted herein shall have no ratemaking implications.
- 3) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code of Virginia.
- 4) 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.
- 5) Commission approval shall be required for any changes in terms and conditions of the Agreement from those contained herein, including any successors and assigns as referenced in Section 7(a) of the Agreement.
- 6) VNG shall include the Agreement approved herein in its Annual Report of Affiliate Transactions filed with the Commission's Director of Public Utility Accounting.
- 7) VNG shall include in the Annual Report of Affiliate Transactions filed with the Commission a summary of the portable LNG facility's activity by month, runtime hours, customer class served, dekatherms vaporized, and SE LNG transportation charges incurred.
- 8) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then VNG shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.
- 9) There appearing nothing further to be done in this matter, it hereby is dismissed.

¹ On December 30, 2002, Staff, through counsel, filed a Response to VIGUA's Notice, Request, and Motion in Case No. PUE-2002-00648. Staff asserted that VIGUA's Notice, Request and Motion were beyond the scope of VNG's application for a three-year waiver of 49 C.F.R. Part 193 Pipeline Safety Regulations and that the issues raised by VIGUA should be addressed in a separate proceeding. Therefore, Staff recommended that VIGUA's request for hearing and motion to consolidate and expand the scope of the proceeding be denied.

**CASE NO. PUE-2002-00654
JANUARY 23, 2003**

APPLICATION OF
STAND ENERGY CORPORATION

For a license to conduct business as a natural gas competitive service provider

ORDER GRANTING LICENSE

On December 10, 2002, Stand Energy Corporation ("Stand Energy" or "the Company") filed an application with the Virginia State Corporation Commission ("Commission") for a license to provide competitive natural gas services. The Company intends to serve commercial and industrial customers in the natural gas retail access programs of Washington Gas Light Company ("WGL") and Columbia Gas Company of Virginia ("CGV"). 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, 20 VAC 5-312-10 *et seq.* ("Retail Access Rules").

On December 23, 2002, the Commission issued its Order for Notice and Comment, establishing the case and requiring that this Order should be served upon appropriate persons. The Order also required the Commission's Staff to analyze the reasonableness of the Company's application and present its findings in a Staff Report.

No comments from the public on Stand Energy's application were received.

The Staff filed its Report on January 14, 2003, concerning Stand Energy's fitness to provide competitive natural gas services. In its report, Staff summarized Stand Energy's proposal and evaluated its financial condition and technical fitness and found the Company to be technically and financially qualified. No comments were filed by the Company in response to the Staff Report.

NOW UPON CONSIDERATION of the application and Staff's report, the Commission is of the opinion and finds that Stand Energy's request should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) Stand Energy shall be granted License No. G-17 for the provision of competitive natural gas services to commercial and industrial retail customers in the retail access programs of WGL and CGV.
- (2) This license is not valid authority for the provision of any product or service not identified within the license itself.
- (3) Failure of Stand Energy to comply with the Retail Access Rules, the provisions of this Order, other State Corporation Commission orders and rules, or other applicable state or federal laws may result in an enforcement action by the Commission including, without limitation, the revocation, suspension, or modification of the license granted herein, the refusal to renew such license, the imposition of appropriate fines and penalties, or such other additional actions as may be necessary to protect the public interest.
- (4) This matter shall remain open pending the receipt of any reports required by the Retail Access Rules, as well as any subsequent amendments or modifications to the license granted herein.

**CASE NO. PUE-2002-00656
APRIL 3, 2003**

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

v.

VIRGINIA UNDERGROUND UTILITY PROTECTION SERVICE INC.,
Defendant

ORDER ACCEPTING OFFER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia, the Virginia 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 ("Act"). The Commission's Division of Utility and Railroad Safety ("Division"), charged with the investigation of probable violations of the Act, has completed investigations of the alleged violations of the Act and the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act ("Rules"), occurring between July 1, 2002, and October 17, 2002, listed in Attachment A, involving Virginia Underground Utility Protection Service, Inc. ("Company"), the defendant, and alleges that:

- (1) The Company is a notification center as that term is defined in § 56-265.15 of the Code of Virginia;
- (2) During the aforementioned period the Company has violated the Act and the Rules by the following conduct:
 - (a) Failing on certain occasions to notify operators whose underground lines are located in the area of the excavation or demolition of plans to excavate or demolish, in violation of § 56-265.22 A of the Code of Virginia;
 - (b) Failing on certain occasions to notify excavators of responses placed on the excavator-operator information exchange system by an operator or a locator, in violation of § 56-265.22 C of the Code of Virginia;

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- (c) Failing on certain occasions to be capable of being contacted by a toll-free telephone call, teletype, telecopy or personal computer, in violation of Rule 20 VAC 5-300-90 C 1;
- (d) Failing on certain occasions to transmit, within one hour of receipt, notices of proposed excavation to member operators by teletype, telecopy, personal computer or telephone, in violation of Rule 20 VAC 5-300-90 C 6;
- (e) Failing on certain occasions to maintain detailed maps or electronic means depicting the member operator's service areas with underground utility lines, in violation of Rule 20 VAC 5-300-90 C 10;
- (f) Failing on certain occasions to permit remote data entry for member operator and excavators, in violation of Rule 20 VAC 5-300-90 C 14; and
- (g) Failing on certain occasions to have a formal and effective training program for the notification center's employees, in violation of Rule 20 VAC 5-300-90 C 15.

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 the probable violations presented to the Underground Utility Damage Prevention Advisory Committee on December 10, and December 11, 2002, 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 \$22,100, to be paid contemporaneously with the entry of this Order. This payment will be made by cashier's check or money order, payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

Further, within 30 days from the entry of this order, the Company will provide to the Commission's Division of Utility and Railroad Safety the following:

- (1) A written procedure that the Company follows in order to effectively issue notices of excavation for areas where the streets or roads given to the center by the excavators are not on the center's maps; and
- (2) A written plan, together with the anticipated date for implementing this plan, to maintain up to date maps or electronic means depicting the member operators' underground utility lines.

Upon completion of the item found in Paragraph (2) above, the Company shall tender to the Clerk of the Commission an affidavit certifying that the Company has implemented the plan for maintaining up to date information depicting the member operator's underground utility lines on the Center's maps.

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 the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company be, and it hereby is, accepted.
- (2) The sum of \$22,100 tendered contemporaneously with the entry of this Order is accepted.
- (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 the account of the Company's failure to comply with the terms and undertakings of the settlement.

**CASE NO. PUE-2002-00661
FEBRUARY 11, 2003**

APPLICATION OF
WASHINGTON GAS LIGHT COMPANY

For authority to enter into billing system access agreements pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING AUTHORITY

On December 16, 2002, Washington Gas Light Company ("WGL" or "Applicant") filed an application with the State Corporation Commission ("Commission") under the Public Utilities Affiliates Act requesting authority to enter into a billing system access agreement with its affiliate, Washington Gas Energy Services, Inc. ("WGES").

WGL's application stems from Case No. PUE-1998-00005, in which the Commission approved a retail access pilot program whereby WGL's residential, commercial, industrial, and group metered apartment customers were allowed to shop for their energy needs from third party energy marketers. WGES participates in this program. WGL offers billing service to all third party energy marketers operating in WGL's service territory. The customer of a marketer opting for such billing receives a single bill for gas consumption and transportation service rather than one bill from the marketer for gas consumption and a second bill from WGL for transportation service. WGES uses this billing service, which is one of several services provided by WGL to WGES under a service agreement approved by the Commission on August 8, 1988, in Case No. PUE-1988-00021. Due to the implementation of new software, WGL's third party energy marketers, including WGES, can no longer access WGL's billing system through the Internet to view their customer

accounts. In order to analyze their customer accounts, third party energy marketers using WGL's billing service now need access to WGL's computer system.

In WGL's initial application, WGL sought authority to enter into a billing agreement ("Agreement #1") with WGES whereby WGL would provide billing system access to WGES via a third party call center with preexisting connections to WGL's computer system. Subsequent to the application, WGL encountered difficulties in negotiating a contact extension with the call center, whose contract expires March 31, 2003. Agreement #1 will expire coincident with this contract. Therefore, WGL filed a request on January 30, 2003, to amend its application by submitting two additional billing system agreements ("Agreements #2 and #3"). Agreement #2 is identical to Agreement #1 except that the third party call center's name has been replaced with "insert name here." Agreement #3 is the form agreement WGL uses for third party energy marketers whose call centers do not have preexisting access to WGL's computer system. WGL proposes to use Agreement #1 for the period through March 31, 2003, and either Agreement #2 or #3 thereafter, depending on which call center WGES ultimately uses.

Agreements #1 and #2 have four main provisions. First, WGL will grant access to WGES customer accounts to the third party call center employees for billing and collection purposes only. Second, WGL will grant to the call center employees read-only access and the ability to make notes on the accounts. Third, WGES agrees that the billing system access is provided without warranty of any kind. Fourth, WGES agrees to indemnify and hold WGL and its directors, officers, employees and agents harmless from any claims, suits, legal proceedings or damages arising from WGES' actions under the agreement.

Agreement #3 includes the provisions described above, but it also details additional security guidelines for directly connecting to WGL's computer system through a virtual private network.

NOW THE COMMISSION, upon consideration of the application and representations of Applicant and having been advised by its Staff, is of the opinion and finds that the above-described billing system access agreements between WGL and WGES are in the public interest and should be approved.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code of Virginia, WGL is hereby granted authority to enter into billing system access agreements with WGES under the terms and conditions and for the purposes as described herein.
- 2) The authority granted herein shall have no ratemaking implications.
- 3) The authority granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code of Virginia.
- 4) The Commission reserves the authority to examine the books and records of any affiliate in connection with the authority granted herein whether or not the Commission regulates such affiliate.
- 5) Commission authority shall be required for any changes in terms and conditions of the agreements from those contained herein.
- 6) WGL shall include the agreements authorized herein in its Annual Report of Affiliate Transactions filed with the Commission's Director of Public Utility Accounting.
- 7) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then VNG shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.
- 8) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2002-00680
JANUARY 10, 2003**

APPLICATION OF
APPALACHIAN POWER COMPANY

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On December 16, 2002, Appalachian Power Company d/b/a/ American Electric Power ("APCO" or "Applicant") filed an application with the State Corporation Commission ("Commission") for authority under Chapter 3 (§ 56-55 et seq.) of Title 56 of the Code of Virginia to issue long-term debt. Applicant paid the requisite fee of \$250.

In its application, APCO requests authority to issue long-term debt in the form of notes and pollution control bonds (collectively, "Debt Securities"). Specifically, Applicant requests authority to issue: 1) up to \$450,000,000 in secured or unsecured promissory notes ("New and Refunding Notes") from time to time through December 31, 2003; and 2) up to \$187,500,000 in pollution control bonds ("Tax-Exempt Bonds") to refinance existing pollution control bonds from time to time on or before January 1, 2004.

The New and Refunding Notes may be issued in the form of first mortgage bonds, senior or subordinated debentures (including junior subordinated debentures), or other unsecured promissory notes. Applicant indicates the New and Refunding Notes will have maturities of not less than nine months and not more than 50 years. The interest rate on the New and Refunding Notes may be fixed or variable and may be sold through either competitive bidding, negotiation with underwriters or agents, or by direct placement with a commercial bank or other institutional investor. No fixed rate security shall

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

be issued at an interest rate in excess of 350 basis points above the yield to maturity on a comparable maturity U.S. Treasury obligation at the time of issuance. The proceeds from the New and Refunding Notes will be used to provide financing for APCO's ongoing construction programs, to provide additional working capital, to refinance bonds or notes prior to maturity, or to retire short-term debt.

Applicant states that the Tax-Exempt Bonds are being issued to allow for the redemption of outstanding pollution control bonds prior to maturity. The Tax-Exempt Bonds will be issued via a public offering. The interest rate on the Tax-Exempt Bonds may be fixed or variable and will be established by competitive bidding or through negotiation with underwriters or agents. The maturity of any Tax-Exempt Bonds may be up to 40 years, depending on market conditions at the time of issuance.

Applicant indicates that it may enter into one or more interest rate hedging agreements from time to time through December 31, 2003, with respect to the Debt Securities. Such arrangements may include, but are not limited to, treasury lock agreements, treasury put options, or interest rate collar agreements. These hedges will be used to protect against future interest rate movements in connection with the issuance of the Debt Securities. Each hedging agreement will correspond to specific securities, and the aggregate corresponding principal amounts of all hedging agreements will not exceed the aggregate levels defined above. The term of any hedge agreement will not exceed 90 days.

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 issue up to \$450,000,000 in secured or unsecured promissory notes from time to time through December 31, 2003, and to issue up to \$187,500,000 in tax-exempt pollution control bonds from time to time through January 1, 2004, under the terms and conditions and for the purposes set forth in the application.

(2) Applicant shall submit a preliminary Report of Action within ten (10) days after the issuance of any Debt 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 the yield to maturity on a U. S. Treasury security of comparable maturity.

(3) Within sixty (60) days after the end of each calendar quarter in which any securities are issued pursuant to Ordering Paragraph (1), APCO shall file with the Commission a detailed Report of Action with respect to all Debt Securities issued and sold during the calendar quarter to include:

- (a) the issuance date, type of security, amount issued, interest rate, date of maturity, underwriters' names, underwriters' fees, other issuance expenses realized to date, and net proceeds to Applicant; and
- (b) the cumulative principal amount of New and Refunding Notes and Tax-Exempt Bonds issued under the authority granted herein and the amount remaining to be issued.

(4) Applicant shall file a final Report of Action on or before February 28, 2004, to include all information required in Ordering Paragraph (3) and a detailed account of all the actual expenses and fees paid to date for the New and Refunding Notes and Tax-Exempt Bonds, with an explanation of any variances from the estimated expenses contained in the Financing Summary attached to the application.

(5) Approval of the application shall have no implications for ratemaking purposes.

(6) This matter shall be continued, subject to the continuing review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2002-00691
JANUARY 27, 2003**

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

v.
ATMOS ENERGY CORPORATION,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia, the Virginia 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 September 11, 2002, D. L. B., Inc., damaged a four-inch plastic gas main line operated by Atmos Energy Corporation ("Company") located at or near Inglewood and Rock Road, Radford, Virginia, while excavating;

(2) On or about September 30, 2002, Atlantic Engineering Group damaged a three-quarter inch plastic gas service line operated by the Company located at or near 385 Lynnwood Drive, Bristol, Virginia, while excavating; and

(3) On or about October 10, 2002, Byer, Harmon & Johnson, General Contractors, Inc., damaged a three-quarter inch plastic gas service line operated by the Company located at or near 710 Auburn Avenue, Radford, Virginia, while excavating;

(4) On or about October 14, 2002, Christiansburg Electrical & Plumbing, Inc., damaged a two-inch plastic gas service line operated by the Company located at or near 1601 Downey Street, Radford, Virginia, while excavating;

(5) On or about October 24, 2002, the City of Radford damaged a three-quarter inch plastic gas service line operated by the Company located at or near 2328 Second Street, Radford, Virginia, while excavating;

(6) On or about November 4, 2002, Atlantic Engineering Group damaged a two-inch plastic gas main line operated by the Company located at or near Meadowcrest Drive, Bristol, Virginia, while excavating;

(7) On or about November 8, 2002, A & R Underground Utilities damaged a three-quarter inch plastic gas service line operated by the Company located at or near 1106 Calhoun Street, Radford, Virginia, while excavating; and

(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 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.

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 \$5,850 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.

(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.

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 be, and it hereby is, accepted.

(2) The sum of \$5,850 tendered contemporaneously with the entry of this Order is accepted.

(3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2002-00696
MAY 29, 2003**

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

v.

CENTRAL LOCATING SERVICE, LTD.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia, the Virginia 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 ("Act"). 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 between May 20, 2002, and November 5, 2002, listed in Attachment A, involving Central Locating Service, Ltd. ("Company"), and alleges that:

(1) The Company is a contract locator as that term is defined in § 56-265.15 of the Code of Virginia;

(2) During the aforementioned period the Company violated the Act by committing the following violations:

(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 and D of the Code of Virginia.

(b) Failing on certain occasions to mark within the time prescribed in the Act, in violation of § 56-265.17 C and §§ 56-265.19 A and D of the Code of Virginia.

(c) Failing on certain occasions to report to the notification center that lines had been marked or they were not in conflict with the proposed excavation, in violation of §§ 56-265.19 A, and D of the Code of Virginia.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As an offer to settle all matters before the Commission arising from the Division's allegations made herein, which includes all probable violations presented to the Underground Utility Damage Prevention Advisory Committee on December 10, 2002, 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 \$10,950 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.

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 be, and it hereby is, accepted.
- (2) The sum of \$10,950 tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2002-00697
MARCH 14, 2003**

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, the Virginia 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 ("Act"). 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 between April 4, 2002, and October 24, 2002, listed in Attachment A, involving Utiliquest, LLC ("Company"), and alleges that:

- (1) The Company is a contract locator as that term is defined in § 56-265.15 of the Code of Virginia;
- (2) During the aforementioned period the Company violated the Act by committing the following violations:
 - (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 and D of the Code of Virginia.
 - (b) Failing on certain occasions to mark within the time prescribed in the Act, in violation of §§ 56-265.19 A and D of the Code of Virginia.
 - (c) Failing on certain occasions to report to the notification center that lines had been marked or they were not in conflict with the proposed excavation, in violation of §§ 56-265.19 A and 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.

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 10, 2002, 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 \$8,500 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.

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 be, and it hereby is, accepted.
- (2) The sum of \$8,500 tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2002-00699
DECEMBER 10, 2003**

APPLICATION OF
VIRGINIA GAS STORAGE COMPANY

For an Annual Informational Filing

ORDER ADOPTING RECOMMENDATIONS AND DISMISSING PROCEEDING

On December 17, 2002, Virginia Gas Storage Company ("VGSC" or the "Company") by counsel, filed a motion with the State Corporation Commission ("Commission") requesting an extension of time in which to file its Annual Informational Filing ("AIF") for the period October 1, 2001, through September 30, 2002. VGSC requested that the date for filing its AIF be extended from January 28, 2003, to May 31, 2003. VGSC also requested a partial waiver from the filing requirements of Rule 20 VAC 5-200-30 A 9 so that VGSC's AIF for the period ending September 30, 2003, could be filed without Schedules 9 through 14. VGSC alleged that the Company had no regulatory assets or capitalized interest subject to the earnings test required by these schedules or workpapers.

On January 14, 2003, the Commission entered an Order that granted VGSC's request, extended the time in which VGSC could file its AIF from January 28, 2003, to May 31, 2003, and permitted the Company to file its AIF for the period ending September 30, 2002, without Schedules 9 through 14.

On May 28, 2003, VGSC filed its AIF for the twelve months ending September 30, 2002, with the Commission.

On October 30, 2003, the Staff filed its Report on the captioned application. This Report included a financial and accounting analysis. In its financial analysis, Staff noted that it employed an 11.5% return on equity for illustrative purposes. It explained that in VGSC's application for a storage facility, the Company was not a going concern. Because actual operating data was not available, the Company's application was based on rates derived from estimates of revenues and costs. VGSC received authority from the Commission to provide gas storage service on the basis of the rates filed in its certificate application rather than on a specified return on equity range.

Staff reported that NUI Corporation ("NUI") acquired VGC and VGSC's ownership interest in VGSC on March 28, 2000.¹ The Staff explained that it used the consolidated capital structure of NUI in its Report for ratemaking purposes because NUI is the ultimate source of market capital available to VGSC. Staff noted that NUI's consolidated ratemaking capital structure has an equity ratio of 39.54% and produces a cost of capital of 7.522% for the test year.

In its accounting analysis, the Staff observed that the Company had no regulatory assets subject to an earnings test evaluation on its books and did not propose to defer any new costs as regulatory assets. Staff related that in VGSC's preceding AIF, Case No. PUE-2001-00358, the Commission directed the Company to conduct a full review of its jurisdictional allocation methodology and to report the results of such review in the Company's next AIF. Since certain facilities, such as lines, compressor station equipment, and measuring and regulating station equipment were designed based on maximum daily flows rather than annual flow, Staff and the Company agreed to use the maximum daily withdrawal quantity ("MDWQ") rather than annual injections and withdrawals to allocate these items. Staff's presentation of VGSC's jurisdictional results included the following revisions: (i) the use of depreciable plant in service rather than contracted volumes to allocate depreciation expense and accumulated depreciation, (ii) the use of net utility plant rather than customer count to allocate property tax expense, (iii) the use of rate base rather than contracted volumes for allocating interest expense, (iv) the use of gas plant in service rather than contracted volumes for allocating Construction Work in Progress, (v) the use of net utility plant rather than contracted volumes for allocating Accumulated Deferred Income Taxes, (vi) the use of Operations and Maintenance ("O&M") expense rather than contracted volumes for allocating cash working capital. Staff commented that the resulting jurisdictional study provides a more characteristic representation of the actual nature of Company operations. Staff cautioned that this methodology was not intended to preclude or limit any future improvements that Staff, the Company, or the Commission may determine are necessary through additional experience or improved understanding of VGSC's operations. Staff also commented that the pro forma loss of two storage customers has a considerable impact on jurisdictional earnings when developing a fully adjusted jurisdictional return on equity.

Staff expressed concern about the costs allocated from Virginia Gas Company to VGSC and VGSC's other regulated affiliates. It noted that the allocation of VGC general costs to VGSC was applied after an estimated allocation was made of VGC general costs to Saltville Gas Storage Company, L.L.C. ("Saltville"). Staff recommended that once operating data for Saltville becomes available, this data be incorporated in the formula used to allocate costs from VGC to VGSC.

With regard to corporate costs incurred related to NUI and allocated to VGC and, in turn, to VGSC, the Staff noted that the Commission granted authority to allocate such corporate costs in Case No. PUE-2003-00129 on June 27, 2003. The Commission's June 27, 2003 Order directed that the booking of these costs would take place on a prospective basis. The Staff noted that after considering the reporting requirements directed in Case No. PUE-2003-00129, the appropriate ratemaking treatment for these costs should not be determined in this AIF, but should be explored in VGSC's next AIF. Staff recommended that once operating data for Saltville becomes available, this data be incorporated in the formula used to allocate costs from NUI to VGC and, in turn, to VGSC.

Staff related that VGSC has used Account 922-Administrative Expenses Transferred to transfer amounts from a variety of accounts, including non-Administrative and General ("A&G") accounts. Staff recommended that amounts transferred from O&M accounts other than 920 and 921 should be credited directly to the accounts from which the amounts are transferred. Staff further recommended that the Company utilize Account 922-Administrative Expense Transferred in accordance with the Uniform System of Accounts.

Staff concluded that, based on Staff's adjusted rate of return analysis, no action on VGSC's rates appeared necessary. Staff made the following recommendations for VGSC's prospective AIFs: (i) Saltville operating data should be incorporated into the formula used to allocate costs from VGC to VGSC once the data becomes available; (ii) Saltville operating data should be incorporated in the formula used to allocate costs from NUI to VGC and, in

¹ See Joint Petition of NUI Corporation, VGC Acquisition, Inc. and Virginia Gas Company, For approval of agreement and plan of merger under Chapter 5 of Title 56 of the Code of Virginia, Case No. PUA-2000-00079, 2001 S.C.C. Ann. Rep. 162.

turn, to VGSC; (iii) VGSC should use Account 922 in conformance with the Uniform System of Accounts; and (iv) accounts transferred from O&M accounts other than 920 and 921 should be credited directly to the accounts from which these amounts are transferred.

On November 19, 2003, the Company, by counsel, advised that it did not intend to file any formal comments responsive to the Staff Report.

NOW, UPON CONSIDERATION of the Company's application, the October 30, 2003, Staff Report, and the applicable statutes, the Commission is of the opinion and finds that the Staff's recommendations found in the October 30, 2003, Staff Report should be adopted and that the captioned application should be dismissed from the Commission's docket of active proceedings.

Accordingly, IT IS ORDERED THAT:

- (1) Consistent with the findings made herein, the recommendations set out in the Staff's October 30, 2003, Report are hereby adopted.
- (2) There being nothing further to be done in this proceeding, this application 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. PUE-2002-00700
DECEMBER 12, 2003**

APPLICATION OF
VIRGINIA GAS DISTRIBUTION COMPANY

For an Annual Informational Filing

ORDER ADOPTING RECOMMENDATIONS AND DISMISSING PROCEEDING

On December 17, 2002, Virginia Gas Distribution Company ("VGDC" or the "Company"), by counsel, filed a Motion with the State Corporation Commission ("Commission") requesting an extension of time in which to file its Annual Informational Filing ("AIF") for the period October 1, 2001, through September 30, 2002. VGDC requested that the date for filing this AIF be extended from January 28, 2003, to May 31, 2003. The Company also asked that the AIF for the period ending September 30, 2002, be filed without Schedules 9 through 14. VGDC represented that it was appropriate to omit these Schedules because the Company had no regulatory assets or capitalized interest subject to the earnings test required by these Schedules or workpapers.

In its January 14, 2003, Order Granting Motion, the Commission, among other things, extended the time within which VGDC had to file its AIF to May 31, 2003, and authorized VGDC to file its AIF for the test period ending September 30, 2002, without Schedules 9 through 14.

On May 28, 2003, VGDC filed its AIF for the twelve months ending September 30, 2002.

On November 7, 2003, the Staff filed its Report in the captioned case, which included a financial and accounting analysis. In its financial analysis, Staff noted that it had used an 11.5% cost of equity in the ratemaking capital structure for illustrative purposes since the Company does not have an authorized point or range for return on equity. Staff explained that the lack of actual operating data made it necessary for the Company to base its application for certificate of public convenience and necessity, docketed as Case No. PUE-1993-00013, on rates derived from estimates of revenues and costs. Such estimates included a cost of capital that incorporated a return on equity rate of 11.5%.

VGDC filed an application for its first rate increase in August 1999, in Case No. PUE-1999-00531. VGDC elected not to seek an authorized return on equity, which would have supported a higher rate increase than it had requested in its application. The February 22, 2000, Order entered in Case No. PUE-1999-00531 permitted VGDC's proposed rate increase to take effect on January 23, 2000, under the terms of a Joint Stipulation reached between the Company and Staff.

The Staff analyzed NUI Corporation's ("NUI's") consolidated capital structure for ratemaking purposes in its Report since NUI acquired Virginia Gas Company's ("VGC's") ownership interest in VGDC on March 28, 2000.¹ According to the Staff, NUI is the ultimate source of market capital available to VGDC. The consolidated NUI ratemaking capital structure has an equity ratio of 39.543% and produces a cost of capital of 7.522% for the test year. Staff reported that in September 2003, NUI's Board of Directors announced that NUI was up for sale as a result of credit downgrades and what was described as adverse business conditions. Staff determined that VGDC's return on rate base after previously approved adjustments was 2.44%, and its return on equity after previously approved adjustments was -1.35%.

In its accounting analysis, Staff reported that it had corrected several of the Company's accounting adjustments. Staff noted that on September 6, 2002, the Commission had issued an Order Granting Approval in Case No. PUA-2001-00041, which approved a comprehensive affiliate agreement. Staff expressed concern that while VGC is directly charging costs associated with Saltville Gas Storage Company, L.L.C. ("Saltville"), NUI's joint venture with Duke Energy, no general costs are being allocated from VGC to Saltville. Staff noted that employee nonproductive time such as vacation leave, sick leave, employee development costs and office training, depreciation maintenance, utilities, and computer systems are beneficial to Saltville just as they are to Virginia Gas Storage Company ("VGSC"), Virginia Gas Pipeline Company ("VGPC"), and VGDC. Staff recommended that once Saltville has sufficient operating data available, the allocation methodology for these costs should include Saltville in the formula when allocating costs to VGDC. In the alternative, the Staff recommended that the Company demonstrate that all legitimate costs are already being properly charged to Saltville, such that costs which are necessarily allocated to the other regulated companies, including VGDC, need not include Saltville.

¹ See Joint Petition of NUI Corporation, VGC Acquisition, Inc., and Virginia Gas Company, For approval of agreement and plan for merger under Chapter 5 of Title 56 of the Code of Virginia, Case No. PUA-2000-00079, 2001 S.C.C. Ann. Rep. 162.

The Staff also reported that VGC received Commission approval in Case No. PUE-2003-00129 to allocate corporate costs incurred at the NUI level down to VGC and to the regulated subsidiaries. The Staff concluded that with the commencement of book allocations to VGDC nine months after the end of the test year, the appropriate ratemaking treatment for these services should not be incorporated in the current AIF, but should be explored more fully beginning in the next AIF. The Staff, therefore, incorporated no costs allocable from NUI to VGDC in its AIF review for this case.

Additionally, Staff commented in its Report that the Company used Account 922 - Administrative Expenses Transferred to transfer amounts from a variety of accounts, including non-Administrative and General ("A&G") accounts. Staff observed that amounts transferred from Operating and Maintenance ("O&M") accounts other than Account 920 and 921 should be credited directly to the accounts from which the amounts are transferred. Staff recommended that the Company use Account 922 - Administrative Expenses Transferred in accordance with the Uniform System of Accounts.

In summary, Staff recommended that: (i) Saltville operating data be incorporated in the formula used to allocate costs from VGC to VGDC once Saltville operating data becomes available; (ii) Saltville operating data be incorporated into the formula used to allocate costs from NUI to VGC, and in turn to VGDC; (iii) VGDC use Account 922 in conformance with the Uniform System of Accounts; and (iv) accounts transferred from O&M accounts other than 920 and 921 be credited directly to the accounts from which these amounts are transferred.

On November 19, 2003, VGDC, by counsel, advised that the Company did not intend to file any formal comments to the Staff Report.

NOW UPON CONSIDERATION of the Company's application, the Staff's Report, and the applicable statutes, the Commission is of the opinion and finds that the Staff's recommendations set out in the November 7, 2003, Staff Report should be adopted, and this case dismissed.

Accordingly, IT IS ORDERED THAT:

(1) Consistent with the findings made herein, the recommendations set out in the Staff's November 7, 2003, Report are hereby adopted.

(2) 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 files for ended causes.

**CASE NO. PUE-2002-00701
DECEMBER 16, 2003**

APPLICATION OF
VIRGINIA GAS PIPELINE COMPANY

For an Annual Informational Filing

ORDER ADOPTING RECOMMENDATIONS AND DISMISSING PROCEEDING

On December 17, 2002, Virginia Gas Pipeline Company ("VGPC" or the "Company"), by counsel, filed with the State Corporation Commission ("Commission") a motion requesting an extension of time in which to file its Annual Informational Filing ("AIF") for the test period October 1, 2001, to September 30, 2002. The Company requested that the date for filing its AIF be extended from January 28, 2003, to May 31, 2003.

On January 14, 2003, the Commission entered an Order granting VGPC's Motion and extending the date by which VGPC was to file its AIF to May 31, 2003. The January 14, 2003 Order continued the case generally.

On May 28, 2003, VGPC filed its AIF for the twelve months ending September 30, 2002, with the Commission.

On November 7, 2003, the Staff filed its Report on the captioned application. Staff noted in its Report that a 13.5% return on equity had been used for illustrative purposes since the Company does not have an authorized point or range for return on equity. Staff explained that in VGPC's application for certificates of public convenience and necessity for its storage and pipeline facilities, a cost of equity of 13.5% had been used for illustrative purposes to establish VGPC's rates because actual operating data was unavailable.

In its discussion of the relevant capital structure, the Staff used the consolidated capital structure of NUI Corporation ("NUI") in its Report because NUI is the ultimate source of market capital available to VGPC. Staff reported that NUI's consolidated ratemaking capital structure has an equity ratio of 39.543% and produced a cost of capital of 8.313% for the test year. Staff calculated that VGPC's return on rate base, after previously approved adjustments, was 5.54%, and its return on equity, after previously approved adjustments, was 6.49%.

In its accounting analysis portion of the Report, the Staff noted that it had reached an agreement with VGPC that had been accepted by the Commission in Case No. PUE-1998-00627, regarding the treatment of capitalized interest. Based on Staff's analysis of VGPC's earnings for the 12 months ended September 30, 2002, the Staff concluded that the Company had not recovered its interest costs. However, based on continuing methodology differences between Staff and the Company, a partial disallowance of capitalized interest from rate base appeared to be appropriate for the test period. Staff calculated that \$35,961 should be removed from rate base for the test year.

Staff used the methodology approved by the Commission in Case No. PUE-1998-00627 to calculate the jurisdictional amount of capitalized interest to be included in rate base. The amount of Total Company capitalized interest calculated by Staff was \$114,039. The Company calculated an adjustment of \$112,738, with the small difference relating to Staff's use of a revised capital structure filed by the Company.

Staff commented that the agreed upon treatment regarding capitalized interest is an exception to the Commission's long standing approach regarding capitalized interest. Staff acknowledged that there may come a time when it may no longer be appropriate to capitalize VGPC's interest. It observed that inclusion of capitalized interest in VGPC's rates should continue to be examined in VGPC's next AIF or rate case, and that the Company should reflect capitalized interest at a level consistent with the use of the agreed upon methodology in VGPC's next AIF or rate case.

As to the Company's earnings test, the Staff noted that VGPC is not earning above the 13.50% return on equity benchmark that Staff has used in prior AIFs. Therefore, Staff did not recommend any write-off of the Company's regulatory asset related to amortization of Segment 5 of VGPC's P-25 intrastate pipeline.

Staff expressed concern about the costs being directly charged by Virginia Gas Company ("VGC") associated with Saltville Gas Storage Company L.L.C. ("Saltville"). Staff commented that no VGC general costs were being allocated to Saltville, even following the commencement of allocations to VGPC and its other regulated affiliates on October 1, 2002. Staff asserted that employee non-productive time (vacation leave/sick leave), employee development costs and office training, depreciation, maintenance, utilities, and computer systems are beneficial to Saltville just as they are to VGPC and its other regulated affiliates Virginia Gas Storage Company ("VGSC") and Virginia Gas Distribution Company ("VGDC"). Staff recommended that once Saltville has sufficient operating data available, VGC's allocation methodology should include Saltville in the formula when allocating costs to VGPC and VGC's other regulated affiliates. In the alternative, Staff proposed the Company demonstrate that the entirety of legitimate costs are already being properly charged to Saltville, such that costs which are necessarily allocated to the other regulated companies need not be allocated to Saltville.

Staff also noted that on June 27, 2003, VGC received approval from the Commission in Case No. PUE-2003-00129 to allocate corporate costs incurred at the NUI level down to VGC, and in turn to VGC's regulated affiliates including VGPC. The approval granted by the Commission in that docket was prospective in nature. Based on the reports required by the June 27, 2003, Order, the magnitude of the dollar amount related to the costs, and the commencement of book allocations to VGPC nine months after the end of the test year, the Staff concluded that the appropriate ratemaking treatment for such costs should not be determined in the current AIF, but should be explored more fully in the next AIF. Consequently, Staff incorporated no costs allocable from NUI to VGPC in the current AIF review.

The Staff reported that on November 22, 2002, the Commission issued its Order Granting Authority in Case No. PUE-2002-00458 in response to an application filed by Saltville, VGPC, NUI, and VGC. In that Order, the Commission directed Staff to address the transfer price issues arising from the transfers of certain facilities and land in VGPC's next AIF or rate proceeding. In accordance with that Order, as well as the Commission's January 15, 2003 Order entered in Case No. PUE-2001-00359, Staff instructed the Company to include with the captioned AIF all journal entries made to reflect the transfer of assets as well as the justification for the transfer price for the subject assets.

Staff explained in its Report that there were two transfers in question: The first involved the transfer of an evaporation plant, three holding ponds, and a disposal well for fair market value ("FMV") of \$13,794,110. The second transfer involved the reassignment of 582.14 acres of real estate. Both transfers would serve to remove plant from the books of VGPC and add plant to Saltville's books.

The basis of the transfer price for both transfers, according to Staff, was the actual cost of the assets at February 28, 2001. The actual cost was then adjusted downward to reflect the projected value of the asset to Saltville. For example, a 75% allocation factor was used for the evaporation plant because three of the associated caverns were being developed by Saltville, while only one cavern was owned by VGPC. The holding ponds, disposal well, and land was allocated based on 88% of actual cost as of February 28, 2001. This factor was derived by VGPC based on 10 Bcf of storage expected to be developed by Saltville and the 1.3 Bcf of storage created by VGPC. Staff concluded that the transfer prices should be accepted for purposes of the AIF.

Staff also reported that VGPC has used Account 922-Administrative Expenses Transferred to transfer amounts from a variety of accounts, including non-Administrative and General ("A&G") accounts. According to Staff, amounts transferred from Operating and Maintenance ("O&M") accounts other than 920 and 921 should be credited directly to the accounts from which the amounts are transferred.

Staff concluded that no action should be taken with respect to VGPC's rates since the Company's jurisdictional return on equity for the test year was 4.55% on a per books basis and 6.49% on an adjusted basis. For future AIFs, Staff recommended that: (i) Saltville operating data be incorporated in the formula used to allocate costs from VGC to VGPC once such data becomes available; (ii) Saltville operating data be incorporated into the formula used to allocate costs from NUI to VGC, and in turn, to VGPC; (iii) VGPC utilize Account 922 in conformance with the Uniform System of Accounts; and (iv) accounts transferred from O&M accounts other than 920 and 921 should be credited directly to the accounts from which the amounts are transferred.

On November 19, 2003, VGPC, by counsel, advised that the Company did not intend to file any formal comments in response to the Staff's Report.

NOW, UPON CONSIDERATION of VGPC's application, the Staff Report, and the applicable statutes, the Commission is of the opinion and finds that the Staff's recommendations set out in the November 7, 2003, Report should be adopted, and that this application should be dismissed from the Commission's docket of active proceedings.

Accordingly, IT IS ORDERED THAT:

- (1) Consistent with the findings made herein, the recommendations set out in the Staff's November 7, 2003, Report are hereby adopted.
- (2) The Company shall reflect capitalized interest at a level that is consistent with the use of the agreed upon methodology for capitalized interest reached in Case No. PUE-1998-00627 in future AIFs.
- (3) There being nothing further to be done in this case, this application shall be dismissed from the Commission's docket of active proceedings and the papers filed herein placed in the Commission's files for ended causes.

**CASE NO. PUE-2003-00001
MARCH 18, 2003**

JOINT PETITION OF
PRINCE GEORGE SEWERAGE AND WATER COMPANY,
BEXLEY, LLC,
PRINCE GEORGE WASTEWATER, LLC,
BEXLEY PROPERTIES, LLC,
and
PARK HOLDINGS GROUP, LLC

For authorization to transfer utility stock pursuant to the Utility Transfers Act

ORDER GRANTING APPROVAL

On January 10, 2003, Prince George Sewerage and Water Company ("Prince George"), Bexley, LLC ("Bexley"), Prince George Wastewater, LLC ("PG Wastewater"), Bexley Properties, LLC ("Bexley Properties"), and Park Holdings Group, LLC ("Park") (collectively, the "Joint Petitioners"), filed a joint petition with the State Corporation Commission ("Commission") pursuant to the Utility Transfers Act, Chapter 5 of Title 56 of the Code of Virginia ("Code"), wherein they request permission to transfer 50% of the utility assets of Prince George to PG Wastewater. Pursuant to an amendment filed on February 18, 2003, the Joint Petitioners currently request authority, pursuant to § 56-88.1 of the Code, to transfer 50% of the stock of Prince George from Bexley to PG Wastewater.

Prince George is a Virginia corporation located in Prince George County, Virginia. Prince George is the owner and operator of a sewerage treatment plant that serves two customers, a motel and a mobile home park. The two customers currently served by Prince George are Bexley Mobile Home Park and an Econo Lodge Motel located near the Bexley Mobile Home Park. The sewerage treatment plant consists of the sewerage treatment facilities and related equipment, including all wastewater treatment plant assets, related operations, liabilities, machinery, mains, treatment tanks, drainage devices, pools, pumps, and other equipment constituting a complete system of sewerage disposal held by Prince George.

Bexley is a Virginia limited liability company currently owning one-half (50%) of the outstanding common stock of Prince George. Bexley, formerly known as Bexley Limited Partnership, converted to Bexley, LLC, on September 5, 2002. Bexley owns and operates Bexley Mobile Home Park located in Prince George County, Virginia.

PG Wastewater and Park are both Virginia limited liability companies located in Glen Allen, Virginia. Bexley Properties is a limited liability company also located in Glen Allen, Virginia. Bexley Properties is the sole member of PG Wastewater.

In 1994, Bexley Limited Partnership (now known as Bexley) purchased one-half of the outstanding common stock in Prince George, the owner of the sewerage treatment plant. Since this time, Prince George has provided sewerage services to the motel and to residents of Bexley Mobile Home Park. On May 6, 2002, Park entered into a Purchase Agreement with Bexley (the "Agreement") to purchase certain real property and improvements together with Bexley's 50% interest in the stock of Prince George.

In February of 2003, Park entered into a Partial Assignment of Purchase Agreement (the "Assignment") with PG Wastewater wherein it assigned to PG Wastewater all of its rights, title, and interest in, to, and under the Purchase Agreement, to purchase 50% of the stock of Prince George. As a result of this Assignment, PG Wastewater agreed to perform all of the duties, obligations, and liabilities of Park under the Purchase Agreement.

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 transfer of 50% of the stock and, therefore, control of Prince George from Bexley to PG Wastewater, as described herein, will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to §§ 56-88.1 and 56-90 of the Code of Virginia, approval is hereby granted for the transfer of 50% of the stock and, therefore, control of Prince George from Bexley to PG Wastewater, as described herein.
- 2) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUE-2003-00003
JANUARY 30, 2003**

JOINT APPLICATION OF
VIRGINIA ELECTRIC & POWER COMPANY D/B/A DOMINION VIRGINIA POWER
and
SOUTHSIDE ELECTRIC COOPERATIVE

For revision of certificates under the Utility Facilities Act

ORDER FOR REVISION OF CERTIFICATE

On September 26, 2002, Southside Electric Cooperative ("SSEC" or the "Cooperative") and Virginia Electric & Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power") submitted to the Division of Energy Regulation of the State Corporation Commission a letter, along with copies of a detailed map, requesting a revision to Certificate E-V48 to change the boundary lines between their service territories.

The requested change relates to a parcel of land owned by a residential consumer who resides on Route 642 (Poor House Road) located in Brunswick County, Virginia. The parcel is currently within SSEC's service territory, however, the closest SSEC facilities are approximately 4000 feet away and the Cooperative has had difficulty obtaining the necessary right-of-way easements. Dominion Virginia Power, on the other hand, has adequate facilities, approximately 1260 feet away, to serve this customer. Dominion Virginia Power and SSEC agree to the proposed change and request that the territory line revisions delineated on attached Map V48 be made to Certificate E-V48 to reflect that Dominion Virginia Power would provide service to the parcel of land indicated herein. Dominion Virginia Power and SSEC represent that the consumer is in agreement with the boundary revision.

NOW THE COMMISSION, having considered the request, is of the opinion and finds that it is in the public interest to amend Certificate E-V48. The parties affected by the proposed revision have notice thereof, and are in agreement with the revision of boundary lines.

ACCORDINGLY, IT IS ORDERED that Certificate E-V48 shall be amended as delineated on attached Map V48 and revised certificates shall be sent to Dominion Virginia Power and SSEC.

**CASE NO. PUE-2003-00004
OCTOBER 22, 2003**

APPLICATION OF
VIRGINIA NATURAL GAS, INC.

For an Annual Informational Filing

FINAL ORDER

On January 21, 2003, Virginia Natural Gas, Inc. ("VNG" or the "Company"), by counsel, filed a Motion with the State Corporation Commission ("Commission") requesting an indefinite extension of time in which to file its Annual Informational Filing ("AIF") for the twelve months ending September 30, 2002 ("test year"). On January 24, 2003, the Staff filed its Response to VNG's Motion, wherein the Staff indicated that it recommended an extension of 60 days and that VNG did not object to such an extension.

On January 30, 2003, the Commission entered an Order that docketed the request and directed the Company to file its 2002 AIF with the Commission by no later than March 31, 2003.

On March 27, 2003, VNG filed a Motion with the Commission requesting an additional forty-five (45) days, *i.e.*, until May 15, 2003, in which to file its AIF. In support of its request, VNG alleged that Staff and Company had reached an agreement regarding the proper accounting for VNG's acquisition by AGL Resources, Inc. ("AGLR") from Dominion Resources, the related merger costs and savings, and the treatment of certain transition costs raised in the AIF. According to the Company, the Commission's final determination regarding these issues would impact VNG's AIF for the test period ending September 30, 2002.

Through its Response filed on March 28, 2003, the Staff advised that it did not oppose VNG's request for an extension of time in which to file the 2002 AIF.

On March 31, 2003, the Commission entered an Order granting VNG's request for an extension.

On April 8, 2003, VNG filed its AIF for the test year ending September 30, 2002, in the captioned docket. This application purported to include adjustments consistent with the Agreement reached with Staff in the Company's AIF for the twelve months ended September 30, 2001, in Case No. PUE-2001-00307. In its April 2, 2003 Order in Case No. PUE-2001-00307, the Commission accepted the methodology described in Appendices A, B, and C to VNG's Amended Response to the Staff Report filed in that docket for use when VNG prepared and filed its subsequent AIFs.¹

On July 18, 2003, the Staff filed its Report in this proceeding. That Report included a financial and accounting analysis. In its financial analysis in the instant case, the Staff noted that in the April 2, 2003 Order entered in Case No. PUE-2001-00307, the Commission authorized the Company to use the hypothetical CNG capital structure set out in Exhibit 2-A to the October 31, 2002 Staff Report filed therein until the issues of capital structure and return on equity were addressed in VNG's next rate proceeding. This hypothetical capital structure is based on an average of the dollar amount of each component of VNG's former parent, Consolidated Natural Gas Company's ("CNG's") capital structure from 1997 to 2000. The resulting average capitalization ratios are then applied to the total dollar amount of AGLR's test year capitalization. That capital structure produces an overall cost of capital of 8.91%, based on the 10.9% midpoint of the authorized return on equity range established in VNG's last rate case.

The Staff also reported that the Commission lowered the bottom of VNG's return on equity range by 40 basis points for future AIF filings, resulting in a new range of 10.0% to 11.4% in its Order Approving Experiment entered in Case No. PUE-2002-00237.² Further, in the September 27, 2002 Order Approving Experiment, the Commission accepted the provision of VNG's Offer of Settlement wherein VNG agreed not to file a base rate case, or any non-gas revenue neutral rate design proposals applicable to residential and general service classes, before July 1, 2004, except under the emergency conditions set forth in § 56-245 of the Code of Virginia.³

¹ See Application of Virginia Natural Gas, Inc., For an Annual Informational Filing, Case No. PUE-2001-00307, Doc. No. 03041077, Order Accepting Agreement and Dismissing Proceeding at 12-14 (April 2, 2003) (Hereafter "April 2, 2003 Order").

² See Application of Virginia Natural Gas, Inc., For approval of a Weather Normalization Adjustment Rider, Case No. PUE-2002-00237, 2002 S.C.C. Ann. Rep. 541, 543 ("Order Approving Experiment").

³ Id.

Consistent with the Commission's April 2, 2003 Order in Case No. PUE-2001-00307, both the Company and Staff have employed the same hypothetical CNG capital structure ratios in this case. Staff recommended that this approach be continued until VNG's next rate case when the cost of equity and the appropriate ratemaking capital structure may be considered together.

In the accounting analysis portion of its Report, Staff describes the differences between its accounting adjustments and those included by VNG in its cost of service. Staff's analysis focuses on VNG's proposals to adjust cost of service to reflect VNG's acquisition by AGLR. As part of this analysis, Staff noted that the Company experienced a substantial increase in intercompany billings. According to Staff, part of this increase is explained by a new 10-year lease agreement for office space at Ten Peachtree Place in Atlanta, Georgia. VNG's annual share of the lease payment for this office space amounts to \$828,764 on a total company basis, representing an increase of \$451,313 over VNG's share of last year's lease payments. Lease payments for the new office space began in January 2003. Staff also attributed the increase in billings to an increase in service company employees, a merit increase for service company employees, the implementation of a crisis management plan that considers system failures and terrorist attacks, an increase in banking fees, software upgrades and maintenance, and increases in insurance expenses, among other things.

The Company included a three-year amortization of merger transition costs in its cost of service.⁴ Such costs related to the termination of employees and computer software costs incurred as a result of the merger with AGLR.

Staff took issue with the deferral and amortization of these costs based on Dominion Resources, Inc.'s ("DRI's") and CNG's representation in a stipulation filed in Case No. PUA-1999-00020, waiving the right to recover from VNG's jurisdictional customers costs directly or indirectly related to VNG's disposition.⁵ Staff also asserted that VNG's severance and capitalized software costs have been recovered, because consistent with Commission policy, such transition costs were matched with savings related to reduced payroll, benefits, and payroll taxes, among other expenses. Staff reported that VNG's cumulative savings in payroll, benefits, and payroll taxes for the test year and previous fiscal year exceeded \$13.2 million, an amount in excess of the deferred severance and computer software costs of \$11.5 million. Staff asserted that its approach for matching these savings with the related expenses was consistent with the Commission's actions in Case Nos. PUE-1997-00455 and PUE-1989-00035, cases involving Columbia Gas of Virginia, Inc. and Virginia Electric and Power Company, respectively.

Finally, the Staff contended that even if the Company's proposal to amortize its transition costs was accepted in the captioned case, the Commission's Order Approving Experiment, does not permit the Company to file a rate application before July 1, 2004. By that time, Staff maintains, the transition costs related to the Company's merger would be fully amortized.

With respect to the Company's proposal to recover the expenses associated with amortization of the acquisition adjustment, Staff noted that the acquisition adjustment represented the difference between the cash paid by AGLR for VNG's stock and the net book value of VNG, *i.e.*, \$156,101,656. Staff reported that the annual amortization would amount to \$3,817,691 on a jurisdictional basis. Staff further represented that Paragraph 5 of the stipulation accepted by the Commission in Case No. PUA-1999-00020 neither obligated nor otherwise bound the Commission to allow recovery of an acquisition adjustment in VNG's cost of services.

Moreover, as a result of AGLR's election to treat VNG's acquisition under Section 338 of the Internal Revenue Code, Staff asserted that VNG's net balance of accumulated deferred income taxes and deferred investment tax credits ("ITCs") of approximately \$46 million on a jurisdictional ratemaking basis was adjusted to zero on October 1, 2000. According to Staff, the loss of these benefits to Virginia ratepayers represented an additional cost of the merger with a lost benefit of the reduction to rate base generated by ADIT as well as the loss of the tax credit amortization generated by the deferred ITC.

Additionally, the Staff cited the increase in intercompany billings as an additional cost of the merger of VNG and AGLR. Staff argued that before the Commission determines that amortization of the acquisition adjustment should be reflected in rates, it should assure itself that there are permanent savings that exceed total merger-related costs, and that a net benefit from the merger accrues to the ratepayer. Staff urged the Commission to consider the issues related to an acquisition adjustment within the context of a rate application. Staff noted that if the Commission authorized the acquisition adjustment for ratemaking purposes, Staff would accept the 39-year amortization period proposed by the Company.

Staff challenged the Company's analysis of merger cost/savings set out in the Company's AIF. Staff explained that the Company's methodology incorporated an arithmetic average growth factor per customer for both operating and maintenance ("O&M") expenses and plant that would have been experienced had CNG continued to own VNG. VNG's methodology then compares the imputed level of expense and plant with the actual AGLR level of expense and plant. Staff asserted that the Company's methodology could not guarantee what the actual results would have been under continued CNG ownership and that VNG's growth factors vary widely from year to year. Staff maintained that its analysis, relying upon actual expenses and account balances, was a more reliable indicator of merger costs and savings. Staff therefore eliminated the per book amount of the amortization of the acquisition adjustment, *i.e.*, \$3,817,691 on a jurisdictional basis.

Staff further reported that the Company had one regulatory asset related to the implementation of other pension employee benefits ("OPEB"). Staff differed in its earnings test adjustments from the Company as to: (i) the annualized revenues resulting from rates in effect at the end of the test year, (ii) the treatment of amortization expense for the acquisition adjustment, (iii) the Company's inclusion of the amortization of merger transition costs in the earnings test, and (iv) the Company's inclusion of lead days developed for use by AGLR in VNG's lead/lag study. Staff, in contrast to VNG, used the expense lead days established by the Commission in the Company's last rate case in its adjustments.

⁴ See Schedule 21, page 44 of 86, Adjustment No. 16a & 16b, page 2 of 2. According to column (2) to this Schedule, the per books level of transition costs is \$11,541,339. Footnote 2 to this Schedule explains that the Company proposes to amortize this amount over three years beginning October 2000. Thus, it appears that the amortization for these expenses will be completed by September 30, 2003.

⁵ See Joint Petition of Dominion Resources, Inc., and Consolidated Natural Gas Company, For approval of agreement and plan of merger under Chapter 5 of Title 56 of the Code of Virginia, Case No. PUA-1999-00020, 1999 S.C.C. Ann. Rep. 169, 173 (hereafter "Case No. PUA-1999-00020" wherein the Commission adopted the stipulation in toto).

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

According to Staff, after all adjustments, VNG's actual earnings resulted in a 5.68% return on equity on a regulatory basis, a return below the bottom of the Company's authorized range of return on equity. Staff concluded that the Company had not recovered charges related to regulatory assets beyond the authorized level of amortization reflected in rates and recommended that no further action on the Company's base rates or regulatory assets be undertaken at this time. Staff further contended that: (i) the Company's transition costs have been recovered, (ii) it was inappropriate for the Company to seek continued amortization of these costs, and (iii) total merger costs, including the write-off of ADIT and ITC and the increase in intercompany billings associated with VNG's merger with AGLR, are in excess of the savings. Staff recommended that the amortization of the acquisition adjustment be excluded from VNG's cost of service, and that any final determination of the treatment of the acquisition adjustment be made in the context of a rate proceeding.

On August 15, 2003, VNG, by counsel, filed its Response to the Staff Report. In its Response, the Company characterized the Staff's approach for measuring costs and savings associated with the AGLR and VNG merger as incomplete and as not considering all elements of costs and savings resulting from AGLR's acquisition of VNG. VNG asserted that the Staff ignored the significant decrease in net plant investment resulting from the AGLR acquisition and other reductions in O&M costs. The Company urged the Commission to use the method of determining acquisition costs and savings approved by the Commission in Case No. PUE-2001-00307 unless and until the Commission approved another methodology. VNG recognized in its Response that the methodology accepted in the April 2, 2003 Order did not obligate the Commission, Staff, or others who were not participating in the case to accept that methodology. VNG committed to continue to prepare its AIFs in accordance with the April 2, 2003 Order entered in Case No. PUE-2001-00307, and commented that the current differences between Company and Staff were essentially the same differences that existed before submission of the agreed upon methodology.

On August 22, 2003, the Staff filed its Reply to VNG's Response ("Reply"). In its Reply, Staff argued that Ordering Paragraph (2) of the April 2, 2003 Order entered in Case No. PUE-2001-00307, did not obligate Staff to accept the methodology adopted in that Order and represents how VNG may present its measurement of costs and savings and account for an acquisition premium when filing its AIFs. The Staff asked that the Commission permit VNG to use the method of determining acquisition costs and savings accepted in the April 2, 2003 Order for purposes of preparing and filing subsequent AIFs. Staff also requested the Commission to find that: (i) the methodology referenced in the April 2, 2003 Order did not bind the Commission, Staff, or any other party in future cases, (ii) the Staff may evaluate the Company's methodology on an ongoing basis, (iii) the Staff may exercise its right to recommend a different methodology in subsequent AIFs or in other future proceedings, and (iv) VNG's entitlement to and recovery of an adjustment associated with its acquisition will be determined in a future rate proceeding.

VNG did not file any further pleading responsive to the Staff's assertions.

NOW, upon consideration of the record and pleadings filed herein, the Commission finds that no change in VNG's base rates has been advocated by either the Staff or the Company. In view of that fact, we find that a determination as to the amount and amortization of the transition costs associated with the merger of VNG and AGLR need not be determined in this case. We note, however, that the financial and operating data filed by the Company in support of its application indicates that the Company anticipated a three-year recovery period for these expenses, beginning October 2000. As provided in Case No. PUE-2002-00237, the Commission accepted VNG's proposal not to file a base rate case or any non-gas revenue neutral rate design proposals applicable to residential and general service classes before July 1, 2004, except under the emergency conditions set forth in § 56-245 of the Code of Virginia. See Order Approving Experiment, 2002 S.C.C. Ann. Rep. at 543. Thus, these expenses would appear to be unavailable to the Company to support an increase in rates because the three year amortization period for the Company would have expired by the time the Company will be eligible to file for an increase in base rates.

As to the differences in methodology for measuring the merger costs and savings as well as VNG's entitlement to an acquisition adjustment, we note that our discussion at page 13 of the April 2, 2003, Order entered in Case No. PUE-2001-00307 provided that the

methodology accepted herein does not bind the Staff, any party or this Commission in future proceedings when considering the issue of measuring merger costs and savings and the issue of an acquisition adjustment; that by accepting the proposed accounting for AIF purposes, the Commission has not decided the issues of VNG's entitlement to and recovery of an acquisition adjustment; that those issues should be reserved for decision in a rate proceeding; . . .

We affirm this earlier determination. As we determined in the preceding AIF, whether VNG is entitled to an acquisition adjustment; if it is entitled to an acquisition adjustment, the amount of such adjustment; the period of collection for the adjustment; the level of the Company's earnings after considering an acquisition adjustment; and any other issues subsidiary to such an adjustment, should be reserved for determination in the Company's next rate application. For purposes of preparing this and other subsequent AIFs, VNG may utilize the methodology accepted in Case No. PUE-2001-00307. However, our authorization to allow VNG to use this methodology should not be construed as our approval of that methodology for purposes of setting rates for VNG or as granting VNG permission to recover an acquisition adjustment. Simply put, acceptance of the methodology does not obligate the Commission, Staff or others not a party to this case to accept the methodology, but instead, represents how VNG may present its measurement of costs and savings and account for an acquisition premium when filing its AIFs. Staff and prospective parties are free to explore alternate methodologies to measure merger costs and savings in this and future AIFs. However, we reiterate that acceptance of the methodology for purposes of presentation in an AIF does not constitute approval of VNG's acquisition adjustment or recovery of the same in the Company's rates.

Finally, VNG did not take issue with the Staff's recommendation to continue the use of the hypothetical CNG capital structure accepted in the Commission April 2, 2003 Order in Case No. PUE-2001-00307. Consequently, we will authorize VNG to employ that approach in its subsequent AIFs, until further Order of the Commission.

Accordingly, IT IS ORDERED THAT:

(1) In accordance with Staff's recommendations, VNG shall continue to use the hypothetical CNG capital structure accepted in Ordering Paragraph (1) of the April 2, 2003 Order entered in Case No. PUE-2001-00307 in its subsequent AIFs until further Order of the Commission.

(2) The methodology to measure costs and savings and to account for VNG's acquisition premium accepted in the Ordering Paragraph (2) of the April 2, 2003 Order entered in Case No. PUE-2001-00307 is hereby accepted for use by VNG in preparing and filing subsequent AIFs with the Commission. Acceptance of this methodology does not obligate the Commission, Staff, or others who are not participants in this case to accept this

methodology. Instead, acceptance of this methodology represents how VNG may present its measurement of costs and savings and account for an acquisition premium when filing its AIFs.

(3) Acceptance of the methodology relative to the Company's merger and acquisition for purposes of presentation in an AIF does not constitute approval of VNG's acquisition adjustment or of any and all issues ancillary to VNG's acquisition adjustment. These issues shall be addressed in VNG's next rate application, i.e., an application in which a change in base rates is sought.

(4) There being nothing further to be done herein, this case shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be placed in the Commission's files for ended causes.

**CASE NO. PUE-2003-00005
FEBRUARY 21, 2003**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY
and
DOMINION RESOURCES. INC.

For an exemption from the filing and prior approval requirements of Chapter 4 of Title 56 of the Code of Virginia or, in the alternative, approval of a parent company guaranty, and for expedited consideration

ORDER GRANTING APPROVAL

On January 22, 2003, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company") and Dominion Resources, Inc. ("DRY") (collectively, the "Applicants") filed an application with the State Corporation Commission ("Commission") requesting an exemption from the filing and prior approval requirements of Chapter 4 of Title 56 of the Code of Virginia ("Code") or, in the alternative, approval of a parent company guaranty for the purpose of meeting a portion of Dominion Virginia Power's nuclear decommissioning financial assurance obligations.

Dominion Virginia Power is a Virginia public service corporation providing electric service to customers in its service territory in Virginia and North Carolina. It is a wholly owned subsidiary of DRI. DRI is a holding company as defined in the Public Utility Holding Company Act of 1935 ("1935 Act"), subject to regulation as such under the 1935 Act by the Securities and Exchange Commission. DRI is the corporate parent of Dominion Virginia Power. DRI is, therefore, an affiliated interest of Dominion Virginia Power within the meaning of Chapter 4 of Title 56 of the Code.

Dominion Virginia Power is the licensee of four nuclear power plants and subject to the rules, regulations, and guidelines promulgated by the Nuclear Regulatory Commission ("NRC") with regard to the operation, maintenance, and ultimate decommissioning of nuclear power reactors. For its obligation to decommission each nuclear reactor at the end of its useful life, Dominion Virginia Power established external trusts to which it funded all amounts included in customers' rates for electric service designated as nuclear decommissioning collections as approved by the various regulatory commissions.

Dominion Virginia Power expects to collect and earn over the respective operating lives of its nuclear power plants sufficient funds to meet its ultimate decommissioning obligation. As of December 31, 2001, the balance of the trusts amounted to \$858 million. The current level of collections is approximately \$36 million per year. The total estimated cost to decommission the plants is \$1.6 billion, stated in 1998 dollars.

NRC regulations specify a minimum level of financial assurance and certain methods that a licensee, if it meets certain criteria, may use in satisfying its nuclear decommissioning financial assurance obligations. The 2002 minimum financial assurance level for Dominion Virginia Power's nuclear plants totaled \$1.1 billion.

In 1998, the NRC changed its regulations regarding nuclear decommissioning financial assurance requirements via its Final Rule on Financial Assurance Requirements for Decommissioning Nuclear Power Reactors ("Final Rule"). The Final Rule modified the criteria that a licensee must meet to use certain of the prescribed methods for meeting the minimum financial assurance requirements. The NRC also modified the prescribed methods, which include external sinking funds (wherein funds are deposited over the operating life of the nuclear unit), surety mechanisms (including insurance and parent company guarantees), prepayment in an amount that with investment earnings will meet the future decommissioning obligation, and certain contractual arrangements.

Prior to the effective date of the Final Rule, Dominion Virginia Power, through its external trusts established for nuclear decommissioning, had been able to rely solely on the sinking fund method to meet its nuclear decommissioning financial assurance obligation. The sinking fund method required the establishment of funds in an account, such as a trust, "segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected." The Final Rule placed restrictions on a licensee's use of the sinking fund method as its sole method for meeting the NRC's financial assurance requirement.

Under the NRC's new regulations, Dominion Virginia Power was no longer able to rely solely on the sinking fund method for meeting its decommissioning financial assurance amount. The Company has relied on the purchase of surety bonds since 1999 to supplement the sinking fund method. Dominion Virginia Power pays an annual premium for the surety bonds and annually adjusts the amount being bonded.

For 2002 the amount being bonded was set at an aggregate total for the four nuclear units of \$56.9 million at a premium of approximately \$114,000. Dominion Virginia Power was notified that such premium would increase effective October 2002 to approximately \$565,000, without the posting of collateral. Additionally, the premium of \$565,000 would double to \$1,130,000 annually effective April 1, 2003. Through its insurance broker, the Company determined that such increases were market-wide and not isolated to the Company's current surety provider. The posting of collateral would be a mandatory requirement from any other surety provider. Under the current indemnity structure, Dominion Virginia Power's current surety provider may not request collateral unless the Company's credit rating falls below investment grade.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Due to these significant cost increases, Dominion Virginia Power proposes to use a parent company guaranty as a replacement for the surety bonds, at no cost to Dominion Virginia Power. The amount of the parent company guaranty allowed by the NRC is defined by certain financial tests as applied to DRI's financial statements. Based on December 31, 2001 values, the parent guaranty available for Dominion Virginia Power is \$142 million.

Dominion Virginia Power states that the issuance of a parent company guaranty by DRI to Dominion Virginia Power is in the public interest because it allows the Company to reduce its costs significantly by avoiding the significant rise in costs of the surety bond method for meeting a portion of its NRC decommissioning financial assurance requirement.

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 requested exemption is not in the public interest and should be denied. We believe, however, that the above described parent guaranty by DRI to replace the surety bonds is in the public interest and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 56-77 of the Code, the requested exemption is hereby denied.
- (2) Pursuant to § 56-77 of the Code, Dominion Virginia Power is hereby granted approval for the issuance of a parent company guaranty by DRI for the purposes as described herein.
- (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 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.
- (5) The approval granted herein shall have no ratemaking implications.
- (6) Company shall include the parent company guaranty approved herein in its Annual Report of Affiliate Transactions to be submitted to the Director of Public Utility Accounting of the Commission by no later than May 1 of each year for the preceding calendar year, subject to extension by the Director of Public Utility Accounting of the Commission.
- (7) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then Dominion Virginia Power shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.
- (8) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00006
FEBRUARY 11, 2003**

PETITION AND COMPLAINT OF
METROMEDIA ENERGY, INC.

Regarding Washington Gas Light Company's Plan to Return Customers to Sales Service Effective February 1, 2003

DISMISSAL ORDER

By Order Granting Temporary Injunction of January 24, 2003, the Commission docketed the Complaint and Petition for Relief filed by Metromedia Energy, Inc. We also enjoined Washington Gas Light Company from transferring Metromedia Energy customers to the utility's service unless additional financial security were provided. By Order Setting Hearing of January 28, 2003, the matter was set for hearing before the Commission. On February 6, 2003, Metromedia Energy moved for leave to withdraw its complaint and petition without prejudice. In support of its motion, Metromedia stated that Washington Gas Light had agreed to begin discussions on resolving the dispute.

Upon consideration of the motion, the Commission will grant leave to withdraw.

Accordingly, IT IS ORDERED THAT:

- (1) The motion of Metormedia Energy, Inc., for leave to withdraw its complaint and petition is granted.
- (2) The temporary injunction against Washington Gas Light Company is dissolved.
- (3) This case is dismissed from the Commission's docket and placed in closed status in the records maintained by the Clerk.

**CASE NO. PUE-2003-00007
JULY 30, 2003**

APPLICATION OF
COMMUNITY ELECTRIC COOPERATIVE

Application for approval of retail access tariffs and terms and conditions of service for retail access

FINAL ORDER

On January 29, 2003, Community Electric Cooperative ("CEC" or the "Cooperative"), filed an application for State Corporation Commission ("Commission") approval of the Cooperative's retail access tariffs and terms and conditions of service for retail access, as required by paragraph (5) of the Commission's Final Order issued on December 18, 2001, in the Cooperative's case for functional separation, Case. No. PUE-2000-00746 ("functional separation case"), and pursuant to the Virginia Electric Utility Restructuring Act (the "Act"), Chapter 23 of Title 56 (§ 56-576 et seq.) of the Code of Virginia.

CEC's retail access tariff filing includes: (1) Terms and Conditions of Service (including Terms and Conditions of Service for Retail Access); (2) Tariffs and Rate Schedules (including Unbundled Tariffs and Rate Schedules, Retail Access Tariffs and Rate Schedules and Other Tariffs and Rate Schedules); (3) Competitive Service Provider Coordination Tariff (including, Competitive Service Provider Agreement, Electronic Data Interchange Trading Partner Agreement, Dispute Resolution Procedure, Aggregator Agreement, and Transmission Customer Designation Form); (4) Market Prices and Wires Charges Calculations; (5) Plan to Provide Price to Compare Information; and (6) Letter of Agreement between CEC and Old Dominion Electric Cooperative regarding the Competitive Transition Charge ("CTC").

On March 14, 2003, the Commission issued an Order Prescribing Notice And Inviting Comments And Requests For Hearing ("Order") in this proceeding, whereby it directed the Cooperative to publish notice of its application, and directed the Staff to investigate the application and file a report detailing its findings and recommendations. On April 15, 2003, the Cooperative filed its required proof of publication of notice and proof of notice to local governments, as required by the Order. On May 13, 2003, the Staff filed its Report in this proceeding wherein it recommended that the Commission approve CEC's tariffs and terms and conditions with the adoption of certain modifications recommended by Staff.

Staff stated in its report that the methodology employed by CEC in calculating projected market prices for generation applicable for the rate classes that will participate in retail choice, was the methodology set forth in the electric cooperatives' Comprehensive Wires Charges Proposal ("Comprehensive Plan"), approved by Commission Order issued May 24, 2002, in Case PUE-2001-00306 ("Wires Charges Case"). The Staff stated its support for CEC's methodology for calculating projected market prices, but noted a technical error in the calculation of the proposed wire charges. Staff indicated in its Report that CEC has agreed with Staff that there was an error in the calculation. Staff further stated that CEC has agreed to resubmit corrected Tables 7-11 at the time that CEC submits its compliance filing prior to initiating retail access in its service territory. Staff found that the Cooperative's methodology for calculation of competitive transition charges ("CTCs") was appropriate, however, Staff further recommended that the value currently used for the Cooperative's Wholesale Fuel Adjustment factor should be updated to reflect the most recent actual monthly fuel adjustment available prior to its initiation of retail access in its service territory.

The Staff accepted the Cooperative's proposal, as reflected in its filed commitment document, for the allocation of wires charges revenue between CEC and its electricity supply cooperative, Old Dominion Electric Cooperative ("ODEC"). Pursuant to Va. Code § 56-584, the Staff recommended that if the agreement is renegotiated, the renegotiated agreement must be submitted to the Commission for approval.

Staff further found that the proposed retail access schedules were consistent with the currently effective bundled service schedules and that the rates proposed for each service class properly reflect the pricing approved by the Commission in CEC's last rate case, Case No. PUE-1991-00030¹ and its functional separation case. The Staff further noted, however, that the unbundled rates in the filing did not include the effects of two riders – Rider F and Rider G6. These riders became effective after January 1, 2001, the effective dates of capped rates in CEC's functional separation case. Staff further recommended, pursuant to Va. Code § 56-582 B (ii), which allows the Commission to adjust capped rates following any changes in the taxation of incumbent electric utility revenues, that Rider F should be rolled into CEC's unbundled rates.

In addition, with regard to Rider G6, Staff recommended, pursuant to Va. Code § 56-582 B (v)² that Rider G6 be terminated upon the initiation of Customer Choice in CEC's service territory.

Furthermore, Staff indicated that CEC did not propose a retail access (unbundled) lighting service schedule in this proceeding. Staff noted that in CEC's functional separation case, the Commission approved the Cooperative's proposal to offer unmetered lighting service to its customers only as a bundled service. In its Report, Staff did not oppose this schedule offering unmetered lighting service only as a bundled service.

With respect to Extension of Facilities, Staff recommended that the term "distribution" be inserted in applicable areas to reflect that CEC may require a customer requesting an extension to contract with the Cooperative to receive "distribution" service to pay for the costs of the extension.

With respect to Billing and Payment for Service, Staff stated that the language in the Meter Reading section was ambiguous and recommended that the section should be revised to make clear that the requesting customer must pay the meter reading fee.

With respect to Meters and Metering, CEC had proposed the adoption of new language, which allows the Cooperative to adjust bills for meter inaccuracy back to the date of the event that caused the meter inaccuracy to occur, if the Cooperative is certain of the date of the event that the meter

¹ Application of Community Electric Cooperative for an expedited increase in rates, 1991 S.C.C. Ann. Rep. 327.

² Virginia Code § 56-582 B (v) provides that "the Commission may adjust such capped rates in connection with the following...with respect to cooperatives that were members of a power supply cooperative on January 1, 1999, their recovery of fuel costs, through the wholesale power cost adjustment clauses of their tariffs pursuant to § 56-231.33."

inaccuracy is deemed to have begun. The Staff recommended that the Cooperative keep the language addressing this issue currently in its tariff, which limits adjustments to customers' bills to the preceding period not to exceed six months.

With respect to CSP enrollment of a customer, Staff recommended that the Cooperative's proposed \$15 fee for enrolling a customer be denied because it is anti-competitive. Staff recommended instead that the fee be reduced to \$6 to reflect costs associated with special meter reads, and that such a charge be re-identified as a special meter reading fee.

With respect to Customer Information, including individual historical energy usage data and summary usage data, the Staff recommended that CEC amend its tariffs to conform with Rule 20 VAC 5-312 60 D. Rule 60 D requires the CSP to obtain customer authorization prior to requesting any customer usage information not included on the mass list from the local distribution company. The Staff recommended that the Cooperative amend its tariffs to release historical information to a CSP upon request at any time during the enrollment process. Staff further recommended that the Cooperative modify the applicable section of its Competitive Service Provider Tariff to include language that CEC will electronically provide Customer summary usage information not included on the mass list.

With respect to Customer Billing, pursuant to Retail Access Rule 10 VAC 5-312-90 M, Staff recommended that the section addressing billing and payment for service be modified to reflect that the LDC will be responsible for the communication, notification and collection of the CSP's portion of delinquent bills, while that customer is enrolled with the CSP, and for two billing cycles after service is terminated.

With respect to Budget Billing, Staff recommended, in light of the Commission's position on this issue articulated in its Final Order in Case No. PUE-2002-00086, that the Cooperative modify this section to permit the retail access customer to retain budget billing for the distribution portion of his bill, and have the ability to switch to the CSP of his choice after bringing such budget balance for distribution to zero, or making acceptable payment arrangements on the outstanding balance with the Cooperative.

Staff further accepted as cost-based charges, the imposition of the new CSP Registration and Aggregator Registration Fee, Technical Support ("IT") Fee, and Customer Service Representative ("CSR") Fee.

Staff accepted the Competitive Service Provider, Aggregator and Trading Partner Agreements, as attachments to the Cooperative's CSP Coordination Tariff.

Finally, the Staff found that the proposed dispute resolution procedure was appropriate and should be accepted.

On May 23, 2003, CEC filed its response to the Staff Report ("Response"). In its Response, CEC provided comments on three specific areas. CEC disagreed with the Staff's recommendation that Rider G6 be terminated upon the initiation of Customer Choice in its service territory. CEC argued that the infusion of additional revenues through the elimination of Rider G is unnecessary and undesirable. CEC further asserted that while the Cooperative would not desire to lower the cap on its rates established July 1, 1999, it should be permitted to include in its rate structure as called for in Schedule G, Wholesale Power Cost Adjustment, Rider G6 and successor riders, to the extent that the Cooperative does not exceed its capped rates.

Furthermore, in its Response, CEC agreed with the Staff's recommendation to insert the word "distribution" in applicable areas in the Extension of Facilities section. Furthermore, the Cooperative requested the addition of the following sentence to the end of that section, Section VI.B.1: "The consumer may, at their option, make a contribution in aid of construction ("CIAC") to reduce the amount of the contracted increased minimum monthly bill or sufficient to eliminate the need for a five (5) year contract for distribution service as called for in this section."

With respect to the Service Connection Fee proposed by CEC, the Cooperative stated that the requested fee is intended to recover only the incremental cost to the Cooperative for enrolling a member with the CSP. CEC stated that these costs generally include a meter reading, processing of the EDI enrollment as well as the response, and the confirmation correspondence. CEC further stated that should the Cooperative not be permitted to recover these incremental costs, the costs will be borne by the entire Cooperative membership through reduced margins and capital credit assignments. CEC requested the Commission recognize the total incremental cost associated with the enrollment of a consumer by the approval of the originally proposed \$15 enrollment fee.

NOW THE COMMISSION, having considered the Cooperative's application, Staff's Report, CEC's response, and applicable law, hereby approves CEC's application, as recommended by Staff and subject to the modifications detailed herein.

We incorporate, by reference, our findings in the Wires Charge Case (Case No. PUE-2001-00306). The Cooperative's proposed CTC reflects the appropriate fuel adjustments and wires calculation. The wires charges calculated are subject to the limitation of Va. Code § 56-583, which permits adjustments no more frequently than annually. Thus, these wires charges are effective until December 31, 2004, in conformance with Ordering Paragraph (5) of the May 24, 2002, Order in the Wires Charges Case. As discussed above, the value used for the fuel adjustment to base generation should be updated to reflect the most recent actual monthly fuel adjustment available prior to CEC initiating retail access in its service territory. As agreed to by CEC, the Cooperative shall resubmit corrected Tables 7-11 at the time that the Cooperative submits its compliance filing incorporating the updated fuel adjustment.

With respect to CEC's commitment document with ODEC to reflect the allocation of wires charge revenue, we accept the Cooperative's proposal, however, with the condition that if the commitment agreement is renegotiated to change the revenue sharing ratio, CEC must submit the renegotiated agreement to the Commission for further approval. As we have previously discussed in Case No. PUE-2002-00575³, Virginia Code § 56-584 states, in pertinent part:

To the extent not preempted by federal law, the establishment by the Commission of wires charges for any distribution cooperative shall be conditioned upon such cooperative entering into binding commitments by which it will pay to any power supply cooperative of which such distribution cooperative is or was a member,

³ Application of Shenandoah Valley Electric Cooperative, for approval of retail access tariffs and terms and conditions of service for retail access, Case No. PUE-2002-00575, Final Order issued April 2, 2003, at 6-7.

as compensation for such power supply cooperative's stranded costs, all or part of the proceeds of such wires charges, as determined by the Commission.

In that proceeding, we found that the plain language of the statute specifies that the allocation of wires charges between a power supply cooperative and a distribution cooperative is established "*as determined by the Commission.*" Thus, any change to the commitment agreement must be submitted to the Commission for approval.

We now address Rider F and the Staff's recommendation to roll the base rate decrease into CEC's unbundled rates. Rider F represents the base rate decrease for power purchased from ODEC subsequent to a decrease in wholesale capacity rates due to the elimination of the Virginia Gross Receipts Tax. Staff has recommended that Rider F be rolled into, and such decrease reflected in, the unbundled capped rates. The Cooperative did not oppose this recommendation in its Response. We find, pursuant to Virginia Code § 56-582 B (ii), that it is appropriate to include Rider F in the Cooperative's unbundled rates.

With respect to Rider G6, the Staff has recommended that the Rider should be terminated upon CEC's initiation of Customer Choice in its service territory, because this rider does not qualify for inclusion in the capped unbundled rates as it represents a change in wholesale capacity rates not eligible to be passed through the fuel component of CEC's wholesale power adjustment clause. CEC has asserted that the Rider should be retained, as long as the Cooperative does not exceed its capped rates.

Although we agree with the Staff that Va. Code § 56-582 B (v) provides that the Commission may only adjust the capped rates of cooperatives that are members of power supply cooperatives in connection with fuel costs - and not capacity costs - we find that Va. Code § 56-581 B specifically addresses the circumstances here, and permits the implementation and retention of such riders, to the extent that the resulting changes do not exceed such cooperatives' capped generation rates. Section 56-581 B states:

Beginning July 1, 1999, and thereafter, no cooperative that was a member of a power supply cooperative on January 1, 1999, shall be obligated to file any rate rider as a consequence of an increase or decrease in the rates, other than fuel costs, of its wholesale supplier, nor must any adjustment be made to such cooperative's rates as a consequence thereof.

Thus, in the matter before us, CEC is free to file a rate rider to pass on decreases in the non-fuel rates that CEC pays ODEC. Furthermore, we do not find that § 56-582 or other provisions of the Act prohibit CEC from reflecting such decreases in capacity costs through such a rider. CEC has chosen to pass on such reductions, and having filed and received approval for such rate rider, thus, maintains Rider G6.

With respect to CEC's proposed unbundled lighting service schedule, we will accept the Company's proposed schedules. We have previously approved such schedules in CEC's functional separation case, Case No. PUE-2000-00746.

With respect to Extension of Facilities, we find CEC should amend this section to include "distribution" in the applicable areas, as proposed by the Staff, and as the Cooperative has agreed to in its Response. In addition, CEC has also offered tariff language that would allow a customer to make a CIAC to offset the costs of the requested extension. Thus, the CIAC would allow the customer to reduce the contracted increased minimum monthly bill or eliminate the need for a five (5) year contract for distribution service. We find that the language should be adopted to permit customers to make such a CIAC.

CEC proposes an enrollment fee of \$15. We have previously denied such fees for customer enrollments with CSPs in the retail access pilot proceedings.⁴ We continue to find that the costs associated with customers' enrollment with a CSP of their choice is a part of the cost of customer choice, and not a new service. Thus, we deny the Cooperative's request to impose such a fee. We will, however, adopt the Staff's recommendation and allow the Cooperative to charge a separate \$6 special meter reading fee to cover the incremental costs of providing a special meter read for a customer to switch to a CSP. CEC does not currently read meters on a regular basis and thus, reading meters fairly qualifies as a new service.

With respect to the proposed new CSP Registration and Aggregator, IT, and CSR fees, we adopt these fees as proposed by CEC.

With respect to the CSP, Trading Partner, and Aggregator Agreements, we accept their inclusion as attachments to the CSP Coordination Tariff.

Accordingly, IT IS ORDERED THAT:

- (1) CEC's tariffs and terms and conditions of service as recommended by Staff and subject to the modifications discussed herein are hereby approved.
- (2) CEC shall file revised tariffs and terms and conditions of service reflecting the findings herein, as soon as practicable after the date of this order.
- (3) CEC may initiate retail choice in its service territory upon the filing required by paragraph (2) above.
- (4) This case is hereby dismissed, and the papers shall be placed in the file for ended causes.

⁴ Ex Parte: In the matter of considering an electricity retail access pilot program – Virginia Electric and Power Company, Case No. PUE-1998-00813, Final Order issued April 28, 2000, at 39; and Ex Parte: In the matter of considering an electricity retail access pilot program – American Electric Power – Virginia, Case No. PUE-1998-00814, Final Order issued June 15, 2000, at 40.

**CASE NO. PUE-2003-00009
OCTOBER 24, 2003**

APPLICATION OF
ATMOS ENERGY CORPORATION

For an Annual Informational Filing

ORDER ADOPTING RECOMMENDATIONS AND DISMISSING CASE

On February 3, 2003, Atmos Energy Corporation ("Atmos" or the "Company") filed its Annual Informational Filing ("AIF") for the twelve months ending September 30, 2002 ("2002 test year"). Atmos also filed financial and operating data for the 2002 test year in support of its application.

On September 15, 2003, the Staff filed its audit report in the captioned case, setting out its review and analysis of Atmos' AIF for the 2002 test year. Staff's audit report contained both a financial and accounting analysis. In its financial review, Staff reported that Atmos successfully negotiated additional lines of credit during the test year demonstrating its stable financial operating results. According to Staff, Atmos did not issue any new long-term debt financing during the test year. However, it did issue 884,431 shares of common stock through various common stock plans, increasing the balance for common stock by approximately \$18.3 million. According to Exhibit 3 to the Staff Report, Atmos' utility-only capital structure consisted of 7.24% short term debt, 53.652% of long-term debt, 38.897% of common equity, and 0.204% of investment tax credits. Atmos' weighted cost of capital was in the range of 8.495% to 8.885%.

In its accounting analysis, Staff described the differences between its adjustments and those made by Atmos. For the test year ended September 30, 2002, Staff concluded that Atmos had an 11.81% per books return on common equity and a 9.44% fully adjusted return on equity. Atmos and Staff differed on the weather normalization adjustment, adjustments for residential and small commercial customer growth, and jobbing and service revenues and expenses, and calculation of income taxes.

With regard to the fiscal year 2000-2001 heating season, Staff reported that Atmos experienced record cold weather and high gas costs which resulted in a sharp increase in the level of uncollectible account charge-offs. Staff and Atmos agreed to provide for creation of a regulatory asset and deferral of the excessive uncollectible costs arising from unpaid natural gas bills. This deferral is equal to the excess of the test year net charge-off level compared to the four-year average net charge-off level from 1997-2000. According to Staff, the amount of this regulatory asset is \$492,363. Amortization of the new regulatory asset commenced on January 1, 2002, and will take place over no more than a maximum of a three-year period. Staff agreed to use the midpoint (11.00%) of Atmos' currently authorized return on equity range, *i.e.*, 10.50% to 11.50% as the benchmark to measure recovery of the deferred costs. Any accelerated recovery resulting from excess earnings would serve to shorten the three-year amortization period.

Since amortization of the excessive uncollectibles expense deferral began during the test year, the Staff included twelve months of amortization expense in the fully adjusted rate of return statement. In accordance with the agreement, amortization of the regulatory asset was to commence on January 1, 2002, for a period of 36 months. However, the Company did not commence amortization until March 2002, based on an amortization period of 33 months. Staff's adjustment to the amortization expense that is part of the uncollectible expense annualizes the amortization as if it had commenced on the agreed upon date of January 1, 2002.

Staff also noted that the Company provided documentation that demonstrated that the other postretirement employee benefits ("OPEB") voluntary employees benefit association ("VEBA") trust is fully funded as the result of catch-up contributions made in May and June of 2003. On a fully-adjusted basis, according to Staff, it was no longer necessary to reflect an unfunded OPEB liability in rate base. Staff commented that in the August 1, 2003 Order Adopting Recommendations and Dismissing Proceeding entered in Case No. PUE-2002-00002,¹ the Commission directed Atmos to: (i) establish a formal policy such that once VEBA trust funds are committed to funding the Virginia OPEB accrual, the funds cannot be transferred to another account without notice and explanation to the Staff, and (ii) provide Staff with an annual reconciliation of the Virginia OPEB accrual to the Virginia VEBA trust funding, to be included in the Company's prospective AIFs or rate application. Staff's earnings test results indicated that Atmos earned a 10.51% return on equity on a regulatory basis. According to Staff, this result demonstrated that Atmos had not experienced an accelerated recovery of the uncollectible accounts regulatory asset. Staff therefore recommended that no action be taken in relation to this excess uncollectible regulatory asset.

Staff reported that Atmos also has a deferral of Merger and Integration ("M&I") costs related to the merger of United Cities Gas Company with Atmos in June 1997. The amount of this deferral is \$1,283,705 on a jurisdictional basis or \$331,290 for ratemaking purposes. Staff reported that pre-fiscal year 2001 regulatory assets remain subject to a benchmark based on the bottom of the authorized range of return on common equity, *i.e.*, 10.50%, for Atmos. Because Staff's earning test results were in excess of 10.50%, it was necessary to write off \$898 of the M&I regulatory asset to reflect the accelerated amortization and reduce the earnings test return on common equity to the authorized level of 10.50%.

Staff concluded that Atmos should be directed to continue the following for subsequent AIFs and rate applications: (i) establish a formal policy such that once VEBA trust funds are committed to funding the Virginia OPEB accrual, the funds cannot be transferred to another account without notice and explanation to Staff; and (ii) provide Staff with an annual reconciliation of the Virginia OPEB accrual to the Virginia VEBA trust fund, to be included in any subsequent AIF or rate application.

On October 14, 2003, the Company, by counsel, filed a letter with the Commission, noting that Atmos took no exception to the recommendations in the Staff Report and agreed that it was appropriate to close the case.

NOW, upon consideration of the Company's application and record in this case, the Commission is of the opinion and finds that the Staff's recommendations are appropriate. As we noted in our August 1, 2003 Order entered in Case No. PUE-2002-00002, our acceptance of Staff's recommendation on the M&I regulatory asset merely reserves judgment on the remaining balance of the M&I regulatory asset until Atmos' next rate proceeding in which rates are changed. No change in rates has been recommended in this case.

¹ See Application of Atmos Energy Corporation d/b/a United Cities Gas Company-Virginia, For an Annual Informational Filing, Case No. PUE-2002-00002, Doc. No. 030810062, Order Adopting Recommendations and Dismissing Proceeding at 8 (August 1, 2003).

We further find that the proposals of Staff and Atmos to monitor the level of Atmos' OPEB funding prospectively appear appropriate. We will therefore direct Atmos to provide an annual reconciliation of the Virginia OPEB accrual to the Virginia VEBA trust funding in its subsequent AIF or rate application. We will also direct Atmos to establish a formal policy so that once VEBA trust funds are committed to funding the OPEB accrual for Virginia, these funds cannot be transferred to another account without notice and explanation to the Staff. Adoption of these proposals should permit the Commission, Staff or any interested case participant to evaluate the Company's compliance with the requirements of the Order entered in Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte, In re: Consideration of a rule governing Accounting for Postretirement Benefits other than Pensions, Case No. PUE-1992-00003, 1992 S.C.C. Ann. Rep. 315, 316.

Accordingly, IT IS ORDERED THAT:

- (1) Consideration of the M&I regulatory asset issue shall be delayed until the Company files its next rate proceeding during which rates are changed.
- (2) Atmos is hereby directed to establish a formal policy so that once VEBA trust funds are committed to funding the OPEB accrual for Virginia, these funds cannot be transferred to another account without notice and explanation to the Staff.
- (3) Atmos shall provide an annual reconciliation of the Virginia OPEB accrual to the Virginia VEBA trust fund in its subsequent AIF or rate application.
- (4) There being nothing further to be done herein, this case shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be filed in the Commission's files for ended causes.

**CASE NO. PUE-2003-00057
MARCH 25, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION
v.
ATMOS ENERGY CORPORATION,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia, the Virginia 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 October 18, 2002, Atlantic Engineering Group damaged a two-inch plastic gas main line operated by Atmos Energy Corporation ("Company") located at or near 91 Winding Way, Bristol, Virginia, while excavating;
- (2) On or about November 7, 2002, C. L. Draughn Ditching Contractor, Inc., damaged a two-inch plastic gas service line operated by the Company located at or near 106 Yorkshire Court, Blacksburg, Virginia, while excavating;
- (3) On or about November 7, 2002, A & R Underground Utilities damaged a three-quarter inch plastic gas service line operated by the Company located at or near 1104 Downey Street, Radford, Virginia, while excavating;
- (4) On or about November 18, 2002, Newcomb Electric Co., Inc., damaged a two-inch plastic gas service line operated by the Company located at or near Adams Street, Radford, Virginia, while excavating;
- (5) On or about November 19, 2002, Ed Vanhoy, homeowner, damaged a one-half inch plastic gas service line operated by the Company located at or near 1820 Norway Street, Bristol, Virginia, while excavating;
- (6) On or about December 10, 2002, C. L. Draughn Ditching Contractor, Inc., damaged a two-inch plastic gas main line operated by the Company located at or near South Hampton Court, Blacksburg, Virginia, while excavating;
- (7) On or about December 12, 2002, Nichols Construction damaged a three-quarter inch plastic gas service line operated by the Company located at or near 191 East Main Street, Abingdon, Virginia, while excavating; and
- (8) On the occasion 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 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.

As an offer to settle all matters before the Commission arising from the Division's allegations made herein, the Company represents and undertakes that:

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(1) The Company will pay a civil penalty to the Commonwealth of Virginia in the amount of \$5,750 to be paid contemporaneously with the entry of this Order. This payment will be made by cashier's check or money order, payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

(2) Any 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.

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 be, and it hereby is, accepted.

(2) The sum of \$5,750 tendered contemporaneously with the entry of this Order is accepted.

(3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2003-00058
MAY 29, 2003**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
CENTRAL LOCATING SERVICE, LTD.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia, the Virginia 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 ("Act"). 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 between August 1, 2002, and November 21, 2002, listed in Attachment A, involving Central Locating Service, Ltd. ("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 of Virginia;

(2) During the aforementioned period the Company has violated the Act by committing the following violations:

(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 and D of the Code of Virginia.

(b) Failing on certain occasions to mark within the time prescribed in the Act, in violation of § 56-265.17 C and §§ 56-265.19 A and D of the Code of Virginia.

(c) Failing on certain occasions to report to the notification center that lines had been marked or they were not in conflict with the proposed excavation, in violation of §§ 56-265.19 A and 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.

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 4, 2003, 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 \$12,250 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.

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 be, and it hereby is, accepted.

(2) The sum of \$12,250 tendered contemporaneously with the entry of this Order is accepted.

(3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2003-00059
MARCH 25, 2003**

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, the Virginia 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 November 6, 2002, John J. Curry, excavator, damaged a one-half inch plastic gas service line operated by Washington Gas Light Company ("Company") located at or near 2423 Kensington Street North, Arlington, Virginia, while excavating;

(2) On or about November 7, 2002, WCC Cable, Inc., damaged a three-quarter inch plastic gas service line operated by the Company located at or near 8205 Spring Hill Lane, McLean, Virginia, while excavating;

(3) On or about November 8, 2002, Long Fence Company damaged a one-quarter inch plastic gas light line operated by the Company located at or near 13607 Pennsboro Drive, Chantilly, Virginia, while excavating;

(4) On or about November 21, 2002, Casper Colosimo & Son, Inc., damaged a one-half inch plastic gas service line operated by the Company located at or near 2001 Marthas Road, Fairfax, Virginia, while excavating;

(5) On or about November 21, 2002, PVM Plumbing & Heating, Inc., damaged a one and one-quarter inch plastic gas service line operated by the Company located at or near 10928 Coverstone Drive, Manassas, Virginia, while excavating;

(6) On or about November 26, 2002, Virginia Electric and Power Company damaged a one-half inch plastic gas service line operated by the Company located at or near 4044 Hunt Road, Fairfax, Virginia, while excavating;

(7) On or about November 26, 2002, Prince William Construction Company damaged a one-half inch plastic gas service line operated by the Company located at or near 2490 Linwood Lane, Woodbridge, Virginia, while excavating;

(8) On or about December 2, 2002, the Town of Vienna damaged a one-half inch plastic gas service line operated by the Company located at or near 2203 Witness Court, Vienna, Virginia, while excavating;

(9) On or about December 2, 2002, William A. Hazel, Inc., damaged a three-quarter inch plastic gas service line operated by the Company located at or near Waxpool Road and Demott Drive, Ashburn, Virginia, while excavating;

(10) On or about December 2, 2002, Arlington County damaged a one-half inch plastic gas service line operated by the Company located at or near 722 South 22nd Street, Arlington, Virginia, while excavating;

(11) On or about December 4, 2002, Triple H Contracting Co. damaged a three-quarter inch plastic gas service line operated by the Company located at or near 4138 Point Hollow Lane, Fairfax, Virginia, while excavating; and

(12) On the occasions set out in paragraphs (1) through (11) 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 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.

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 \$5,450 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.

(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.

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 be, and it hereby is, accepted.

- (2) The sum of \$5,450 tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2003-00060
MAY 6, 2003**

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, the Virginia 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 "Act"). 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 between May 28, 2002, and December 30, 2002, listed in Attachment A, involving Utiliquest, LLC ("Company"), and alleges that:

- (1) The Company is a contract locator as that term is defined in § 56-265.15 of the Code of Virginia;
- (2) During the aforementioned period the Company violated the Act by committing the following violations:
 - (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 and D of the Code of Virginia.
 - (b) Failing on certain occasions to mark within the time prescribed in the Act, in violation of §§ 56-265.19 A and D of the Code of Virginia.
 - (c) Failing on certain occasions to report to the notification center that lines had been marked or they were not in conflict with the proposed excavation, in violation of §§ 56-265.19 A and 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.

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 4, 2003, 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 \$11,250 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.

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 be, and it hereby is, accepted.
- (2) The sum of \$11,250 tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2003-00063
MAY 8, 2003**

APPLICATION OF
WASHINGTON GAS LIGHT COMPANY

For an exemption under Virginia Code § 56-77 B from the filing and prior approval requirements of the Affiliates Act for certain construction contracts with an affiliate

ORDER DENYING EXEMPTION

On February 13, 2003, Washington Gas Light Company ("WGL" or "Applicant") filed an application with the State Corporation Commission ("Commission") requesting an exemption under § 56-77 B of the Code of Virginia (the "Code") from the filing and prior approval requirements of the Affiliates Act for certain construction contracts between WGL and an affiliated company, American Combustion Industries, Inc. ("ACI").

WGL states that the requested contract exemption will be limited to construction projects to repair, renovate, or enlarge facilities, such as heating, ventilation, or air conditioning ("HVAC") systems, at WGL buildings for which WGL puts the work out for bid and ACI is the low bidder. No such contracts are currently outstanding.

WGL represents that it is requesting the contract exemption in order to obtain the lowest possible price on future construction projects. WGL's construction projects typically require multiple contractors, and bids are held open for 30 days. WGL is concerned that bids from other contractors could lapse before approval could be obtained under the Affiliates Act for ACI's portion of the project even if ACI were the low bidder. The nature of the projects, which require close scheduling and coordination between the trades, prevents other contractors from proceeding with construction while WGL awaits the Commission's action.

WGL states that it can estimate neither the frequency nor the average dollar amount of the contracts to be exempted. WGL also represents that it does not have a standard contract to present for exemption but that ACI's terms and conditions, warranties, and other contractual requirements will be same as for other project participants and consistent with industry standards.

WGL states that most, if not all, of the construction projects in which ACI will participate will be led by unaffiliated general contractors or supervised by unaffiliated architects and engineers. These parties will be responsible for selecting the group of subcontractors to minimize the total project cost and present the most favorable bid.

WGL represents that ACI, like any other contractor, bids its jobs at anticipated cost plus overhead and profit. For WGL projects where ACI is the low bidder, WGL represents that ACI's bid will be at the low end of the market range.

NOW THE COMMISSION, upon consideration of the application and representations of Applicant and having been advised by its Staff, is of the opinion and finds that the above-described contract exemption for certain WGL-ACI agreements is not in the public interest and, accordingly, should be denied.

We have insufficient information to determine that such exemption is in the public interest, WGL has not been able to provide Staff with any documentation regarding the type, number, or size of contracts applicable to the requested exemption. Moreover, WGL has represented to Staff that no ACI-biddable projects currently exist and that none are currently anticipated.

The requested exemption appears to have limited applicability because it applies only to projects where WGL contracts directly with ACI. WGL contracts directly with third party general contractors for the majority of its construction projects and the requested exemption would not apply.

In addition, we note that contract exemptions approved in the past, with the exception of telecommunications companies that are no longer under traditional cost of service regulation, have been extremely limited in nature, scope, and amount to allow Staff to monitor closely the utility's use of the exemption.

We believe that WGL's concerns can better be addressed within the context of the Affiliates Act by filing an application requesting expedited treatment. Such application should include a Transaction Summary, a copy of the proposed WGL-ACI agreement, and a copy of the Request for Proposal, including a list of the firms from which WGL solicited bids and a copy of the competing bids. A complete and accurate application filed in a timely manner should result in an expeditious review process. Once we gain a more complete understanding of the nature, type, size, and frequency of the WGL-ACI contracts, we will be in a better position to determine whether any requested exemption is in the public interest.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 B of the Code of Virginia, WGL's request for a contract exemption for the filing and prior approval requirements of the Affiliates Act is hereby denied.
- 2) WGL shall file with the Commission timely, complete, and accurate applications for approval of any contract arrangements with ACI for the provision of construction services including, at a minimum, the information detailed above.
- 3) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00064
OCTOBER 9, 2003**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For a certificate of public convenience and necessity for facilities in the City of Chesapeake: Virginia portion of Fentress-Shawboro 230 kV Transmission Line

FINAL ORDER

On February 14, 2003, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Virginia Power" or "Company") filed an Application for Approval and Certification of Electric Facilities: Fentress-Shawboro 230 kV Transmission Line, Application No. 223 (the "Application") with the State Corporation Commission ("Commission"). The Company seeks approval and a certificate of public convenience and necessity, pursuant to §§ 56-46.1, 56-265.2 and related provisions of Title 56 of the Code of Virginia (the "Code"), to construct and operate a 230 kV transmission line in the City of Chesapeake, Virginia, extending 6.9 miles from the Hickory substation to the Virginia-North Carolina border (the "Transmission Facility"). The Transmission Facility includes 230 kV structures, conductors, insulators and other associated equipment. Work associated with the proposed line but not

requiring specific Commission approval includes installing two 230 kV breakers and an additional breaker row at the Fentress substation, installing a 115 kV autotransformer at the Hickory substation, and reconfiguring existing 230 kV and 115 kV circuits between the Fentress and Hickory substations. The Transmission Facility will be constructed within the existing 150-foot right-of-way in which the existing 230 kV line is located. Therefore, no additional easement of right-of-way is required in Virginia.

Currently, a single 25-mile 230 kV transmission circuit runs from the Fentress substation in Chesapeake to the Shawboro substation in Currituck County, North Carolina. The Transmission Facility is the Virginia portion of the planned 230 kV transmission circuit that, when connected with an existing 4.32-mile circuit between the Fentress and Hickory substations, will create a new, second 25-mile 230 kV circuit from the Fentress substation to the Shawboro substation. The planned Fentress-Shawboro project is intended to meet expected substantial load growth in the Outer Banks area of North Carolina. The ten-year load forecast for the area indicates an average annual load growth of 3.6 percent.

The existing 4.32-mile line between the Fentress substation and the Hickory substation now consists of one 230 kV circuit, which is a segment of the #269 Shawboro-Fentress circuit, and one 115 kV circuit, which is a segment of the #74 Landstown-Portsmouth circuit. In connection with the planned 25-mile 230 kV Fentress-to-Shawboro circuit, the 115 kV circuit between the Fentress and Hickory substations will be converted from operation at 115 kV to 230 kV and made the northern segment of the existing circuit #269, with the previous northern segment of circuit #269 becoming the northern segment of the new 230 kV circuit. The Company obtained approval from the Commission for construction and operation at 230 kV of this double-circuit line between Fentress and Hickory by Certificate No. ET-95h, issued on October 21, 1975, in Case No. 11655. As a result, the conversion of the 115 kV circuit between the Fentress and Hickory substations to 230 kV does not require additional Commission approval.

On March 24, 2003, the Commission entered an Order for Notice in which it directed the Company to provide notice of the Application and invited comments and a request for a hearing. The order directed the Staff of the Commission ("Staff") to analyze the Application and file a report detailing its findings and recommendations by June 4, 2003. By letter dated February 21, 2003, Staff requested the Virginia Department of Environmental Quality ("DEQ") to coordinate a review of the Transmission Facility by appropriate agencies. By letter dated April 16, 2003, DEQ informed Staff that it was suspending its review of the Application pending receipt of certain additional information from the Company. By motion filed May 22, 2003, Staff requested an extension of the filing date for its report. On June 6, 2004, the Commission entered an order extending the filing date for the Staff's report to July 2, 2003, and extending the filing date for any Company comments to the report to fourteen days from the date the Staff files its report. On June 12, 2003, DEQ filed its report summarizing the Transmission Facility's potential impacts on natural resources and recommendations for minimizing those impacts.

The Order for Notice directed the Company to publish notice of the Application in one or more newspapers circulating in the City of Chesapeake and to serve a copy of the order on the mayor of the City of Chesapeake and to send a copy of the notice and a sketch map to all owners of property within the proposed line. The Company filed an affidavit of service of notice on April 11, 2003, and the Company filed proof of publication of the notice on May 9, 2003. No person filed comments, sought to intervene or requested a hearing with respect to the Application.

On June 18, 2003, the North Carolina Utilities Commission approved, without opposition or hearing, an application for approval of the fourteen-mile North Carolina segment of the transmission line project.

On July 2, 2003, Staff filed its report on the Application (the "Report"). The Report recommends that the Application be approved. The Report states that economic development of the Outer Banks area would be negatively impacted if reliability of the bulk power system was not maintained, and notes that completion of the Transmission Facility is essential to maintaining the reliability of the bulk power system.¹ The Report recommends that the Commission require the Company to prepare a report on the merits of lengthening its planning horizon for transmission projects, particularly in high-growth areas, beyond ten years. The Report also recommends that, in the future, the Company provide a detailed description of not only its proposal, but also reasonable alternatives. The Report discusses an alternative for maintaining 115 kV supply at Hickory that would involve constructing a new 115 kV Fentress-Shawboro line adjacent to the existing circuit that is being converted from 115 kV to 230 kV. Staff expressed concern that eliminating the existing 115 kV circuit while re-establishing it through an expensive autotransformer at the Hickory substation may be inefficient. While the alternative offers better reliability, the Company's proposal offers less visual impact. Staff notes that there is no significant cost difference between the alternatives, and the Company's proposal presents only slightly less reliability. Therefore, Staff concludes that the Company's proposal should be approved in order to minimize visual impact to the local public.

At the request of the Staff, the DEQ coordinated a review of the Transmission Facility by various state and local agencies responsible for reviewing the impacts upon natural resources of electric utility projects. Staff incorporated the DEQ review as attachment 3 to the Report. DEQ recommends that the Company, in addition to obtaining required permits or approvals, take the following steps:

- Conduct an on-site survey to determine the presence or absence of wetlands and surface waters within the proposed route of the project.
- Avoid stream and wetlands impacts to the maximum extent practicable, and minimize unavoidable impacts by practices such as: operating machinery and construction vehicles outside of stream-beds and wetlands and using synthetic mats when in-stream work is unavoidable; preserving the top twelve inches of material removed from wetlands for use as wetland seed and root-stock in the excavated area; designing and implementing erosion and sedimentation controls in accordance with the most current edition of the Virginia Erosion and Sediment Control Handbook; placing heavy equipment, located in temporarily impacted wetlands areas, on mats or geotextile fabric or using other suitable measures to minimize soil disturbance to the maximum extent practicable; restoring all temporarily disturbed wetlands areas to pre-construction conditions and planting or reseeding with appropriate wetlands vegetation in accordance with the cover type; taking appropriate measures to promote re-vegetation of these areas; and placing materials designated for use for the immediate stabilization of wetlands that are temporarily stockpiled in wetlands on mats or geotextile fabric and managing these materials in a manner that prevents leachate from entering state waters, and returning disturbed areas to their original contours, stabilized within thirty days following removal of the stockpile, and restored to the original vegetated state.
- Conduct a survey for natural heritage resources along the entire length of the right-of-way.

¹ Staff Report at 21.

- Contain all work within the existing transmission line right-of-way and use tracked or high flotation equipment within existing right-of-way along the MacAlpine Tract.
- Protect individual trees or small groups of trees in the project area from construction impacts.
- Conduct site-specific test drilling prior to construction.
- Use pesticides and herbicides for landscape maintenance in accordance with principles of integrated pest management.
- Follow pollution prevention principles, including the reduction of solid wastes at the source and the re-use and recycling of materials to the maximum extent practicable.

On July 14, 2003, the Company filed comments to the Staff Report. In its comments on the Report, the Company expressed no objections to any of the recommendations. With respect to Staff's recommendation that the Company be required to prepare a report on the merits of lengthening the planning horizon for transmission projects beyond ten years, the Company states that in planning its transmission system, it implements and fully complies with industry standards established by the North American Electric Reliability Council and the Southeastern Electric Reliability Council, both of which recognize a ten-year planning horizon. The Company further states that it has developed and continually updates its ten-year power flow base case model, which reflects yearly changes in load, generation dispatch, and net interchange with interconnected systems.

With respect to Staff's recommendation that the Company provide a detailed description of reasonable alternatives to the Transmission Facility, the Company asserts that, while it takes no issue with the recommendation, there were no reasonable alternatives in this case. Transmission alternatives would not be reasonable because they would involve the construction of new lines over many miles of new right-of-way through environmentally-sensitive areas. Generation alternatives would not be reasonable for economic and reliability reasons. While stating that the Company has always provided reasonable alternatives in its filings, in this case "the Company's solution is clearly the most economical and reliable and it would be wasteful of time and resources to develop details of alternatives which are not in any sense reasonable in relation to the proposed project."²

With respect to the Report's discussion of the trade-off between reliability and visual impact on customers in the decision to install an autotransformer at the Hickory substation rather than building a new 115 kV line, the Company asserts that installing the autotransformer is less costly and avoids the removal of a forest buffer. The Company observes that this matter would not normally be addressed by the Commission because no additional Commission approval was necessary to upgrade the existing 115 kV circuit to operate at 230 kV due to the Commission's previous approval of operation of the line at 230 kV.³

NOW THE COMMISSION, having considered the record, the pleadings, and the applicable law, is of the opinion and finds that approval for the Transmission Facility should be granted and that a certificate of public convenience and necessity to construct and operate the Transmission Facility should be issued, subject to the conditions discussed herein. The public convenience and necessity require construction of the Transmission Facility as approved by this order.

We have considered and weighed the factors set forth in §§ 56-46.1 and 56-265.2 A, which factors are, to a large extent, interrelated and overlapping. As required by § 56-46.1 A of the Code, we have considered the effect of the Transmission Facility on the environment. We will condition the certificate granted herein upon the Company's receipt of all environmental and other permits necessary to construct and operate the Transmission Facility. The DEQ's coordinated review of the project identified no potential adverse environmental impacts associated with the Transmission Facility. The environmental agencies recommended conditions to which the Company did not object. We find that these conditions are desirable or necessary to minimize the adverse environmental impact of the Transmission Facility.

We find that the construction of the Transmission Facility will have no material adverse effect upon reliability of electric service provided by any regulated public utility.

We find that, as required by § 56-46.1 B of the Code, proper notice has been given and the Commission may consider the Application.

We determine that the Transmission Facility is needed to respond to increased loading of existing transmission facilities and thereby maintain system reliability. We further determine that the proposed route of the Transmission Facility uses existing right-of-way and is located completely on the Company's property or existing right-of-way, and thus reasonably minimizes any adverse impact on the scenic assets, historic districts and environment of the concerned area.

With respect to the recommendation in the Staff's Report that the Company be required to prepare a report on the merits of lengthening the planning horizon for transmission projects beyond ten years, we find that the comments submitted by the Company adequately address the issue in this case. If the Company finds in future applications that a planning horizon that extends beyond ten years can provide reasonably reliable data to assist in the analysis of the proposed facility, it should provide such data. However, we will not require that this issue be addressed in each application.

With respect to Staff's recommendation that in the future the Company provide a detailed description of not only its proposal, but also reasonable alternatives, we note that we will ask for a discussion of alternatives whenever reasonable alternatives exist. In this case, we find that alternatives relating to the Transmission Facility are addressed adequately in the Company's comments, and that the proposed Transmission Facility is the best technical and environmental option available.

Finally, we determine that the certificate should expire if the Transmission Facility is not constructed and in-service by September 1, 2005.

² Company's Comments at 4.

³ Id. at note 2 (citing Staff Report at 6).

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 is hereby granted a certificate of public convenience and necessity authorizing construction and operation of the Transmission Facility as provided for in this Order.

(2) The Company is hereby authorized to construct and operate in the City of Chesapeake a 230 kV transmission line extending for approximately 6.9 miles from the Hickory substation to the Virginia-North Carolina border, and related facilities.

(3) Pursuant to the Utility Facilities Act, Chapter 10.1 (§ 56-265.1 et seq.) of Title 56 of the Code, Virginia Power is issued the following certificate of public convenience and necessity:

Certificate No. ET-95t, which authorizes Virginia Electric and Power Company under the Utility Facilities Act to operate presently-constructed transmission lines and facilities in the Cities of Chesapeake, Norfolk, Suffolk, Portsmouth, and Virginia Beach, all as shown on the detailed map attached to the certificate, and to construct and operate facilities as authorized in Case No. PUE-2003-00064; Certificate No. ET-95t will cancel Certificate No. ET-95s issued to Virginia Electric and Power Company. on July 16, 2002.

(4) The certificate issued in ordering paragraph (3) above is conditioned on the Company undertaking the following:

Obtaining all environmental permits or approvals or exceptions prior to commencement of construction activities.

Avoiding stream and wetlands impacts to the maximum extent practicable, and minimizing unavoidable impacts by practices such as: operating machinery and construction vehicles outside of stream-beds and wetlands and using synthetic mats when in-stream work is unavoidable; preserving the top twelve inches of material removed from wetlands for use as wetland seed and root-stock in the excavated area; designing and implementing erosion and sedimentation controls in accordance with the most current edition of the Virginia Erosion and Sediment Control Handbook; placing heavy equipment, located in temporarily impacted wetlands areas, on mats or geotextile fabric or using other suitable measures to minimize soil disturbance to the maximum extent practicable; restoring all temporarily disturbed wetlands areas to pre-construction conditions and planting or reseeded with appropriate wetlands vegetation in accordance with the cover type; taking appropriate measures to promote re-vegetation of these areas; and placing materials designated for use for the immediate stabilization of wetlands that are temporarily stockpiled in wetlands on mats or geotextile fabric and managing these materials in a manner that prevents leachate from entering state waters, and returning disturbed areas to their original contours, stabilized within thirty days following removal of the stockpile, and restored to the original vegetated state.

Conducting an on-site survey to determine the presence or absence of wetlands and surface waters within the proposed route of the project.

Conducting a survey for natural heritage resources along the entire length of the right-of-way.

Containing all work within the existing transmission line right-of-way and use tracked or high flotation equipment within existing right-of-way along the MacAlpine Tract.

Protecting individual trees or small groups of trees in the project area from construction impacts.

Conducting site-specific test drilling prior to construction.

Using pesticides and herbicides for landscape maintenance in accordance with principles of integrated pest management.

Following pollution prevention principles, including the reduction of solid wastes at the source and the re-use and recycling of materials to the maximum extent practicable.

(5) As a condition of the certificate granted in this case, the transmission facilities must be constructed and in-service by September 1, 2005; however, the Company is granted leave to apply for an extension for good cause shown.

(6) 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-2003-00065
APRIL 10, 2003**

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 February 18, 2003, 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.¹ Applicant paid the requisite fee of \$250.

Applicant requests authority to issue up to \$250,000,000 of fixed rate long-term debt ("Proposed Debt") during the 2003 calendar year. The Company intends to issue the Proposed Debt with a fixed rate of interest on maturities ranging between two to twelve years. The Proposed Debt will be used to reduce the Company's short-term borrowings, refund maturing long-term debt and finance the acquisition of combustion turbines and construction of pollution control facilities.

Applicant requests authority to issue the Proposed Debt in the form of secured loans to its affiliate, Fidelity Corporation ("Fidelity"). The Company and Fidelity are both wholly owned subsidiaries of E.ON AG ("E.ON"). Applicant states that it will also require approval from the Securities and Exchange Commission ("SEC") to issue the Proposed Debt on a secured basis to Fidelity. Applicant is requesting such authority due to restrictions in the Company's Articles of Incorporation which limit the amount of unsecured debt that can be issued without the consent of its preferred stockholders. Issuance of the Proposed Debt would exceed the Company's unsecured debt limit. Applicant represents that the cost to obtain such consent would be significantly higher than the expected cost of less than \$50,000 for issuing secured debt.

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 issue up to \$250,000,000 of fixed-rate long-term debt securities for the purposes as set forth in its application, through the period ending December 31, 2003.
- 2) Applicant shall promptly submit to the Commission a copy of its application to the SEC for authority to engage in secured loan transactions with its affiliates and promptly submit any subsequent SEC order that grants or denies the authority requested.
- 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, a brief explanation of reasons for the choice of maturity and issuance date, and a cost/benefit analysis for any outstanding securities refunded prior to maturity from the proceeds.
- 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, and net proceeds to Applicant;
 - (b) The cumulative principal amount of Refunding Bonds issued under the authority granted herein and the amount remaining to be issued; and
 - (c) A balance sheet that reflects the capital structure following the issuance of the Refunding Bonds.
- 5) Applicant shall file a final Report of Action on or before March 31, 2004, to include all information required in Ordering Paragraph (3) and 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) This matter shall be continued, subject to the continuing review, audit, and appropriate directive of the Commission.

¹ By Commission Order dated March 13, 2003, the Commission extended the period of review in this case for an additional 30 days, or through April 13, 2003, to permit sufficient time to consider fully matters associated with Applicant's requested authority.

**CASE NO. PUE-2003-00066
MARCH 13, 2003**

APPLICATION OF
RAPPAHANNOCK ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On February 21, 2003, Rappahannock Electric Cooperative ("Rappahannock" 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 incur long-term indebtedness with the Rural Utilities Service ("RUS") and the National Bank for Cooperatives ("CoBank"). Applicant has paid the requisite fee of \$250.

Rappahannock requests authority to obtain financing from RUS in the amount of \$26,950,000 and from CoBank in the amount of \$11,550,000. The proceeds will be used to fund new construction and system improvements as approved by RUS in the Company's most recent three-year work plan. The loans will have concurrent maturities of thirty-five years. The loan from RUS may be drawn down from time to time and may have a variable or fixed interest rate, not to exceed 7% per year. The CoBank loan may have a variable or fixed interest rate depending on market conditions at the time of the drawdown.

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 \$26,950,000 from RUS and to borrow up to \$11,550,000 from CoBank, 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 either RUS or CoBank, 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 selected, and the interest rate maturity.
- 3) In the event Applicant wishes to convert its CoBank loan to a variable interest rate after a fixed rate has been established, it shall file for Commission approval for such action.
- 4) Approval of this application shall have no implications for ratemaking purposes.
- 5) There being nothing further to be done, this matter is hereby dismissed.

**CASE NO. PUE-2003-00067
JUNE 3, 2003**

APPLICATION OF
THE POTOMAC EDISON COMPANY d/b/a ALLEGHENY POWER

For authority to enter into a tax allocation agreement among affiliates

DISMISSAL ORDER

On March 6, 2003, The Potomac Edison Company d/b/a Allegheny Power ("Allegheny") filed an application with the State Corporation Commission ("Commission") under Chapter 4 of Title 56 of the Code of Virginia for approval to enter into a tax allocation agreement for the purpose of allocating federal and state tax liability among affiliates in Allegheny Energy, Inc.

By letter dated May 29, 2003, Allegheny, through counsel, advised that it is currently in negotiations with the Securities and Exchange Commission that could result in wording changes to the Tax Allocation Agreement as originally submitted to conform to the requirements of the Public Utility Holding Company Act of 1935. Allegheny further advises that to date the negotiations have not been completed. Therefore, Allegheny withdraws its application filed on March 6, 2003, and will resubmit the revised Tax Allocation Agreement for Commission approval when it is finalized.

THE COMMISSION, upon consideration of Allegheny's May 29, 2003, letter and having been advised by its Staff, is of the opinion that Allegheny's application should be withdrawn.

Accordingly, IT IS ORDERED THAT:

- (1) Allegheny's request to withdraw its application filed on March 6, 2003, is hereby granted.
- (2) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00110
SEPTEMBER 10, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

CENTRAL LOCATING SERVICE, LTD. (CLS),
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia, the Virginia 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 August 13, 2002, Commonwealth Mechanical Corporation damaged a three-quarter inch plastic gas service line operated by Virginia Natural Gas, Inc. located at or near 1608 Volvo Parkway, Chesapeake, Virginia, while excavating;

(2) On or about September 24, 2002, the City of Harrisonburg damaged a two thousand four hundred pair telephone cable operated by Verizon Virginia, Inc. located at or near 25 West Water Street, Harrisonburg, Virginia, while excavating;

(3) On or about November 14, 2002, J. D. Baker Contracting damaged a one and one-quarter inch steel gas main line operated by Virginia Natural Gas, Inc. located at or near 1243 Manchester Avenue, Norfolk, Virginia, while excavating;

(4) On or about November 20, 2002, Old Dominion Demolition Corporation damaged a three-quarter inch plastic gas service line operated by Virginia Natural Gas, Inc. located at or near 4414 Washington Avenue, Newport News, Virginia, while excavating;

(5) On or about November 22, 2002, Suburban Grading & Utilities, Inc. damaged a one-half inch plastic gas service line operated by Virginia Natural Gas, Inc. located at or near 1305 and 1307 Jefferson Street, Norfolk, Virginia, while excavating;

(6) On or about December 9, 2002, Newport News Water Works damaged a one-half inch plastic gas service line operated by Virginia Natural Gas, Inc. located at or near 2 Turner Terrace, Hampton, Virginia, while excavating;

(7) On or about December 17, 2002, the City of Hampton damaged a two-inch steel gas main line operated by Virginia Natural Gas, Inc. located at or near 130 North Fourth Street, Hampton, Virginia, while excavating;

(8) On or about December 27, 2002, Technical Underground Connections damaged a three-quarter inch plastic gas service line operated by Virginia Natural Gas, Inc. located at or near 7151 Richmond Road, James City County, Virginia, while excavating;

(9) On the occasions set out in paragraphs (1) through (8) above, Central Locating Service, Ltd. (CLS) ("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 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.

As an offer to settle all matters before the Commission arising from the Division's allegations made herein, the Company represents and undertakes that it will pay a civil penalty to the Commonwealth of Virginia in the amount of \$5,950 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.

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 be, and it hereby is, accepted.

(2) The sum of \$5,950 tendered contemporaneously with the entry of this Order is accepted.

(3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2003-00111
JULY 24, 2003**

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, the Virginia 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"), charged with the investigation of probable violations of the Act, has completed investigations of certain incidents between July 9, 2002, and February 22, 2003, 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 of Virginia;
- (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 and D of the Code of Virginia.
 - (b) Failing on certain occasions to mark within the time prescribed in the Act, in violation of § 56-265.17 C and § 56-265.19 A and D of the Code of Virginia.
 - (c) Failing on certain occasions to report to the notification center that lines had been marked or they were not in conflict with the proposed excavation, in violation of § 56-265.19 A and 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.

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 March 5, 2003, 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 \$12,250 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.

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 be, and it hereby is, accepted.
- (2) The sum of \$12,250 tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2003-00111
SEPTEMBER 16, 2003**

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

AMENDING ORDER NUNC PRO TUNC

On July 24, 2003, the State Corporation Commission ("Commission") entered an Order of Settlement (hereafter "July 24, 2003, Order") involving Utiliquest, LLC, ("Company").

The July 24, 2003, Order in Ordering Paragraph (4) incorrectly referred to the sum of \$12,250 as tendered contemporaneously with the entry of the Order. In addition, page 2 of the July 24, 2003 Order of Settlement, states that "the Company represents and undertakes that it will pay a civil penalty to the Commonwealth of Virginia in the amount of \$12,250 to be paid contemporaneously with the entry of this Order." The reference to \$12,250 should be revised to \$11,800. The Company tendered the sum of \$11,800 contemporaneously with the July 24, 2003, Order. Ordering Paragraph (4) of the July 24, 2003, Order should be amended to reflect the correct amount tendered by the Company, *i.e.*, \$11,800, instead of \$12,250, as referenced in the July 24, 2003 Order. We therefore find it appropriate to revise the July 24, 2003 Order to correct these clerical errors.

Accordingly, IT IS ORDERED THAT Ordering Paragraph (4) and page 2 of the July 24, 2003 Order are hereby amended to refer to \$11,800 instead of \$12,250.

**CASE NO. PUE-2003-00112
APRIL 3, 2003**

APPLICATION OF
ATMOS ENERGY CORPORATION

For authority to issue common stock

ORDER GRANTING AUTHORITY

On March 10, 2003, Atmos Energy Corporation ("Atmos" or "Applicant") filed with the State Corporation Commission ("Commission") an application under Chapter 3 of Title 56 of the Code of Virginia, Va. Code §§ 56-55 et seq. and 56-76 et seq., requesting authority to issue common stock through its Pension Account Plan for employees and retirees ("Plan"). Applicant paid the requisite fee of \$250.

Atmos states that as a result of decline in the U.S. equities markets since 2000, the value of the liabilities of the Plan exceed the value of the assets in its Master Retirement Trust ("Trust") for the benefit of the Plan. This means that for the first time in several years, Atmos will need to fund the Plan with cash or other assets prior to the Plan valuation date of June 30, 2003. Atmos requests authority to issue up to 1,700,000 shares of common stock to the Trust, subject to the limitation of the Employee Retirement Income Security Act of 1974 ("ERISA") that no more than 10% of the Plan's fair market value can be in the form of Atmos stock.

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 issue up to 1,700,000 shares of Atmos common stock to the Master Retirement Trust, under the terms and conditions and for the purposes set forth in the application.
- 2) Applicant shall submit to the Commission a report of action on or before September 15, 2003. The report shall include the date the stock was issued, the total number of shares issued to the Trust, the amount of any cash contribution to the Trust, and a summary of the accounting transaction completing the issuance.
- 3) Approval of this application shall have no implications for ratemaking purposes.
- 4) This matter shall remain under the continued review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2003-00113
MAY 8, 2003**

APPLICATION OF
EAST COAST TRANSPORT, INC.,
and
TENASKA VIRGINIA PARTNERS, L.P.

For authority to enter into affiliate transactions under Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING AUTHORITY

On March 11, 2003, East Coast Transport, Inc. ("ECTI"), and Tenaska Virginia Partners, L.P. ("TVF") (collectively referred to as the "Applicants"), filed an application with the State Corporation Commission (the "Commission") pursuant to Chapter 4 to Title 56 of the Code of Virginia (the "Code"). The Applicants request authority to enter into a Letter Agreement Regarding Compliance with Provisions of § 316(b) of the Clean Water Act (the "Letter Agreement") and a Perpetual Water Pipeline Right-of-way and Easement Agreement (the "ROW/Easement Agreement").

ECTI is a Virginia public service corporation incorporated on January 16, 2001, which plans to construct, own, and operate water supply facilities to provide raw, non-potable water to customers in Fluvanna and Buckingham counties. ECTI is 100% owned by Tenaska Energy, Inc. ("TEI"). ECTI filed its initial rates and regulations for water sales and transportation service with the Commission on July 16, 2001, pursuant to § 56-236 of the Code. ECTI's rates and regulations were last amended and re-filed May 2, 2002.

TVP is a limited partnership formed to construct and operate a 900-megawatt ("MW") natural gas-fired electrical generating facility in Fluvanna County, Virginia. TVP is 1% owned by Tenaska Virginia, Inc., the general partner, and 99% owned by Tenaska Virginia L.L.P., which is 50% owned by TEI. On January 16, 2001, TVP filed an application, Case No. PUE-2001-00039, requesting approval of a Certificate of Public Convenience and Necessity ("CPCN) to construct and operate the Fluvanna County facility. On April 19, 2002, the Commission issued an order granting TVP the CPCN to construct and operate the facility.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

On May 7, 2002, ECTI, TVP, Tenaska Virginia 11 Partners, L.P. ("TV2P"), and Tenaska Operations, Inc. ("TO"), jointly filed an application, Case No. PUE-2002-00303, requesting approval of several affiliate agreements, including an ECTI-TVP Water Service Agreement whereby ECTI agreed to provide cooling water to TVP's Fluvanna County generating facility. On July 18, 2002, the Commission issued an order approving the agreements.

On October 7, 2002, ECTI, TVP, TV2P, Tenaska, Inc. ("TI"), and TO jointly filed an application, Case No. PUE-2002-00522, requesting authority to enter into several affiliate agreements, including two amendments to the ECTI-TVP Water Service Agreement. The amendments to ECTI-TVP's Water Service Agreement included a delay in the initial service date from July 1, 2003, to October 1, 2003, and the replacement of the term "Service Connection Charge" with the term "Facility Construction Charge." On December 17, 2002, the Commission issued an order authorizing the agreements.

The Letter Agreement

Part I, Paragraphs F.2 and 3 of the Virginia Pollutant Discharge Elimination System ("VPDES") permit issued May 13, 2002, to TVP by the Virginia Department of Environmental Quality requires TVP to obtain cooling water for its Fluvanna County generating facility in compliance with 40 Code of Federal Regulations ("C.F.R.") §§ 125.80 through 125.89, the regulations implementing § 316(b) of the Clean Water Act ("CWA"). These federal regulations require that the location, design, construction, and capacity of cooling water intake structures for new electrical generating facilities reflect the best technology available for minimizing adverse environmental impact. The regulations also require new facility operators to perform biological and velocity monitoring and visual or remote inspections, maintaining records showing compliance with all permit requirements, for a period of at least three years from the date of permit issuance.

The Applicants are seeking approval of a Letter Agreement between ECTI and TVP which documents ECTI's assurance to TVP that the water intake facilities that ECTI will design, construct, and operate to serve TVP's Fluvanna County generating facility will comply with current and future VPDES requirements under the CWA. The Letter Agreement also requires ECTI to submit to TVP, at least 240 days prior to TVP's initial discharge of cooling water and on annual basis thereafter, a report containing the environmental data necessary to indicate compliance with the monitoring requirements of 40 C.F.R. 125.84 of the CWA.

The Letter Agreement states that TVP will bear any incremental costs associated with complying with the CWA, including all monitoring and recordkeeping charges. This is consistent with § 6 of ECTI-TVP's amended Water Service Agreement, dated May 9, 2002, which states in part that:

"Customer ("TVP") shall be responsible for all costs incurred by the Company ("ECTI") in any efforts to secure and/or maintain such rights-of-way, permits, franchises or other necessary authorizations."

The Letter Agreement runs conjointly with the Water Service Agreement, which has an initial term of approximately 22 years, from October 1, 2003, through June 30, 2025. Thereafter, the Letter Agreement will continue in effect until either party to the Water Service Agreement gives 90 days written notice of termination.

The Right-of-Way/Easement Agreement

The Applicants represent that the general purpose of the ROW/Easement Agreement is to allow ECTI to construct, repair, maintain, operate, alter or replace that portion of its water pipeline that is situated on TVP's property. The narrow purpose of the ROW/Easement Agreement is to facilitate ECTI's obligation to provide cooling water service to TVP's Fluvanna County generating facility under the ECTI-TVP Water Service Agreement.

The estimated total cost of the water pumping and transportation facilities to be constructed by ECTI to serve TVP's Fluvanna County generating facility is \$14 million, which includes a pumphouse, metering equipment, and approximately 14 miles of pipeline. The pipeline will be able to transport up to 8.5 million gallons of water per day. The approximate cost of the portion of ECTI's water pipeline that will be located on TVP's property is \$300,000. This portion of the pipeline will consist of 5,100 feet of 24-inch diameter ductile iron pipe furnished with fittings, valve vents and low point drains as required.

The cost of the ROW/Easement Agreement is nominal (ten dollars paid in hand by ECTI to TVP). It has no termination date. The Applicants represent that the limited easements granted to ECTI under the ROW/Easement Agreement are perpetual so that ECTI may serve TVP's generating facility over its commercial life, which is unknown, and also so that ECTI can retire the pipeline facilities on TVP's property even after the generating facility is decommissioned, if it so elects.

NOW THE COMMISSION, upon consideration of the application and representations of Applicants and having been advised by its Staff, is of the opinion and finds that the above-described agreements are in the public interest and should be approved.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code of Virginia, East Coast Transport, Inc., is hereby authorized to enter into a Letter Agreement with Tenaska Virginia Partners, L.P., under the terms and conditions and for the purposes as described herein.
- 2) Pursuant to § 56-77 of the Code of Virginia, East Coast Transport, Inc., is hereby authorized to enter into a Right-of-Way/Easement Agreement with Tenaska Virginia Partners, L.P., under the terms and conditions and for the purposes described herein.
- 3) Commission approval shall be required for any changes in terms and conditions of the affiliate agreements from those contained herein, including any successors or assigns under the affiliate agreements.
- 4) The authorities granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code of Virginia hereafter.
- 5) The authority granted herein shall have no ratemaking implications should there be any future rate proceedings.

- 6) The Commission reserves the right to examine the books and records of any affiliate in connection with the authority granted herein whether or not such affiliate is regulated by this Commission.
- 7) East Coast Transport, Inc., shall include agreements authorized herein in its Annual Report of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting, on or before May 1 of each year, subject to extension by the Director of Public Utility Accounting.
- 8) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00114
JULY 30, 2003**

IN THE MATTER OF

Receiving comments on a draft memorandum of agreement between the State Water Control Board and the State Corporation Commission

ORDER DISTRIBUTING MEMORANDUM OF AGREEMENT

Section 62.1-44.15:5 D 2 of the Code of Virginia ("Code") requires the State Water Control Board ("Board") and the State Corporation Commission ("Commission") to "develop a memorandum of agreement pursuant to §§ 56-46.1, 56-265.2, 56-265.2:1 and 56-580 [of the Code] to ensure that consultation on wetland impacts occurs prior to siting determinations" by the Commission. The Department of Environmental Quality ("Department") is acting on behalf of the Board for this matter. On March 18, 2003, on behalf of the Department and the Commission, the Commission issued an Order inviting interested persons or entities to submit comments on a draft memorandum of agreement, which was affixed to the Order as Attachment A. The Order also noted that the Department and the Commission would consider such comments and enter into a final memorandum of agreement.

Written comments were filed jointly by Virginia Electric and Power Company and Dominion Transmission, Inc. (collectively, "Dominion Companies"), and by Old Dominion Electric Cooperative ("Old Dominion"). The final memorandum of agreement entered into by the Department and the Commission is attached to today's Order. On behalf of the Department and the Commission, this Order discusses certain issues raised in the comments and the modifications reflected in the final memorandum of agreement attached hereto.

Paragraph 4 of the memorandum of agreement requires the Department to submit certain information to the Commission no later than sixty (60) days after receipt of the complete wetland impacts analysis information from the applicant. The Dominion Companies request that this time period be clarified as sixty (60) "calendar" days. This change is reflected in the final memorandum of agreement.

Pursuant to paragraph 3 of the memorandum of agreement, the Appendix to the agreement is a Guidance Document that provides guidance on the information the Department has determined it may need in order to conclude its Wetland Impacts Consultation. The Dominion Companies request that the Guidance Document be clarified to apply specifically to alternatives "considered by the applicant." The Dominion Companies state that this would ensure the Department considers only alternatives offered by the applicant, resulting in a more efficient and cost effective consultation process. This change is reflected in the Guidance Document.

The Dominion Companies support reviewing wetlands for the applicant's proposed alternatives using the desktop tools described in the Guidance Document. The Guidance Document, however, also states that the applicant may be asked by the Department to "field verify" certain areas for one or more of the proposed alternatives. The Dominion Companies assert that they typically do not have access to the properties under consideration and, thus, recommend that the Department not require field verification under any circumstances. In this regard, the Guidance Document has been modified to reflect that the Department will request field verification only if appropriate and feasible.

The Guidance Document also requires the applicant to provide a "field delineation" of wetlands and streams for the applicant's preferred alternative. The Dominion Companies state, however, that field delineation should not be required until after the Commission has approved the construction of the facilities. The Dominion Companies contend that utilities typically do not have access to the properties under consideration, and the process of obtaining access through the Circuit Court would be lengthy and expensive and also would cause the owner anxiety for a route that ultimately may not be approved by the Commission. In this regard, the Guidance Document has been modified to require the same level of information for the preferred alternative as for the other alternatives, *i.e.*, a desktop evaluation with field verification only if appropriate and feasible.

In addition, the Guidance Document requires the applicant to submit, for its preferred alternative, documentation from the Department of Game and Inland Fisheries, the Department of Conservation and Recreation Natural Heritage Program, and the Department of Historic Resources. The Dominion Companies argue that this information should not be required as part of the Wetland Impacts Consultation. The Department, however, requires this information to prepare a complete evaluation of the permitting necessary for the preferred alternative for purposes of the Wetland Impacts Consultation. Thus, the Guidance Document has not been modified in this regard.

The Guidance Document also states that documentation from either the affected localities or directly from the Chesapeake Bay Local Assistance Department regarding any potential impacts to Chesapeake Bay Resource Protection Areas or Resource Management Areas must be submitted if applicable. The Dominion Companies assert that there are no standards provided to assess whether such potential impacts would be relevant to the Wetland Impacts Consultation and, thus, the Department should not accept such documentation. The Department, however, is required to consult with the Chesapeake Bay Local Assistance Department when a proposed activity could impact a designated Chesapeake Bay Protection Area. The Department also requires this information to prepare a complete evaluation of the permitting necessary for the preferred alternative for purposes of the Wetland Impacts Consultation. The Guidance Document further notes that, based on the information provided in this regard, the Department may consult with and consider the comments of the Norfolk District Corps of Engineers and the U.S. Fish and Wildlife Service. In addition, public utility projects, in general, may be exempt from many local Chesapeake Bay ordinances. Thus, the Guidance Document has been clarified to require the above information only if local ordinances are applicable to the project under consideration.

Old Dominion's primary concern relates to the length of time that may be required for the Department to complete the Wetland Impacts Consultation. Old Dominion states that this time could be better used for direct coordination of issues between the applicant and the Department. Similarly, the Dominion Companies express concern regarding potential delays in the Department's development of the Wetland Impacts Consultation. The Department's completion of the Wetland Impacts Consultation may be delayed if the Department does not receive necessary information. The applicant may facilitate this process by working closely with the Department before and after an application is filed with the Commission. Indeed, the Dominion Companies recommend that the memorandum of agreement include a provision allowing the applicant to begin consultation with the Department prior to filing an application with the Commission. We agree with the Dominion Companies that such a procedure should assist the parties and help expedite the Department's review process. Although the draft memorandum of agreement does not prohibit the applicant from working with the Department prior to filing an application with the Commission, the final agreement explicitly references this option as requested by the Dominion Companies.

Finally, Old Dominion states it should be made clear that the process developed under the memorandum of agreement is to be applied to the application for certification of a particular facility, and not to other supporting facilities owned and operated by entities other than the applicant. Section 62.1-44.15:5 D 2 of the Code requires development of the memorandum of agreement "pursuant to §§ 56-46.1, 56-265.2, 56-265.2:1 and 56-580 [of the Code] to ensure that consultation on wetland impacts occurs prior to siting determinations" by the Commission for "[f]acilities and activities of utilities and public service companies." Paragraphs 2 and 3 of the memorandum of agreement recognize that the Department's consultation is triggered when the Commission receives an application for certification of facilities pursuant to §§ 56-46.1, 56-265.2, 56-265.2:1 or 56-580 of the Code. The siting determination by the Commission is limited to the facilities requested by the applicant for approval. Likewise, the Wetland Impacts Consultation by the Department also will be limited to the facilities requested by the applicant for approval.

Accordingly, this matter is now closed.

NOTE: A copy of Attachment A entitled "Memorandum of 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. PUE-2003-00115 (Formerly CASE NOS. PUE-2000-00110 and PUE-2002-00354)
MARCH 24, 2003**

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

v.
ROBERT LEE MORRIS, INDIVIDUALLY, AND T/A ELLICOTT CITY UNDERGROUND, INC.,
Defendant

ORDER ESTABLISHING PAYMENT PLAN

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 "Act").

In Case Nos. PUE-2000-00110 and PUE-2002-00354, the Commission issued Rules to Show Cause against Robert Lee Morris, Individually, and t/a Ellicott City Underground, Inc. ("Defendant"), alleging violations of § 56-265.24 A of the Act. Although the Defendant was properly served, the Defendant failed to file an answer or other responsive pleading or to appear at the scheduled hearing and was found to be in default. Judgments in the amount of \$2,500 for each violation, for a total of \$5,000, were entered against him.

On March 20, 2003, the Staff of the Commission filed the attached Motion to Establish Payment Plan. The Staff requests the Commission accept, pursuant to § 12.1-15 of the Code, the Admission and Consent executed by the Defendant, a copy of which is also attached, and establish the payment plan as described in the motion ("Payment Plan") so that the Defendant shall make installment payments to satisfy the default judgments entered against him. The Payment Plan as proposed by the Defendant and Staff has the following terms and conditions:

- (1) The \$5,000 total amount of judgments shall be paid in five \$1,000 installments to be paid:
 - (a) on or before May 1, 2003;
 - (b) on or before June 1, 2003;
 - (c) on or before July 1, 2003;
 - (d) on or before August 1, 2003; and
 - (e) on or before September 1, 2003.
- (2) These payments shall 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; State Corporation Commission, 1300 East Main Street, 4th Floor, Richmond, Virginia 23219.
- (3) Should the Defendant fail to abide by the terms and conditions of the Payment Plan, the Commission will consider appropriate enforcement action.

As evidenced by the attached Admission and Consent, the Defendant admits the Commission's jurisdiction and authority to enter this Order. The Defendant represents and undertakes that he will pay the total amount of \$5,000 due to the Commonwealth of Virginia.

The Commission, being advised by the Staff and finding sufficient basis herein for the entry of this Order, hereby grants the Staff motion, accepts the Admission and Consent, and will establish the proposed Payment Plan.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to the authority granted to the Commission by § 12.1-15 of the Code, the Staff motion is hereby granted and the Payment Plan is hereby established.
- (2) The \$5,000 total amount of judgments shall be paid in five \$1,000 installments to be paid:
 - (a) on or before May 1, 2003;
 - (b) on or before June 1, 2003;
 - (c) on or before July 1, 2003;
 - (d) on or before August 1, 2003; and
 - (e) on or before September 1, 2003.
- (3) The installment payments shall 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; State Corporation Commission, 1300 East Main Street, 4th Floor, Richmond, Virginia 23219.
- (4) Should the Defendant fail to abide by the terms and conditions of the Payment Plan, the Commission will consider appropriate enforcement action.
- (5) This case shall remain open for further order of the Commission.

**CASE NO. PUE-2003-00117
JUNE 12, 2003**

APPLICATION OF
APPALACHIAN POWER COMPANY

For approval to participate in a consolidated affiliates tax agreement between American Electric Power Company, Inc., and its subsidiaries under Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On March 17, 2003, Appalachian Power Company ("APCO or the "Applicant") filed an application with the State Corporation Commission (the "Commission") seeking approval to participate in an amended consolidated affiliates tax agreement (the "Tax Agreement") between American Electric Power Company, Inc. ("AEP"), and its subsidiaries under Chapter 4 of Title 56 of the Code of Virginia (the "Code"). APCO also requests a waiver of any requirement to file and seek approval for Tax Agreement revisions that merely add or delete Tax Agreement participants.

APCO is a Virginia public service corporation engaged in the generation, sale, purchase, transmission, and distribution of electric energy. APCO is a wholly owned subsidiary of AEP. APCO serves approximately 917,000 retail customers in southwest Virginia and southern West Virginia. APCO provides service to its jurisdictional customers in Virginia and West Virginia under the respective names of AEP Virginia and AEP West Virginia.

AEP is a registered public utility holding company under the Public Utility Holding Company Act of 1935 ("PUHCA"). AEP provides electric utility and non-utility services to numerous states in the mid-eastern United States, including portions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia, and West Virginia.

Federal Regulation

The Securities and Exchange Commission ("SEC"), through Title 17, Code of Federal Regulations §250.45(c) ("Rule 45(c)"), requires holding companies registered under the PUHCA to file with the SEC written tax allocation agreements covering the holding company, its regulated utilities, and other consolidated subsidiaries (the "Group Members") in order to have the ongoing authority to file consolidated income tax returns with the federal government. On October 15, 2002, AEP filed an application with the SEC requesting approval of the Tax Agreement (the "SEC Application"). AEP requested specific approval of a provision in Paragraph 2 of the Tax Agreement that allows the holding company to retain the tax benefits associated with holding company extraordinary items that do not apply to the regulated business. AEP's request has two parts. First, AEP is seeking to retain the tax benefits associated with approximately \$235 million in merger expenses incurred by AEP and Central and South West Corporation ("CSW) in connection with their June 15, 2000, merger that were not approved to be recovered in rates by the jurisdictional commissions that regulate AEP's operating subsidiaries. Second, AEP is requesting the SEC to approve such changes retroactively. As this time, the SEC application remains pending.

The Tax Agreement lists 148 AEP affiliates that are current Group Members. The Tax Agreement, in various forms, has been in place for more than 30 years and has no expiration date.

Tax Allocation Methodology

Rule 45(c)(2) states that:

The consolidated tax shall be apportioned among the several members of the group in proportion to (i) the corporate taxable income of each such member, or (ii) the separate return tax of each such member, but the tax apportioned to any subsidiary shall not exceed the separate return tax of such subsidiary.

In accordance with this rule, Paragraph 1 of the Tax Agreement states that the consolidated federal income tax, excluding capital gains and preference taxes and before the application of general business credits, shall be apportioned among the Group Members based on corporate taxable income. Paragraph 2 states that before apportionment, each Group Member having positive taxable income shall first have its income reduced by a proportionate share of the holding company's tax loss, excluding the effect of extraordinary items that do not apply to regulated businesses. Paragraph 8 says that no Group Member shall be allocated federal income tax in excess of the amount the Group Member would owe if it had filed a separate return.

Rule 45(c)(3) says that the consolidated tax agreement:

Shall provide for appropriate and equitable adjustment of the allocation specified under paragraph (c)(2)(ii) to the extent that the consolidated tax and separate return tax for any year include material items taxed at different rates or involving other special benefits or limitations. Such adjustments will be directing to the individual members of the group the material effects of any particular features of the tax law applicable to them.

Accordingly, Paragraph 3 of the Tax Agreement states that, to the extent that there are material items taxed at rates other than the statutory federal rate (such as capital gains and preference items), the consolidated tax attributable to these items will be apportioned directly to the Group Members giving rise to the items. Paragraph 4 states that general business, foreign and other tax credits shall be equitably allocated to the members whose investments or contributions generated the tax credits. Paragraph 5 says that if the tax credits cannot be fully utilized, the carryover will be allocated to the members whose activities generated the credits.

Holding Company Tax Benefits

Rule 45(c)(5) states that, in general:

[The] agreement may include all members of the group in the tax allocation. An agreement under this paragraph shall provide that those associate companies with a positive allocation will pay the amount allocated and those subsidiary companies with a negative allocation will receive current payment of their corporate tax credits.

In accordance with Rule 45(c)(5), Paragraph 7 of the Tax Agreement states that a Group Member with a net positive tax allocation shall pay the holding company the net amount allocated ("Paying Member"), while a Group Member with a negative tax allocation shall receive a current payment from the holding company ("Loss Member").

In 1981, though, an SEC amendment to the PUHCA precluded registered holding companies, which are usually Loss Members, from sharing in consolidated return tax savings because of concerns about the possibility of improper upstream cash distributions. Accordingly, AEP currently pays its holding company positive tax liabilities, while its tax loss benefits are permanently allocated to the Paying Members, with no carrying charges assessed by AEP.

In the SEC Application, AEP requests specific approval to retain the tax benefits associated with approximately \$235 million in merger expenses incurred to consummate the CSW merger that were not recovered in rates. AEP represents that its request is analogous to the National Grid Group case,¹ where the SEC allowed the holding company to retain the tax benefits associated with the interest expense on acquisition debt. AEP says that, rather than typical and customary expenses, both AEP's merger expenses and National Grid's interest costs were incurred to acquire significant investments. AEP also notes that neither company's subsidiaries are liable for the tax deductible expense. The tax benefit AEP seeks to retain stems solely from the unreimbursed merger expenses incurred by AEP. Finally, the pertinent expenses never affect the subsidiaries' income statements or balance sheets. Therefore, AEP has inserted a provision in Paragraph 2 of the Tax Agreement that allows the holding company to retain the tax benefits associated with holding company extraordinary items that do not apply to the regulated business. AEP defines extraordinary items as:

material transactions or events, such as a merger, that are not expected to recur frequently and are of a nature considerably different from its usual or customary business activities.

Other Provisions

Rule 45(c)(5) also states that the consolidated tax agreement:

Shall provide a method of apportioning such payments, and carrying over uncompensated benefits, if the consolidated loss is too large to be used in full.

Accordingly, the Tax Agreement states that, should the consolidated group generate a net operating tax loss, the tax benefits of any resulting refund shall be allocated proportionately to the Loss Members in the year the consolidated net operating loss occurred.

¹ The National Grid Group plc, HCAR No. 27154 (March 15,2000).

Other Taxes

For state tax returns applying to more than one Group Member, the Tax Agreement allocates the tax liability or benefit according to the principles described above for federal income taxes. If the consolidated state tax liability exceeds the separate return liability, the excess consolidated liability shall be allocated proportionately based on each member's contribution to the consolidated apportionment percentage. If additional state tax is attributable to a single significant transaction or event, such tax shall be allocated directly to the members responsible for the transaction.

Legal Provisions

According to the Tax Agreement, AEP shall pay to the Internal Revenue Service ("RS") the consolidated group's current federal income tax liability from the sum of the Group Members' payments and receipts. In the event the group's consolidated tax liability is subsequently revised by IRS audit adjustments, amended returns, refund claims, etc., the changes will be allocated as if the adjustments on which they are based had been part of the original return.

NOW THE COMMISSION, upon consideration of the application and representations of APCO and having been advised by its Staff, is of the opinion and finds that the above-described Tax Agreement is in the public interest and should be approved subject to certain conditions.

The Tax Agreement's provision allowing AEP to retain the tax benefits related to all extraordinary items incurred by the holding company is a significant change from prior SEC interpretations of Rule 45(c)(5). Therefore, we believe that it is prudent to condition our approval of the Tax Agreement upon the SEC's approval of the SEC Application. For monitoring purposes, we further believe that APCO should disclose by type and amount any consolidated tax item and associated tax benefit that is retained by AEP in APCO's Annual Report of Affiliate Transactions.

We also find that APCO's request for a waiver from the Chapter 4 filing and approval requirements for changes in the Tax Agreement related solely to Group Member additions and deletions is reasonable and should be granted. For monitoring purposes, we believe that APCO should include an annual list of Group Members added and deleted in its Annual Report of Affiliate Transactions.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code of Virginia, Appalachian Power Company is hereby authorized to participate in the Consolidated Affiliates Tax Agreement with American Electric Power Company, Inc., and its subsidiaries under the terms and conditions and for the purposes described herein. This approval is conditioned upon the subsequent approval of the Tax Agreement as presented by the SEC. Applicants shall promptly notify the Commission of the SEC's action in regard to its pending application.
- 2) Appalachian Power Company shall file with the Commission an executed copy of the Consolidated Affiliates Tax Agreement within 30 days from the date of this Order, subject to extension by the Director of Public Utility Accounting.
- 3) Commission approval shall be required for any changes in the terms and conditions of the Consolidated Affiliates Tax Agreement excepting Group Member additions and deletions.
- 4) The approval granted herein shall have no ratemaking implications. The Commission reserves the right to reflect ratemaking adjustments to Appalachian Power Company's income taxes in the course of the Commission's review and analysis of APCO's cost of service in the future.
- 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 authority granted herein whether or not such affiliate is regulated by this Commission.
- 7) APCO shall include the Consolidated Affiliates Tax Agreement approved herein in its Annual Report of Affiliate Transactions submitted to the Director of Public Utility Accounting of the Commission. APCO shall include an annual list of Group Member additions and deletions in its Annual Report of Affiliate Transactions. APCO shall also disclose by type and amount any consolidated tax item and associated tax benefit that is retained by AEP in its Annual Report of Affiliate Transactions.
- 8) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then APCO shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.
- 9) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00118
SEPTEMBER 10, 2003**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY D/B/A DOMINION VIRGINIA POWER

For approval of retail access pilot programs

FINAL ORDER

On March 19, 2003, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("DVP" or "the Company") filed with the State Corporation Commission ("Commission") an application (the "Application") requesting approval of three retail access pilot programs ("Pilots"): (i) a

Municipal Aggregation Pilot; (ii) a Competitive Bid Supply Service Pilot;¹ and (iii) a Commercial and Industrial Pilot. Combined, the three Pilots make up to 500 MW of load available to competitive service providers ("CSPs"), with up to 65,000 customers from all rate classes eligible to participate. To encourage participation by CSPs, the Company proposed to reduce the wires charge for the duration of the Pilots by 50 percent of the amount approved by the Commission for 2003.

Under the Municipal Aggregation ("MA") Pilot, one or more localities may aggregate its residential and small commercial customers utilizing an opt-in method² and one or more localities may aggregate its residential and small commercial customers utilizing an opt-out method³ for the purpose of soliciting bids from CSPs for electricity supply service. Under the Competitive Bid Supply Service ("CBS") Pilot, CSPs may bid to serve blocks of residential and small business customers. Under the Commercial and Industrial ("C&I") Pilot, CSPs may make offers to large commercial and industrial customers, provided the total load does not exceed 200 MW.

The Company asserts that the Pilots are in the public interest and will help stimulate the development of competition within the Commonwealth while simultaneously providing market participants an opportunity to test new market concepts and attributes of default service, including bidding processes.

The Commission has the authority to approve pilot programs pursuant to §§ 56-577 and 56-589 of the Virginia Electric Utility Restructuring Act (the "Act"), Chapter 23 (§ 56-576 *et seq.*) of Title 56 of the Code of Virginia. Subsection C of § 56-577 of the Code of Virginia states:

The Commission may conduct pilot programs encompassing retail customer choice of electricity energy suppliers for each incumbent electric utility that has not transferred functional control of its transmission facilities to a regional transmission entity prior to January 1, 2003. Upon application of an incumbent electric utility, the Commission may establish opt-in and opt-out municipal aggregation pilots and any other pilot programs the Commission deems to be in the public interest, and the Commission shall report to the [Commission on Electric Utility Restructuring] on the status of such pilots by November of each year through 2006.

Subdivision A 3 of § 56-589 of the Code of Virginia states in part:

Nothing in this subsection shall prohibit the Commission's development and implementation of pilot programs for opt-in, opt-out or any other type of municipal aggregation, as provided in § 56-577.

On April 21, 2003, the Commission issued its Order Prescribing Notice and Inviting Comments and Requests for Hearing (the "Procedural Order") in this proceeding, which, among other things, directed interested parties to file comments on or before June 4, 2003. Comments were filed by the Division of Consumer Counsel, Office of Attorney General ("Consumer Counsel"); Strategic Energy, LLC ("Strategic"); Compass Energy; Pepco Energy Services, Inc. ("PES"); Washington Gas Energy Services ("WGES"); the National Energy Marketers Association ("NEMA"); 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, Inc., and the Virginia, Maryland & Delaware Association of Electric Cooperatives (collectively, the "Cooperatives"); Mr. Urchie B. Ellis; Chaparral (Virginia), Inc. ("Chaparral"); and the Virginia Committee for Fair Utility Rates ("Committee"). None of the parties that filed comments requested a hearing.

On June 17, 2003, DVP filed a motion to revise and extend the procedural schedule, in which the Company stated its intent to file revisions to certain provisions of its pilot proposals and the Terms and Conditions filed with its original Application. On June 18, 2003, the Commission issued an Order Granting Motion that directed the Company to file revisions to its application by June 25, 2003; invited interested persons to file comments on the revisions on or before July 1, 2003; directed the Commission's Staff ("Staff") to file its report by July 15, 2003; allowed any interested person to file comments to Staff's report by July 25, 2003; and allowed the Company to file a response to Staff's report and any comments by August 1, 2003.

On June 25, 2003, the Company filed proposed revisions to the Application, including Revised Terms and Conditions for the Pilots (collectively, the "First Revision").⁴ The MA Pilot, as amended by the First Revision, includes the following elements:

1. One or more localities with a combined total of up to 30,000 customers may volunteer to participate to aggregate their residential and small business customers using an opt-in model.
2. One or more localities with a combined total of up to 30,000 customers may volunteer to participate to aggregate their residential and small business customers using an opt-out model.
3. Participating localities will register with DVP, be licensed as an aggregator by the Commission, and be responsible for customer communication efforts, including notifying customers about the Pilot and providing instructions on how to opt-in or opt-out.
4. Localities must adopt an Operation and Governance Plan that details the services to be provided and specifies the rights and obligations of customers, which will be filed with the Commission.

¹ This Pilot was initially named the Default Service Pilot.

² The opt-in method requires that a consumer affirmatively choose to participate and switch to the CSP selected by the municipality.

³ The opt-out method provides that consumers will be given the opportunity to decline to participate; if they decline, they will continue on capped rate service from DVP or may select a CSP outside of the Pilot. A consumer who is chosen for participation and takes no action will automatically be included in the Pilot.

⁴ The following descriptions of the three pilots include the Company's original proposal as well as those modifications proposed in DVP's First Revision.

5. Localities will request bids from CSPs who will sell their electricity directly to customers. The Commission may review the bid solicitation and evaluation process and provide guidance during the analysis.

According to the Company, the CBS Pilot is intended to help stimulate competition within the Commonwealth and provide the Commission and interested parties an opportunity to learn about the competitive bidding process for electricity supply service. The CBS Pilot, as amended by the First Revision, consists of the following principal elements:

1. CSPs would bid to serve blocks of residential and small commercial customers.
2. The Pilot would serve 43,134 customers, with 200 MW load, in 4 rate classes, and will be available to all DVP customers except those eligible to participate in one of the other Pilots.
3. The blocks will each target 13,005 residential customers; 1,124 GS-1 customers, 229 GS-2 customers, and 20 Worship Site customers.
4. The three blocks will be arranged geographically (Northern Virginia, Central/Western Virginia, and Eastern Virginia).
5. DVP will select customers, first from volunteers, then by random selection to fill vacancies. The pool of customers from whom the random selection will be made will not include customers that have opted-out of the mass list or who have affirmatively selected to be served under specific tariffs, riders, or programs. Customers who are randomly selected must opt-out or will be included in the Pilot.
6. Staff will issue a request for qualifications ("RFQ") and a request for bids ("RFB"). CSPs must submit bids within twenty days of the issuance of the request for bids, and the Staff must select the winning bids within ten days of receiving the bids.
7. Qualifying bids must cover a minimum of two years, be block specific, include class-specific prices on a MWh basis. Bids exceeding the class average price-to-compare for any rate class will be eliminated. The winning bid for each block will be the weighted average bid for the block. No CSP may win more than two of the three blocks.
8. Any Customer selected for this Pilot will be removed from participation if the customer has an individual price-to-compare that is lower than the price offered by the winning CSP. Such customers will be replaced with others that have a price-to-compare higher than the offer. The CSP must send notice to each customer informing them of the offer and its terms and conditions and of the customer's individual pilot price-to-compare. Customers will have 21 days to decline the offer.
9. The CSP must notify DVP of all customers that decline and then enroll the remaining customers.

The C&I Pilot, as amended by the First Revision, consists of the following principal elements:

1. The number of participants depends on the respective loads of customers that are accepted.
2. The Pilot is open to GS-3 and GS-4 customers with load demands equal to or greater than 500 kW.
3. Eligible customers may volunteer to participate. If the load of those volunteering exceeds the 200 MW limit for the Pilot, the Company would conduct a lottery, overseen by Staff, to choose the eligible participants.
4. Eligible customers have 60 days following their selection to choose a CSP. If a customer has not chosen a CSP within 60 days, its position in the Pilot will be awarded to the next appropriate customer on the volunteer list, provided that the 200 MW limit is not exceeded.
5. Participating customers will be allowed to return to service from DVP under capped rates, subject to applicable minimum stay provisions. If a participating customer's CSP fails to provide service to the customer, the customer will be allowed 60 days after returning to capped rate service from DVP to choose another CSP. If another CSP is not selected within this 60-day period, the customer will remain on capped rate service and will be subject to the minimum stay requirement before it may again participate in the Pilot.
6. DVP will prepare simulations using two or more market-based pricing models in order to estimate what each participating customer's cost of electricity would have been. DVP and Staff are to mutually agree on the selection of the market-based pricing models from methods that are either in place or under consideration in other jurisdictions.

Each Pilot would commence within 150 days of the issuance of the Commission's order authorizing the Pilot to be conducted and would end at the expiration of the Company's period of capped rates as provided in § 56-582 of the Code of Virginia. The Company requests that the Commission, upon application by the Company no sooner than two years from the date of the Final Order in this proceeding, allow for modifications to the Pilots that may be required to more successfully transition to the post capped rate period. Such modifications would be exclusive of amendments to the size of the Pilots and the scope of the wires charge reductions.

Each of the Pilots proposes reducing the applicable wires charges for the duration of the Pilot by 50 percent of the amount approved by the Commission for 2003. The Company has offered to consider an increase in the wires charges reduction with a corresponding decrease in the amount of MW available in the Pilots if the proposed wires charge reductions appear to be insufficient to stimulate activity in the Pilot programs. On this issue, the Company "requests that the Commission provide the Company the latitude to make such appropriate changes, working with Commission Staff, in the wires charge reduction and the amount of MW available in the Pilot to effect any implementation in a timely fashion if it is determined that the existing wires charge reduction is insufficient to stimulate activity."⁵

⁵ First Revised Terms and Conditions at 4.

Six parties filed comments on the First Revision to the Pilots. Consumer Counsel (i) expressed concern with the ambiguity of DVP's request to modify the Pilots after two years; (ii) argued that DVP, rather than CSPs, should provide customers with their annually updated price-to-compare information; and (iii) argued that CSPs should not be allowed to charge termination fees to CBS Pilot participants who did not volunteer for this program.

Strategic expressed concern with DVP's intention to join PJM Interconnection, and requests a delay in the procedural schedule until it is known whether DVP will join PJM.

Constellation New Energy recommended that the Pilots remain at their proposed size. However, if no switching activity occurs within six months, the wires charge should be reduced by an additional 25 percent; and if no switching activity occurs in the ensuing six months, the wires charge should be reduced to zero.

The Cooperatives maintained that the Pilots are not in the public interest unless additional revisions are made to provide greater protection for consumers. The Cooperatives expressed concern with the opt-out provisions and with the RFB process, which they contend should be evaluated, but not administered, by the Commission.

Mr. Urchie B. Ellis stated that the Pilots are not in the public interest because they are too complicated and confusing, and that the public should participate on an opt-in basis, if at all.

The Committee raised concerns with the Company's offer to consider increasing the wires charge reduction with a corresponding decrease in the MW size of the Pilots. The Committee restated its position that the Commission should exercise its authority to approve a pilot program for commercial and industrial customers that is substantially larger in size, starts on January 1, 2004, lasts at least through July 1, 2007, and eliminates wires charges.

On July 15, 2003, Staff submitted its report ("Report") recommending that we approve the Pilots as amended by the First Revision, with certain modifications. The Report observes that "absent the Pilots, it appears there will be little, if any, competitive activity in the near future. Section 56-596 of the Code of Virginia requires the Commission to vigorously pursue the goal of advancing competition in the Commonwealth."⁶ The Report commends DVP's outreach effort and its genuine interest in garnering feedback from, and addressing concerns of, potential participants. Staff noted its concern that the comments do not indicate strong support for the Pilots and while DVP addressed a number of concerns in its First Revision, certain concerns remain.

Staff specifically agreed with the modification to the MA Pilot that removed any references to approval or administration by the Commission of the Operation and Governance Plans. While Staff noted that an opt-out approach may create confusion, it reports that the Pilot's Terms and Conditions include reasonable consumer protection provisions and a fairly comprehensive list of notification requirements that must be satisfied for both the opt-in and opt-out approaches.

Staff recommended that the CBS Pilot be approved with three changes. The Company should be required to provide annual notice to Pilot participants of any changes in the market price, fuel factor, wires charges, and price-to-compare information. The Company should be required to administer the RFQ and RFB processes and the Staff should monitor the bidding process and make the final selection of the winning CSPs.

The third change recommended by Staff pertains to the ability of customers who have not volunteered for the Pilot to opt-out. Staff believes that subsection C of § 56-577 gives this Commission broad authority to allow opt-out provisions in pilot programs. Though such opt-out provisions may be authorized, they are not inherently in the public interest. In order to ensure that customers are made cognizant of their opportunities to decline an offer to participate, the Report includes a recommendation that the Company notify customers of their selection immediately following their random selection process, which notice states that they have been selected to participate in the Pilot and have the right to opt-out immediately or can wait and evaluate the offer from the winning CSP.

Staff's largest concern is that randomly-selected customers could pay more under the Pilot than if they had remained on capped rates. The CBS Pilot provides that customers with an initial price-to-compare lower than the CSP's offer would be eligible to participate, however, customers whose historical usage and current rates make them eligible for the Pilot could end up paying more with the CSP if their price-to-compare changes or their actual usage pattern deviates from historical usage patterns. The Report identifies two potential remedies that we may wish to consider if we share this concern. First, DVP could be required to guarantee that non-volunteer customers will be no worse off with a CSP than they would have been on capped rates. If capped rates would have been more beneficial, the customer would be returned to capped rates and issued a refund equal to the difference between what they paid to the CSP and what they would have paid to DVP. Second, participation in the CBS Pilot could be limited to volunteers.

The Report notes that Staff does not object to the Company's desire to review the CBS Pilot and propose modifications after two years, since no changes can be made unilaterally nor can they be made without approval of this Commission. Staff also states that the Company's proposal that DVP be provided latitude to increase the 50 percent reduction in wires charges with a corresponding reduction in the amount of MW available in the Pilot, as proposed, is reasonable.

Staff did not agree with comments that the proposed size limit and wires charge reduction will render the C&I Pilot unsuccessful. To the contrary, Staff recommended that the C&I Pilot be approved, though with two exceptions. First, Staff recommends that the proposed choice of market-based pricing models to be used in performing the proposed simulation analysis not be limited to those that are either in place or are under consideration in other jurisdictions. Second, Staff recommended that the procedure for customers who are "passed over" on the list of volunteers for the C&I Pilot be clarified. As proposed, when a slot for participation opens, DVP will award this position to the next appropriate customer on the volunteer list, so long as the 200 MW ceiling is not exceeded. Staff seeks assurance that the passed-over customer would retain its rank on the list in the event another slot opens.

Five parties submitted comments to the Report. Consumer Counsel generally endorsed the recommendations of the Report regarding the three Pilots. Consumer Counsel agrees that the Commission, in order to ensure that customers who are randomly selected to participate in the CBS Pilot do not pay more than they would have had they remained on capped rates, should either (i) require DVP to guarantee that assigned customers be no worse off with a CSP than they would have been under capped rates or (ii) limit participation in the CBS Pilot to volunteers. If the Commission adopts the first option (requiring DVP to guarantee that non-volunteer CBS Pilot participants be no worse off with a CSP than they would have been under capped rates),

⁶ Staff Report at 10.

Consumer Counsel recommends that such participants who subsequently terminate CSP service and return to capped rate service not be charged a termination fee. Consumer Counsel reasons that requiring DVP to provide a refund without limiting the ability of CSPs to charge termination fees could effectively nullify the ability of a CBS Pilot participant who has failed to opt-out to truly return to the status quo.

The Cooperatives' comments to the Report focus on two issues. First, they recommend eliminating the non-consensual switching of randomly-selected customers and the opt-out approach, particularly in the CBS Pilot. Second, participation by localities in the MA Pilot should be restricted to those that are served wholly and exclusively by DVP.

The Committee criticized the scope of DVP's proposed Pilots, and asserted that the Commission has the ability to establish pilots that go beyond the elements DVP proposed in order to establish pilots that are in the public interest. Specifically, the Committee urged the Commission to exercise this authority by establishing a pilot that is substantially greater in size, starts on January 1, 2004, lasts at least through July 1, 2007, and eliminates wires charges.

Constellation New Energy suggested that DVP examine the possibility of additional reductions in wires charges, without a corresponding decrease in the pilot program size. It also asked that the CBS Pilot either include a fourth group consisting of GS-1 and GS-2 customers or allow GS-2 customers to opt-in to the C&I Pilot.

Food Lion LLC asked the Commission to direct DVP to reconsider the 500 kW eligibility threshold for participation in the C&I Pilot. Though Food Lion has an aggregate peak load of 70 MW, most of its individual grocery stores have significant peak period electric loads of between 240 kW and 500 kW. Under the C&I Pilot, each grocery store would be treated as a single customer and this would not meet the 500 kW entry threshold. Specific options identified include (i) waiving the 500 kW requirement for customers that operate at high load factors, in multiple locations, and with high per-store and high aggregate peak loads and (ii) redefining the entry requirement for the C&I Pilot to include such commercial customers.

On August 1, 2003, DVP submitted its response to the Report and to the comments of interested parties (the "Response"). The Response includes additional revisions to the Pilots and their Terms and Conditions (collectively, the "Second Revision"). The Second Revision incorporates several modifications to the Pilots that were recommended in the Report and in comments filed by parties, as well as changes not previously considered.

The Second Revision amends the CBS Pilot to adopt several recommendations included in the Report. DVP has agreed to be responsible for the initial notification to customers who are randomly selected to participate in the CBS Pilot, and to inform such customers of their right to withdraw from participation.

With respect to Staff's concern that randomly-selected customers in the CBS Pilot could pay more than they would have had to pay had they stayed under capped rates, DVP has agreed to include in the CBS Pilot a "hold harmless" condition whereby the Company will calculate annually whether randomly-selected customers would have saved money if they had been charged the Company's capped rate. If this calculation reveals that capped rates would have yielded lower billings on an annual basis, the customer would receive a refund equal to the difference between what the customer had paid to the CSP and what they would have paid the Company under capped rate service. The Company does not agree that a customer who receives a refund via this process should automatically be returned to DVP's capped rate service. Instead, DVP proposes to include an explanatory message on the customer's bill that discusses the reason for the refund and provides instructions on how the customer may discontinue participation in the Pilot.

DVP asserts that implementation of this hold harmless provision will require CSPs to provide additional information during the RFB process. Amendments are included in the Second Revision that would obligate CSPs to provide class-specific prices on a \$-per-MWh basis for low load, normal load, and high load scenarios as provided by the Company. DVP also proposes to modify the determination of the winning bidder using these scenarios. In order for the Company to compare what customers paid to a CSP with what they would have paid had they continued under capped rates, DVP proposes that each CSP provide monthly billing amounts for each twelve month period for all of its customers that were initially randomly selected and assigned, netting non-tariff items such as rebates and credits, and excluding additional items such as late payment fees. The CSP's response to the RFQ must include a commitment to provide this information.

With respect to Staff's recommendation that DVP provide Pilot participants with updated market price, fuel factor, wires charges, and price-to-compare information, DVP observes that it currently notifies customers of changes in the fuel factor and is willing to notify customers of annual changes in their price-to-compare. DVP has also agreed to work with Staff in its role of monitoring the bidding process and selecting bid winners.

With respect to the C&I Pilot, DVP states that it is willing to work closely with Staff to identify methods in use or under consideration in other jurisdictions that should be tested in this Pilot, and to develop additional market-based methods that would be beneficial to test in the simulations. DVP also reiterated that the selection of any such method to conduct the simulations would not be considered an endorsement of that method by the Company or the Commission.

An amendment in the Second Revision pertaining to the C&I Pilot clarifies that a customer would not lose its position on the list of volunteers if it is not selected for participation because its inclusion would cause the Pilot's 200 MW ceiling to be exceeded. The C&I Pilot's Terms and Conditions are amended to allow GS-2 customers to volunteer to participate in the C&I Pilot. The Second Revision provides that customers whose peak demand reached or exceeded 30 kW during no less than three billing periods and reached or exceeded 500 kW during no more than two billing months during the previous 11 billing months (or during the actual number of billing months in the customer's history if there are less than 12 previous billing months) have the option to participate in the C&I Pilot. However, in order to ensure that a customer is not eligible to participate in more than one Pilot, these customers are not eligible for other Pilots after the lottery has been completed or they have enrolled with a CSP in the C&I Pilot.

NOW THE COMMISSION, having considered the Application, the Report, the revisions to the Terms and Conditions, the pleadings, the comments of interested parties, the Response, and the applicable law, is of the opinion and finds that the application for the Pilots, subject to the modifications detailed herein, should be approved.

All Pilots

We find that the Pilots are in the public interest and further the goal of advancing competition in the Commonwealth. The Pilots shall be subject to the existing Rules Governing Retail Access to Competitive Energy Services⁷ except as provided in the Application.

The First Revision extended the expiration of the Pilots from December 31, 2005, to the end of the capped rate period.⁸ The First Revision also included DVP's request that we allow the Company, no sooner than two years from the date of this order, to apply for modifications to the Pilots (other than modifications to the amount of MW in the Pilots and the wires charge reduction) that may be required to more successfully transition to the post-capped rate period. We agree that experience gained over the next two years may make it appropriate to consider modifying the Pilots in the future. If and when an appropriate application is made, we will fully consider any such request.

DVP also asks in the First Revision for latitude to make changes, working with Staff, in the 50 percent reduction in the wires charge amounts approved for 2003 with a corresponding decrease in the amount of MW available in the Pilots. DVP indicates that it may affect such changes if it is determined that the wires charge reduction is insufficient to stimulate activity. We observe that amendments to the size of the reduction in the wires charge and to the load allowed to participate in the Pilots could affect the extent to which the Pilots are in the public interest. Though DVP has offered to work with Staff in exercising the requested latitude to change these elements of the Pilots, we do not find that this informal amending process is appropriate. If the Company seeks to amend these elements of the Pilots, then it may seek such amendments upon application to this Commission.

In the Procedural Order, we asked whether pilot participants should receive notification of any change in the projected market price, the Company's fuel factor, wires charges and price-to-compare information and, if so, who should be responsible for providing such information. Staff recommended that DVP provide such information to participants in all three Pilots.⁹

DVP currently provides information on changes in the fuel factor and is willing to accommodate notification to customers of annual changes in their price-to-compare. However, DVP states that "providing customers with [market price and wires charge information] will be of little use and may, in fact, increase confusion and introduce unnecessary complexity."¹⁰ However, as the Company observes, the price-to-compare is derived using the market price and wires charges values. Rather than merely providing Pilot participants with the resulting price-to-compare, we find that DVP should also provide information about changes in the projected market price and wires charges and any other information that Pilot participants may need in order to determine how their price-to-compare is calculated. We further find that when the Company provides this information to Pilot participants, it should include a concise and conspicuously-located explanation of the relationship between the price-to-compare and the CSP's price, which explanation shall address how the customer would pay more if the price offered by the CSP exceeds the Company's price-to-compare.

MA Pilot

We note that § 56-589 A 1 requires that political subdivisions not earn a profit on, but recover the actual costs incurred in, aggregation programs. The Procedural Order invited comments on how this requirement should be monitored and enforced, and who should monitor or enforce it. Under the MA Pilot, each participating political subdivision is required to adopt an Operation and Governance Plan which will be filed with the Commission. We find that it is appropriate to require that the Operation and Governance Plans include information regarding how the political subdivision will conduct the pilot in a manner that ensures compliance with this statutory requirement.

The Cooperatives assert that political subdivisions that are not wholly and exclusively served by DVP should be ineligible to participate in the MA Pilot. They are concerned that cooperative customers in areas with both cooperative and DVP service should not be put in the confusing position of being subjected to a municipal aggregation pilot in their neighborhood, especially when they cannot participate. DVP counters that participation should not be predicated on the identity of the utilities that serve the locality's constituents.

We recognize the validity of the Cooperatives' concern that the operation of an MA Pilot that encompasses the entire area of a political subdivision could create confusion among residents who are customers of a utility other than DVP. In order to reduce the potential for confusion, we recommend that, if a political subdivision participating in the MA Pilot is not entirely within DVP's service territory, all advertising material and written communications that relates to the MA Pilot which is mailed to or directed at residents of such a political subdivision should include a clear and conspicuous statement that only DVP customers are eligible to participate in the Pilot. We further find that paragraph V(A) of the Terms and Conditions of the MA Pilot shall be amended to read as follows:

(A) The Pilot will be available to all of Dominion Virginia Power's Virginia jurisdictional customers within the selected municipality except those customers eligible to participate in the Commercial and Industrial Pilot.

CBS Pilot

In the Procedural Order, we asked interested persons to address whether §§ 56-577 C and 56-589 A of the Code of Virginia authorize opt-out provisions in pilot programs, such as the CBS Pilot, that do not involve aggregation by local governments. Consumer Counsel does not believe that these provisions of the Code preclude the Commission from authorizing an opt-out component to a pilot other than a municipal aggregation pilot. Subsection C of § 56-577, as amended by House Bill 2319 of the 2003 Session of the General Assembly,¹¹ authorizes the Commission to "establish opt-in and opt-out

⁷ 20 VAC 5-312-10 *et seq.*

⁸ Section 56-582 of the Virginia Code provides that capped rates will expire July 1, 2007, though the Commission, upon petition by a utility after January 1, 2004, may terminate capped rates upon finding an effectively competitive market for generation services within the service territory of that utility.

⁹ Report at 25.

¹⁰ Response at 10.

¹¹ Chapter 795 of the 2003 Acts of Assembly.

municipal aggregation pilots and any other pilot programs the Commission deems to be in the public interest." With respect to pilot programs that do not involve municipal aggregation, the Act appears to neither command nor prohibit any particular format. Staff agrees that this Commission is authorized to approve opt-out provisions in pilot programs, if we find that pilots with such provisions are in the public interest.

The CBS Pilot provides that if there are not sufficient volunteers, DVP customers chosen at random may become participants in the Pilot and receive service from a CSP. The terms of the CBS Pilot allow such randomly-selected customers to opt-out from such participation. We believe that such involuntary participants must be given ample opportunity to exercise this ability to opt-out of the CBS Pilot. Thus, we direct DVP to modify its Terms and Conditions to reflect that the Company must notify customers of their random selection "as soon as practicable" following selection. We note that the Second Revised Terms and Conditions for this Pilot require DVP to "inform such customers of their right to withdraw from participation." We agree with Staff and direct the Company to include a statement in the notice that the customers' right to opt-out may be exercised either immediately or after evaluating the CSP's offer. This notice requirement will not affect any notice that is required to be provided by the CSP.

We are concerned that the randomly-selected CBS Pilot participants could pay more receiving service from a CSP than they would have paid had they received capped rate service. To address this concern, Staff identified two potential remedies: Guarantee that non-volunteer customers are no worse off with the CSP than under capped rates, or limit CBS Pilot participation to volunteers. In its Response, DVP agreed to the "hold harmless" condition for customers who were selected at random to participate in this Pilot. We find that such a provision is appropriate for the CBS Pilot. We note DVP's concern that its agreement to this condition not be construed as establishing a precedent for other matters or for the implementation of retail access or default service outside of the CBS Pilot.¹²

Implementation of the hold harmless provision requires any non-volunteering customer who pays more under the CBS Pilot than it would have paid had it received capped rate service be issued a refund equal to the amount of the difference. DVP has agreed to refund such amount to these randomly-selected participants. Staff has also recommended that making such customers whole requires that they be automatically returned to capped rates. DVP disagrees that this requirement is necessary. Instead, the Company would give such customers notice explaining their refund and instructing the customer how to return to capped rate service. We agree with DVP that such customers should be allowed, but not required, to leave the CBS Pilot. We find that the notice to customers explaining the refund should address why such customers are receiving a refund, informing such participants that they paid, and may continue to pay (absent the end-of-year refund of the difference) more as a result of participating in the Pilot than they would have paid under capped rate service.

The Second Revision to the CBS Pilot imposes new requirements on CSPs regarding information to be provided during the RFB process and during the duration of the Pilot. DVP alleges that the additional information is necessary in order to perform the reconciliation of the amounts paid by non-volunteer participants and the amounts they would have paid under capped rates. We find that these amendments to the Terms and Conditions of the CBS Pilot should be permitted.¹³

Consumer Counsel has observed that if we require DVP to guarantee that non-volunteer participants be no worse off with a CSP under the CBS Pilot than they would have been under capped rates, then CSPs should not be permitted to assess such customers with a termination fee if they return to capped rate service after it is determined that they would have been better off under capped rate service. We agree that charging such customers a termination fee in such circumstances could nullify the goal of making such customers no worse off as a result of their Pilot participation. We find that such customers shall not be assessed a termination fee or similar charge by the CSP, DVP or related entity if they leave the CSP to return to capped rate service when it is determined that they were paying more under such service than they would have paid had they stayed on capped rate service.

In its Response, DVP states that it "will agree to the Staff's proposed modification in order to expedite the process of implementing the Pilot."¹⁴ The Second Revision provides that DVP, "in coordination with" Staff, will have responsibility to issue RFQs and RFBs for the CBS Pilot. Requiring DVP to coordinate with Staff with regard to the issuance of RFQs is not equivalent to requiring the Company to administer the RFQ and RFB process, as recommended by Staff. We find that requiring DVP administer the RFQ and RFB process, and limiting Staff's role to overseeing the process and making the final selection of CSPs, is a more efficient use of resources.

C&I Pilot

We find that the revisions to the C&I Pilot provided in DVP's Response are appropriate. The market-based models or methods to be used in conducting simulation analyses will not be limited to those that are in use or under consideration in other jurisdictions.

DVP proposes expanding the C&I Pilot to include GS-2 customers whose peak demand reached or exceeded 30 kW during three or more billing periods and reached or exceeded 500 kW during fewer than three billing months. This amendment adopts Constellation New Energy's suggestion that, as an alternative to adding a fourth subgroup in the CBS Pilot for small or medium sized customers, GS-2 customers be allowed to opt-in to the C&I Pilot. It also addresses Food Lion's recommendation that customers operating at high load factors, in multiple locations, with both high per store and high aggregate peak loads, be allowed to participate in the C&I Pilot. This change may make participation more attractive to potential commercial customers.

However, we find the wording of Section V B of the Second Revised Terms and Conditions of the C&I Pilot is unclear and should be modified to read as follows:

- (B) In addition, the Pilot shall also be available to all of Dominion Virginia Power's Virginia jurisdictional customers whose peak measured demand reached and exceeded (i) 30 kW during no less than three billing

¹² See Response at 7.

¹³ The amendments to sections VIII and X of the Terms and Conditions of the CBS Pilot that impose these additional informational requirements on CSPs were filed with DVP's Response dated August 1, 2003. We acknowledge that interested persons have not been provided the opportunity to comment on the effect of these additional requirements. CSPs that object to these new informational requirements on grounds that they are unduly burdensome have the opportunity to file with the Commission a request for a waiver from specific requirements.

¹⁴ Response at 10.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

months and (ii) reached or exceeded 500 kW during no more than two billing months, which billing months are (1) within the current and previous 11 billing months or (2) during the actual number of billing months in the customer's history if there are less than 12 previous billing months. Customers described in this subsection (B) shall not be eligible for other pilots after any lottery is completed or they have enrolled with a CSP in the Pilot according to Section VII of these Terms and Conditions.

Accordingly, IT IS ORDERED THAT:

- (1) DVP's Application for Approval of Retail Access Pilot Programs as revised, subject to the modifications discussed herein, is hereby approved.
- (2) On or before October 1, 2003, DVP shall file revised Terms and Conditions of service for each of the pilots reflecting the findings herein. DVP's revised Terms and Conditions shall be subject to the review of the Staff for conformity with this Order.
- (3) One year from the date the pilots commence, and annually thereafter, DVP shall file an original and fifteen (15) copies of a report with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, detailing the status of each of the pilots.
- (4) This matter shall remain open for the receipt of reports by DVP and for other matters concerning the Pilots as they may arise.

**CASE NO. PUE-2003-00120
MAY 8, 2003**

APPLICATION OF
ROANOKE GAS COMPANY

For authority to issue short-term debt

ORDER GRANTING AUTHORITY

On March 25, 2003, Roanoke Gas Company ("Roanoke" or "Applicant") filed an application under Chapter 3 of Title 52 of the Code of Virginia requesting authority to incur short-term indebtedness. The proposed amount of short-term debt exceeds twelve percent of capitalization as defined in §§ 56-65.1 of the Code of Virginia. Applicant has paid the requisite fee of \$250.

Applicant proposed to incur short-term indebtedness in an aggregate amount not to exceed \$22,000,000 over a three year period commencing July 1, 2003, and ending July 1, 2006. The indebtedness will be either in the form of issued negotiable notes maturing or temporary draws on its short-term line of credit. All borrowing will be maturing 12 months or less from the date of issuance.

Applicant estimates that its borrowing rate will be at or below published prime rates. The borrowing rate will vary with market conditions, the form of indebtedness, and the related term to maturity. Short-term notes will be issued with a maturity of either 30, 60, or 90 days. Applicant states that borrowings under its line of credit are currently priced at London Interbank Offered Rate (LIBOR) plus 50 basis points.

The proceeds from the short-term borrowings will be used mainly to fund Roanoke's gas inventory purchases. In addition, Applicant states that it may use its short-term borrowings to fund capital expenditures temporarily until permanent financing can be obtained.

THE COMMISSION, upon consideration of the application and having been advised by its Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest. Accordingly,

IT IS ORDERED THAT:

- 1) Applicant is hereby authorized to issue up to \$22,000,000 in short-term debt from July 1, 2003, through July 1, 2006, under the terms and conditions and for the purposes set forth in the application.
- 2) On or before July 31st and January 31st of each year, Applicant shall file a Report of Action. Such report shall include the daily balance of short-term debt outstanding during the semi-annual period ending in June and December, respectively, and a schedule of issuances including the amount, date of issuance, interest rate, maturity, and lending institution.
- 3) On or before July 31, 2006, Applicant shall file a final Report of Action providing the information outlined in ordering paragraph (2).
- 4) Approval of this application shall have no implications for ratemaking purposes.
- 5) This matter shall be continued, subject to the continuing review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2003-00121
APRIL 3, 2003**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For approval of transactions with an affiliate

FINAL ORDER

By Commission Order dated September 3, 1997, in Case No. PUA-1997-00007, Virginia Electric and Power Company ("Virginia Power" or the "Company") was granted approval of an Affiliate Services Agreement with Virginia Power Services, Inc. Ordering paragraph (2) of the Commission's Order required Virginia Power to submit monthly financial statements of Virginia Power Services, Inc., and Virginia Power Nuclear Services Company to the Commission's Director of Public Utility Accounting.

The Company has submitted such required reports in a timely manner.

NOW THE COMMISSION, having considered the matter and having been advised by our Staff, is of the opinion that such reports are no longer needed on a monthly basis. Rather, we believe that annual financial statements should be included with the Company's Annual Report of Affiliate Transactions.

Accordingly, IT IS ORDERED THAT:

- (1) Virginia Electric and Power Company shall cease submitting monthly financial statements for Virginia Power Services, Inc., and Virginia Power Nuclear Services Company to the Director of Public Utility Accounting.
- (2) Virginia Electric and Power Company shall begin submitting annual financial statements for Virginia Power Services, Inc., and Virginia Power Nuclear Services Company beginning with calendar year 2003. Such statements shall be included in the Company's Annual Report of Affiliate Transactions to be submitted on or before May 1, 2004.
- (3) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00122
MAY 21, 2003**

APPLICATION OF
DELMARVA POWER AND LIGHT COMPANY
and
PEPCO HOLDINGS, INC.

For approval of the Federal and State Income Tax Allocation Agreement between Pepco Holdings, Inc., and its subsidiaries under Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On March 26, 2003, Delmarva Power and Light Company ("Delmarva") and Pepco Holdings, Inc. ("PHI"), filed an application with the State Corporation Commission (the "Commission") under Chapter 4 of Title 56 of the Code of Virginia (the "Code") requesting approval of a Federal and State Income Tax Allocation Agreement (the "Tax Agreement") whereby PHI and its consolidated subsidiaries, including Delmarva, allocate and book income taxes paid on a consolidated basis to federal and state governments.

Delmarva is a Delaware/Virginia public service corporation engaged in the supply, transmission, distribution, and sale of energy to approximately 502,000 electric and 109,000 natural gas customers in Delaware, Maryland, and Virginia. Delmarva serves 22,000 retail customers and one wholesale customer in Virginia's two Eastern Shore counties.

PHI is a Delaware corporation and registered holding company under the Public Utility Holding Company Act of 1935 ("PUHCA"). PHI is the parent company of Potomac Electric Power Company ("Pepco") and Conectiv, Inc. ("Conectiv"). Pepco is a District of Columbia/Virginia corporation that serves approximately 480,000 electric customers in Maryland and 220,000 electric customers in the District of Columbia. Pepco also owns 55 miles of interconnection transmission facilities in Virginia and several subsidiaries engaged in non-regulated business activities. Pepco serves no retail customers in Virginia. Conectiv is a Delaware corporation organized as a registered holding company under PUHCA. Conectiv owns one hundred percent (100%) of the outstanding common stock of Delmarva and Atlantic City Electric Company.

Federal Regulations

The Securities and Exchange Commission ("SEC"), through Title 17, Code of Federal Regulations ("C.F.R.") § 250.45(c) ("Rule 45(c)", requires holding companies registered under the PUHCA to file with the SEC written tax allocation agreements covering the holding company, its regulated utilities, and other consolidated subsidiaries (the "Group Members") in order to have the ongoing authority to file consolidated income tax returns with the federal government. The Tax Agreement was filed with the SEC on March 27, 2002, as part of Pepco's and Conectiv's application seeking approval of their merger and acquisition by PHI (the "Merger Application"). The SEC approved the application, including the Tax Agreement, in its order dated July 24, 2002.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Applicants' Tax Agreement does not apply to unconsolidated affiliates such as foreign subsidiaries, partnership interests, limited liability corporations that are treated as partnerships, and corporations where there is less than an 80% ownership interest. The Tax Agreement also does not cover state income taxes paid on a separate legal entity basis, real and personal property taxes, sales and use taxes, and excise taxes.

Tax Allocation Methodology

Rule 45(c)(2) states that:

"The consolidated tax shall be apportioned among the several members of the group in proportion to (i) the corporate taxable income of each such member, or (ii) the separate return tax of each such member, but the tax apportioned to any subsidiary shall not exceed the separate return tax of such subsidiary."

Article I (A), Step 1 of the Tax Agreement states that PHI's consolidated federal tax liability (excluding any alternative minimum tax ("AMY")) will be apportioned among the Group Members using the ratio of each Group Member's separate tax liability divided by the sum of the positive separate tax liabilities of Group Members having taxable income.

Article I (A), Step 2 of the Tax Agreement states in part that each Group Member will be allocated an additional liability amount (an "Excess Separate Tax") equivalent to 100% of the excess of each Group Member's separate tax liability over the amount allocated to it in Step 1.

Article I (A), Step 2 further states that the allocated Excess Separate Tax shall be reduced by the Group Member's proportional share of PHI'S and Conectiv's tax benefits (excluding amounts associated with acquisition debt), and allocated using the ratio of each Group Member's Excess Separate Tax divided by the aggregate Excess Separate Tax for all Group Members.

Holding Company Tax Benefits

The Merger Application specifically requested SEC approval for PHI's and Conectiv's retention of the tax benefits associated with the \$700 million in acquisition debt assumed to consummate the merger. The request stems from the SEC's interpretation of Rule 45(c)(5), which states that, in general:

"[The] agreement may include all members of the group in the tax allocation. An agreement under this paragraph shall provide that those associate companies with a positive allocation will pay the amount allocated and those subsidiary companies with a negative allocation will receive current payment of their corporate tax credits."

In 1981, an SEC amendment precluded registered holding companies from sharing in consolidated return tax savings because of concerns about the possibility of improper upstream cash distributions. More recently, the SEC revised its regulatory position to allow holding companies to retain selected tax benefits related to acquisition debt.¹ The SEC approved the Tax Agreement in its order dated July 24, 2002, approving the Merger Application. The Applicants state that the acquisition debt related to the acquisition of Conectiv and the related tax benefits are recorded on PHI'S books. Any tax benefits related to Conectiv's acquisition debt are recorded on Conectiv's books.

Other Tax Allocation Provisions

Article I (A), Step 3 of the Tax Agreement states that Group Members (excluding PHI and Conectiv) with negative separate taxable income, credits, or other tax benefits will receive compensation for the use of their tax benefits. The Applicants represent that the negative tax Group Members are compensated to the extent that the tax benefits can be currently utilized.

Rule 45(c)(5) further states that:

"The agreement shall provide a method for apportioning such payments, and for carrying over uncompensated benefits, if the consolidated loss is too large to be used in full. Such method may assign priorities to specified kinds of benefits."

Article I (D) of the Tax Agreement states that a Group Member that does not receive current payment for a tax benefit due to the Tax Agreement's allocation rules shall retain the right to payment to the extent that the benefit can be utilized in future years. Uncompensated tax benefits arising from negative taxable income will have priority over tax benefits attributable to excess tax credits.

The Applicants represent that allocated tax benefits are permanently distributed to Group Members unless the consolidated tax return is subsequently adjusted by PHI or the Internal Revenue Service. In this case, the tax effect of the adjustment including interest and penalties is assigned or apportioned, using the methodology described in Article I, to the Group Member(s) whose separate return tax is affected by the adjustment.

Article II of the Tax Agreement states that state and local income tax liabilities will be allocated using principles similar to those used for the consolidated federal income tax allocation.

Legal and Accounting Provisions

Article III of the Tax Agreement states that PHI shall have authority to prepare tax returns, settle tax issues, and make payments in connection with the consolidated federal and state income tax returns. Article III also says that the Tax Agreement shall apply for the tax year ending December 31, 2002, and subsequent years. Article III indicates that each Group Member shall pay its own expenses, including legal and accounting fees, incident to the Tax Agreement.

¹ National Grid Group plc, HCAR No. 27154 (March 15, 2000).

The Applicants describe four accounting transactions concerning the Tax Agreement that Delmarva records on its books. Delmarva records its current federal tax liability by debiting Federal Income Tax ("FIT") Expense and crediting Accrued FIT. Delmarva records a current federal tax refund by reversing the tax expense entry. Delmarva records its payment to the Consolidated Group for a positive federal tax liability by debiting Accrued FIT and crediting its Money Pool account. Likewise, Delmarva records a receipt from the Consolidated Group of a federal tax refund by reversing the tax payment entry.

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 above-described Tax Agreement is in the public interest and should be approved.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code of Virginia, Delmarva Power & Light Company hereby is granted approval to participate in the Federal and State Income Tax Allocation Agreement between Pepco Holdings, Inc., and its subsidiaries under the terms and conditions and for the purposes described herein.
- 2) Delmarva shall file with the Commission an executed copy of the Federal and State Income Tax Allocation Agreement within 30 days from the date of this Order, subject to extension by the Director of Public Utility Accounting.
- 3) Commission approval shall be required for any changes in the terms and conditions of the Federal and State Income Tax Allocation Agreement.
- 4) The approval granted herein shall have no ratemaking implications. The Commission reserves the right to reflect ratemaking adjustments to Delmarva's income taxes in the course of the Commission's review and analysis of Delmarva's cost of service in the future.
- 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 this Commission.
- 7) Delmarva shall include the Federal and State Income Tax Allocation Agreement approved herein in its Annual Report of Affiliate Transactions submitted to the Director of Public Utility Accounting of the Commission.
- 8) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then Delmarva shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.
- 9) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00126
MAY 27, 2003**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY
and
DOMINION RESOURCES, INC.

For exemption of a Tax Allocation Agreement and a Cash Contribution 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 and Cash Contribution

ORDER DENYING EXEMPTION AND GRANTING APPROVAL

On April 1, 2003, Virginia Electric and Power Company ("Virginia Power") and Dominion Resources, Inc. ("DRI") (collectively the "Applicants"), filed an application with the State Corporation Commission (the "Commission") requesting an exemption of a Tax Allocation Agreement ("Tax Agreement") and Cash Contribution ("Contribution") from the filing and prior approval requirements of the Affiliates Act pursuant to § 56-77 B of the Code of Virginia (the "Code") or, in the alternative, approval to enter into the Tax Agreement and Contribution pursuant to the Affiliates Act.

DRI, which is headquartered in Richmond, Virginia, is a registered holding company under the Public Utility Holding Company Act of 1935 ("PUHCA") and subject to regulation by the Securities and Exchange Commission ("SEC"). DRI's principal subsidiaries are Virginia Power, Consolidated Natural Gas Company ("CNG), and Dominion Energy, Inc.

Virginia Power is a Virginia public service corporation that generates, transmits, and distributes electricity within a 30,000 square mile area in Virginia and northeastern North Carolina. Virginia Power sells electricity to approximately 2.2 million retail customers, including governmental agencies, and to wholesale customers such as rural electric cooperatives, municipalities, power marketers, and other utilities. Virginia Power has trading relationships beyond its retail service territory and buys and sells wholesale electricity and natural gas off-system.

Federal Regulations

The Securities and Exchange Commission ("SEC"), through Title 17, Code of Federal Regulations ("C.F.R.") § 250.45(c) ("Rule 45(c)"), requires holding companies registered under the PUHCA to file with the SEC written tax allocation agreements covering the holding company, its regulated utilities,

and other consolidated subsidiaries (the "Group Members") in order to have the ongoing authority to file consolidated income tax returns with the federal government. On January 10, 2003, DRI filed an application with the SEC requesting approval of the Tax Agreement (the "SEC Application"). DRI requested specific approval of a provision in the Tax Agreement that allows the holding company to retain the tax benefits related to \$4.3 billion in acquisition debt and related costs incurred to finance the fiscal 2000 acquisition of CNG. At this time, the SEC Application remains pending.

The Applicants currently list 140 affiliates that are Group Members under the Tax Agreement. The Applicants list 29 affiliates that are not parties to the Tax Agreement. The unconsolidated affiliates are partnerships or entities in which DRI holds a minority interest.

Tax Allocation Methodology

Rule 45(c)(2) states that:

The consolidated tax shall be apportioned among the several members of the group in proportion to (i) the corporate taxable income of each such member, or (ii) the separate return tax of each such member, but the tax apportioned to any subsidiary shall not exceed the separate return tax of such subsidiary.

Article II, § 2.1(b) of the Tax Agreement describes DRI's general methodology for allocating federal taxes. First, DRI multiplies 100% of the consolidated federal tax liability by the ratio of each Group Member's separate return tax, excluding alternative minimum taxes ("AMT") and related AMT credits ("AMTC"), divided by the sum of the Group Members' separate return tax. This step allocates the consolidated liability.

Second, DRI allocates an additional amount to each Group Member up to, but not exceeding, the difference between the Group Member's separate tax liability and the amount allocated in the first step. This step adjusts each Group Member's tax liability to a separate return tax level.

Third, DRI allocates any AMT liability based on the relative separate adjusted AMT of each Group Member, and any AMTC based on each Group Member's previously assigned AMT liability on a "first in/first out" basis. To the extent that any AMTC is not fully utilized, then it is utilized proportionately by Group Members previously assigned AMT for that year.

Holding Company Tax Benefits

Rule 45(c)(5) states that, in general:

[The] agreement may include all members of the group in the tax allocation. An agreement under this paragraph shall provide that those associate companies with a positive allocation will pay the amount allocated and those subsidiary companies with a negative allocation will receive current payment of their corporate tax credits.

In accordance with Rule 45(c)(5), Article II, § 2.1(c) of the Tax Agreement states that each Group Member's share of the consolidated federal tax liability will be used to determine the amounts paid by positive tax Group Members ("Paying Members") to DRI and the payments made by DRI to negative tax Group Members ("Loss Members"). Article II, § 2.1(d) of the Tax Agreement goes on to state that DRI will pay to the Loss Members the aggregate of the excess of the Paying Members' separate return tax liability over their consolidated tax liability. Article II, § 2.1(b)(i) affirms that the total of the tax amounts allocated to Group Members shall result in payments to Loss Members.

In 1981, though, an SEC amendment precluded registered holding companies, which are usually Loss Members, from sharing in consolidated return tax savings because of concerns about the possibility of improper upstream cash distributions. More recently, the SEC revised its regulatory position to allow holding companies to retain selected tax benefits related to acquisition debt.

The SEC Application requests specific approval for DRI's retention of the tax benefits associated with the \$4.3 billion in acquisition debt costs incurred to consummate the CNG merger. DRI states that the tax benefits at issue relate to unsecured holding company debt used to finance DRI's investment in CNG. As such, the acquisition debt neither funds subsidiary operations nor obligates DRI's subsidiaries to repay it. DRI says it will pay off the acquisition debt through the investment income realized through dividends paid from the current and accumulated earnings of its subsidiaries. Also, DRI represents that it is not seeking recovery of its interest expenses or corporate costs from its subsidiaries. DRI notes that the SEC has granted relief on this issue in a similar case.¹

Therefore, DRI has proposed in Article II, § 2.1(d)(ii) of its Tax Agreement that:

The Tax Benefit Amount allocated to DRI and paid to DRI as a result of its being a Loss Member shall be limited to the lesser of the tax benefit of its interest deduction attributable to Acquisition Indebtedness or the tax benefit of its separate tax loss. The portion of DRI's tax benefits which cannot be allocated and paid to DRI due to the operation of this section shall be reallocated to Paying Members of the Consolidated Group other than DRI.

Other Tax Allocation Provisions

Rule 45(c)(5) further states that the consolidated tax agreement:

Shall provide a method of apportioning such payments, and carrying over uncompensated benefits, if the consolidated loss is too large to be used in full.

¹ National Grid Group plc, HCAR No. 27154 (March 15, 2000).

Article II, § 2.1(e) of the Tax Agreement states that consolidated net operating losses ("NOL") will be allocated using the general methodology previously described. To the extent that consolidated NOL are carried back, each Group Member's allocated NOL shall be carried back and utilized according to the proportion that its individual NOL bears to the consolidated NOL. Similar principles will apply for NOL carryforwards, tax credits, and tax credit recaptures.

Article II, § 2.1(f) of the Tax Agreement states that federal tax allocations will be subject to periodic adjustment as a result of amended returns or Internal Revenue Service audits.

Article II, § 2.2 of the Tax Agreement deals with "Other Taxes," which states that, in general, taxes owed to state, municipal, or other political subdivisions shall be allocated among the Consolidated Group in a manner consistent with the methodology used for federal taxes. Group Members that file an unconsolidated Other Return are solely responsible and obligated to pay the tax liability reflected by that return.

Legal Provisions

Article III of the Tax Agreement, which deals with the legal responsibility and the inter-company payments for the consolidated tax return, states that DRI assumes legal responsibility for the payment of the consolidated tax liability. DRI will assess or pay Group Members their share of estimated tax payments, and within sixty days after the consolidated return filing, DRI and the Group Members will settle the difference between the estimated and actual consolidated tax liability.

Article III also says that DRI shall have sole authority to deal with the IRS and other taxing authorities concerning any adjustments related to the consolidated return. DRI shall be responsible for maintaining the books and records with the inter-company accounts reflecting the amounts owed, collected and paid with respect to the consolidated return.

Article IV, § 4.2 states that the Tax Agreement shall be effective with respect to all taxable years ending on or after January 28, 2000. Section 4.4 states that each party to the Tax Agreement shall pay its own expenses, including legal and accounting fees, incident to the Tax Agreement. The Applicants represent that the Group Members are individually responsible for any cost they incur in applying the provisions of the Tax Agreement to their respective subsidiary. Group Members are not responsible for any cost incurred by DRI. Section 4.16 states that Members leaving the Consolidated Group shall be assigned their allocable portion of the consolidated tax liability and will settle with DRI any differences between estimated and actual tax liabilities within sixty days after leaving the Consolidated Group.

Cash Contribution

The Applicants' accounting treatment for income taxes has created a problem on Virginia Power's balance sheet. The Applicants interpret Statement of Financial Accounting Standards 109 to mean that Virginia Power's separate return tax should be the current tax liability that is booked for financial accounting purposes. The Applicants represent that DRI's holding company tax benefits are not allocated to Virginia Power for the purpose of determining Virginia Power's federal tax liability. Therefore, Virginia Power records its current year separate return tax expense and liability when it debits Federal Income Tax - Current Year and credits Accrued Federal Income Tax - Current.

At the time of settlement though, Virginia Power, consistent with the application of Rule 45(c), does not remit the full amount of its separate return tax to DRI. Instead, Virginia Power reduces its tax payments to DRI by its share of DRI's holding company tax benefits that are allocated among the subsidiaries with positive taxable income.

The result is that Virginia Power, over time, accumulates in its federal tax liability account amounts that are never payable to DRI. In order to correct this problem, the Applicants propose that Virginia Power, on an annual basis, transfer the residual balance of its federal tax liability account, after paying its allocable share of consolidated taxes, to its paid in capital account. Accordingly, DRI will transfer an equivalent amount from its federal income tax receivables account to its investment in subsidiaries account.

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 Applicants' request for exemption of the Tax Agreement and Cash Contribution from the filing and prior approval requirements of the Affiliates Act should be denied.

The Tax Agreement is a formal, legal arrangement between a registered holding company and its consolidated subsidiaries that distributes cash income tax payments and refunds among the Group Members. The parties are exchanging cash, not services, so the Tax Agreement does not fall under the Applicants' existing Service Agreement. Likewise, the Tax Agreement provides tangible incremental benefits to the holding company and the Group Members by minimizing their total federal income tax liability through the filing of a consolidated return. Therefore, the Tax Agreement is not simply a cost allocation methodology. Finally, the PUHCA, Rule 45(c), and the SEC's 1981 amendment to Rule 45(c) make clear that the federal government has had and continues to have concerns that holding companies may misuse the allocation of consolidated income taxes to drain cash from their subsidiary utilities. We have the same concerns and, therefore, the Tax Agreement should be reviewed from a public interest standpoint.

On a similar note, the proposed Cash Contribution must be reviewed within the context of the Affiliates Act because it involves the exchange of rights between affiliated parties. DRI is exchanging a receivable for an increase in its equity interest in Virginia Power. Virginia Power, in turn, is exchanging equity ownership for a reduction in an obligation.

However, we believe that the Tax Agreement as proposed is, in general, an equitable means of assigning consolidated tax liabilities to member companies. In addition, we believe the Applicants' Cash Contribution proposal is a reasonable method for handling the difference between Virginia Power's separate return and paid taxes. The Tax Agreement benefits Virginia Power as a positive separate return company because Virginia Power has the opportunity to receive consolidated tax benefits, which can reduce its tax liability and boost its cash flow. Therefore, we find that the Tax Agreement and Cash Contribution proposal are in the public interest and should be approved.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 B of the Code of Virginia, Virginia Electric and Power Company and Dominion Resources, Inc.'s request for an exemption of a Tax Allocation Agreement and Cash Contribution from the filing and prior approval requirements of the Affiliates Act is hereby denied.
- 2) Pursuant to § 56-77 of the Code of Virginia, Virginia Electric and Power Company is hereby granted approval to participate in the Tax Allocation Agreement between Dominion Resources, Inc., and its subsidiaries under the terms and conditions and for the purposes described herein. This approval is conditioned upon the subsequent approval of the Tax Allocation Agreement as presented by the SEC. Applicants shall promptly notify the Commission of the SEC's action in regard to its pending application.
- 3) Pursuant to § 56-77 of the Code of Virginia, Virginia Electric and Power Company and Dominion Resources, Inc., hereby receive approval to make the Cash Contribution under the terms and conditions and for the purposes described herein.
- 4) Virginia Electric and Power Company shall file with the Commission an executed copy of the Tax Allocation Agreement within 30 days from the date of this Order, subject to extension by the Director of Public Utility Accounting.
- 5) Commission approval shall be required for any changes in the terms and conditions of the Tax Allocation Agreement.
- 6) The approval granted herein shall have no ratemaking implications. The Commission reserves the right to reflect ratemaking adjustments to Virginia Electric and Power Company's income taxes in the course of the Commission's review and analysis of Virginia Power's cost of service in the future.
- 7) 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.
- 8) The Commission reserves the right to examine the books and records of any affiliate in connection with the approval granted herein whether or not such affiliate is regulated by this Commission.
- 9) Virginia Electric and Power Company shall include the Tax Allocation Agreement approved herein in its Annual Report of Affiliate Transactions submitted to the Director of Public Utility Accounting of the Commission.
- 10) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then Virginia Electric and Power Company shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.
- 11) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00129
JUNE 27, 2003**

APPLICATION OF
NUI CORPORATION,
VIRGINIA GAS COMPANY,
VIRGINIA GAS DISTRIBUTION COMPANY,
VIRGINIA GAS PIPELINE COMPANY,
and
VIRGINIA GAS STORAGE COMPANY

For approval of application for permission to distribute costs from parent holding company to subsidiary and affiliates under Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On April 4, 2003, NUI Corporation ("NUI"), Virginia Gas Company ("VGC"), Virginia Gas Distribution Company ("VGDC"), Virginia Gas Pipeline Company ("VGPC"), and Virginia Gas Storage Company ("VGSC") (collectively the "Applicants") filed an application with the State Corporation Commission (the "Commission") pursuant to Chapter 4 of Title 56 of the Code of Virginia (the "Code"). In a series of prior cases before the Commission,¹ VGDC, VGPC, and VGSC were ordered to develop and file a comprehensive affiliates application. This application includes four agreements intended to achieve that goal. The Applicants are seeking approval of agreements between NUI and VGC,² VGC and VGDC, VGC and VGPC, and VGC and VGSC, that are intended to redistribute directly assigned and allocated centralized administrative ("shared service") costs from NUI through VGC to the three Virginia public service corporations, VGDC, VGPC, and VGSC. The agreements contain a cost allocation policy that includes one method for allocating costs from NUI to VGC, and a separate method for allocating costs from VGC to VGDC, VGPC, and VGSC. The Applicants are also seeking authority to implement the terms of the agreements retroactive to October 1, 2002, in order to recover shared service costs that have already been passed down from NUI to VGC.

¹ Case No. PUA-2000-00079; Case No. PUE-2000-00168; Case No. PUE-2001-00030; Case No. PUA-2001-00041.

² This agreement requires Commission approval only as it relates to costs passed down to VGDC, VGPC, and VGSC.

NUI, an exempt public utility holding company located in Bedminster, New Jersey, is a diversified energy company that is primarily engaged in the sale and distribution of natural gas, energy commodity trading and portfolio management, retail energy sales, and telecommunications. NUI's local distribution operations, which include Elizabethtown Gas Company (New Jersey), City Gas Company of Florida, Elkton Gas (Maryland), and VGC, provide natural gas and related services to more than 367,000 customers in four states along the eastern seaboard of the United States. NUI's non-regulated businesses include NUI Energy, Inc., an energy retailer; NUI Energy Brokers, Inc., a wholesale energy trading and portfolio management subsidiary; NUI Environmental Group, Inc., an environmental project development subsidiary; Utility Business Services, Inc., a geospatial and customer information systems and services subsidiary; NUI Telecom, Inc., a telecommunications subsidiary; and TIC Enterprises, LLC, a sales outsourcing subsidiary. On May 28, 2003, NUI announced the sale of NUI Energy, Inc.'s customer accounts to Houston Energy Services Company, LLC. The sale of the customer accounts, along with the liquidation of the underlying gas supply contracts, generated a pre-tax gain of \$1.2 million and allowed NUI to exit from the retail energy marketing business.

VGC, which is located in Abingdon, Virginia, is a Delaware corporation and wholly owned subsidiary of NUI. VGC is the parent of the three Virginia public service corporations: VGDC, VGPC, and VGSC.

VGDC provides natural gas distribution service to approximately 300 customers located in Southwest Virginia. VGDC has certificates of public convenience and necessity ("CPCNs") to offer natural gas service to the counties of Russell, Buchanan, and Dickenson, a portion of Tazewell County, and the Town of Saltville.

VGPC provides pipeline transmission and underground natural gas storage services to customers in southwestern Virginia and eastern Tennessee. VGPC has CPCNs to construct, own, operate and maintain an underground natural gas storage facility in Smyth and Washington Counties, and to own, develop, construct and operate an intrastate gas transmission line in the counties of Smyth, Wythe, and Pulaski.

VGSC provides underground natural gas storage service to customers in southwestern Virginia and eastern Tennessee. VGSC has a CPCN to operate the Early Grove storage field in Scott and Washington Counties.

The NUI/VGC Agreement

The NUI/VGC Agreement is intended:

to formalize the method to identify, charge where necessary and allocate costs associated with the following:
 (a) various corporate services and related costs pertaining thereto; (b) NUI corporate overheads; (c) NUI corporate service costs; and (c) other allocations from NUI to VGC.³

The Applicants state that NUI selects and provides to its business units ("BUs")⁴ a variety of shared services through its corporate headquarters. NUI also charges the BUs for corporate plant depreciation. As an exempt public utility holding company under the Public Utility Holding Company Act of 1935 ("PUHCA"), NUI is not subject to the PUHCA's registration requirements, and is not required to have a separate service company. Responsibility Centers located within the corporate office or host division oversee the budgeting, service quality, cost effectiveness, accounting, and cost distribution of the services provided to the BUs.

The shared services are listed by function below.

Environmental Affairs	Compensation and Benefits
Employee and Labor Relations	Payroll
Purchasing	Training and Organizational Development
Public Affairs	Legal
Executive	Information Technology
Treasury	Accounts Payable
Corporate	Accounting - Corporate and Tax
Investor Relations	Building Services
Human Resources	Insurance

The Applicants state that "the centralization of these functions is cost effective to the BUs because they do not have to maintain an 'in house' presence or acquire costly outside expertise for the shared services."⁵ The Applicants also represent that the centralization allows the BUs to focus more on operational issues. Shared service costs are expensed except for capital costs relating to computer equipment and systems, which are allocated to VGC as depreciation expense.

Article 2 and Appendix I of the NUI/VGC Agreement state that NUI uses a combination of direct charges and indirect allocations to charge its BUs for shared services. NUI costs that directly benefit a specific BU are directly charged to the entity that receives the benefit. Direct charges include, but are not limited to, items such as stock grants, pension expense, corporate office rent, special insurance, bonds, legal fees, and professional services. The Applicants represent that NUI charges cost for its services, with no profit markup or other fees associated with the NUI pass-throughs.

Indirect shared service costs, including depreciation, are distributed to VGC using a single three-part allocation factor (the "NUI Factor"). The NUI Factor is the simple average of the sum of the following three percentages: VGC's thirteen-month average gross plant balance divided by NUI's

³ Exhibit 5, page 1 of the April 4, 2003, Application.

⁴ BUs refer to subsidiaries, affiliates, and divisions, such as VGC, that receive shared services.

⁵ See Exhibit 1, Page 3 of the April 4, 2003, Application.

average plant; VGC's thirteen-month average number of customers divided by NUI's average number of customers; and VGC's budgeted gross payroll for the upcoming fiscal year ("FY") (including base salary, overtime, commissions, and bonuses) divided by NUI's budgeted payroll. Four cost centers (Environmental Affairs, Employee & Labor Relations, HR-North, and HR-FL/NC)⁶ employ a modified NUI Factor that includes only the BUS using the service. The Applicants represent that NUI uses budgeted rather than historic payroll in the NUI Factor to account for changes in the enterprise. The NUI Factor is recalculated annually and applied on a prospective basis. Retroactive true-ups to actual cost are seldom made.

For FY 2003, the basic NUI Factor for allocations to VGC is 4.2%, the modified NUI factor for Environmental Affairs costs is 5.3%, and the modified NUI factor for HR-FL/NC costs is 16.2%. The employee benefits overhead charge is \$775 per employee per month.

The NUI/VGC Agreement has an initial term of three years, commencing with the Commission's approval date. Thereafter, the Agreement automatically renews for one-year terms unless written notice of termination is provided 60 days before the date of renewal.

The VGC/VGDC, VGC/VGPC, and VGC/VGSC Agreements ("Virginia Gas Agreements")

The three Virginia Gas Agreements between VGC and its three subsidiaries, VGDC, VGPC, and VGSC, are identical in form. Their shared purpose is:

to formalize the method to identify, charge for where necessary and allocate costs associated with the following:
(a) various NUI Corporation support service charges...; (b) NUI corporate allocations...; and (c) other NUI costs...[from VGC to VGDC, VGPC, and VGSC].⁷

With one exception, the language in the Virginia Gas Agreements mirrors the language in the NUI/VGC Agreement. Article 2 of the Virginia Gas Agreements states that NUI distributions to VGC that directly benefit VGDC, VGPC, or VGSC will be directly charged by VGC to the benefiting subsidiary. Similarly, Article 3 describes the four types of NUI shared service costs (support service charges, Responsibility Center charges, non-cash charges, and employee benefit charges) that will be redistributed from VGC to VGDC, VGPC, and VGSC. The initial term and renewals for the Virginia Gas Agreements are also the same as for the NUI/VGC Agreement.

The major difference between the NUI/VGC and Virginia Gas Agreements is in the allocation method. The NUI/VGC Agreement employs the NUI Factor, which is a three-part factor based on thirteen-month average gross plant, thirteen-month average number of customers, and fiscal year budgeted payroll. The Virginia Gas Agreements, in contrast, use a three-part factor based on a five quarter weighted average of gross plant, quarterly revenues, and quarterly operating expenses net of purchased gas (the "VGC Factor"). The Applicants propose to allocate NUI shared service costs from VGC to VGDC, VGPC, and VGSC using the VGC Factor because they believe it more equitably distributes costs given the unique nature of each subsidiary's operations.

NOW THE COMMISSION, upon consideration of the application and representations of Applicants and having been advised by its Staff, is of the opinion and finds that the agreements described above are in the public interest and should be approved, on a prospective basis, subject to certain conditions we find necessary in this instance to protect the public interest.

This Commission approved "s merger with VGC (the "Merger") in Case No. PUA-2000-00079 in part because of VGC's financial difficulties and inability to attract the capital necessary to expand its operations. The Applicants represent that VGC's debt restructuring has reduced its interest costs by approximately 150 basis points. If the current application is approved, the Applicants plan to submit a new affiliate application seeking approval for VGDC, VGPC, and VGSC to restructure their debt with VGC. Based on FY 2002's debt levels, restructuring the regulated subsidiaries' debt should yield jurisdictional interest savings of approximately \$451,000 per year.

According to the Applicants, the Merger has achieved savings in other areas, too. VGC's change from a publicly traded company to a privately owned subsidiary yielded jurisdictional savings of about \$302,000 annually. Employee reductions saved another \$167,000. Tighter cost controls and consolidated purchasing power saved about \$105,000. Altogether, gross jurisdictional savings from the merger total about \$1.025 million. That more than offsets the estimated \$808,000 in jurisdictional shared service charges that could be passed down to VGDC, VGPC, and VGSC should the current application be approved.

We find that it is in the public interest for VGDC, VGPC, and VGSC to enter into the subject agreements and receive shared services from NUI.⁸ However, we have several concerns. First, it is not clear that the estimated \$808,000 in jurisdictional shared service charges that could be passed down is less than the cost of these services if obtained at the local level. Second, we are concerned that NUI does not have practices in place, such as comparative pricing or competitive bidding, to ensure that its shared services are provided at least cost. Third, we are concerned that the majority of NUI's I shared service costs are allocated rather than directly charged. Fourth, we note that the NUI Factor uses a budgeted rather than actual number for one variable, and there is no provision for a retroactive true-up to actual cost. Finally, we are concerned about the effect of using one allocation method for distributing costs from NUI to VGC and a separate allocation method for distributing costs from VGC to VGDC, VGPC, and VGSC.

Therefore, we condition our approval to address our concerns about the pricing of shared services and the differences between the NUI and VGC Factors. First, we find that VGDC, VGPC, and VGSC must maintain records to show that the centralization of shared services is cost beneficial to Virginia ratepayers. In other words, VGDC, VGPC, and VGSC must demonstrate that these services cannot be performed by VGC or outsourced to an unaffiliated local provider on a more economical basis.

Second, we find that for all shared services where a market may exist, that VGDC, VGPC, and VGSC must investigate whether alternative sources are available from which to purchase such services. If so, they must compare such market prices to NUI's costs and must pay the lower of cost or

⁶ HR-North refers to Human Resources-North, and HR-FL/NC refers to Human Resources-Florida/North Carolina.

⁷ See Exhibits 2,3, and 4 to the April 4, 2003, Application.

⁸ We refer to the NUI/VGC Agreement because that agreement is incorporated by reference into and acts as the starting point for the provision of shared services to the Virginia Gas companies.

market. For some shared services, pricing at cost may be appropriate. However, some shared services may be obtainable from unaffiliated parties and, therefore, a market and a market price may exist. Examples of such shared services can include, but are not limited to, legal, accounting, accounts payable, and information technology. VGDC, VGPC, and VGSC bear the burden to show that for shared services obtained from NUI where a market and a market price existed, the jurisdictional applicants paid the lower of cost or market.

Third, we find that the shared service costs passed down from NUI through VGC to VGDC, VGPC, and VGSC must be directly charged or allocated using a direct cost factor to the greatest extent practicable. For the remaining indirect costs, the NUI Factor and the VGC Factor appear to be reasonable methodologies for allocating shared service costs to VGC and then redistributing them to VGDC, VGPC, and VGSC. For monitoring purposes, though, we find that VGDC, VGPC, and VGSC must provide in their Annual Reports of Affiliate Transactions a summary of that year's shared service costs passed down from NUI to VGC, listed by function, direct charge or allocation, allocation factor, and amount, and must provide a similar summary of shared service costs redistributed from VGC to VGDC, VGPC, and VGSC.

Fourth, we find that the annual dollar impact on shared service pass-throughs resulting from the use of a budgeted versus actual payroll variable in the NUI Factor must be fully disclosed in the Annual Report of Affiliate Transactions submitted by VGDC, VGPC, and VGSC. Fifth, we find that the computation of the NUI Factor, including the monthly balances for each variable, and the computation of the VGC Factor, including the quarterly balances for each variable, must be fully disclosed in the Annual Report of Affiliate Transactions.

Finally, we find that the Applicants' request for authority to implement the subject agreements retroactive to October 1, 2002, so that costs passed down from NUI to VGC prior to approval of the agreements can be redistributed to VGDC, VGPC, and VGSC, is inconsistent with Commission practice. Furthermore, the Applicants have not provided sufficient justification for retroactive approval. Therefore, we will approve the agreements on a prospective basis, as of the date of this order, subject to the conditions as described in this Order.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code of Virginia, the subject agreements are hereby approved on a prospective basis, commencing with the date of this Order, under the terms and conditions and for the purposes described herein.
- 2) Commission approval shall be required for any changes in the terms and conditions to the affiliate agreements submitted as part of this application, including any changes in the successors or assigns under the subject agreements.
- 3) 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.
- 4) The approvals granted herein shall have no ratemaking implications for annual informational filings or future rate proceedings.
- 5) VGDC, VGPC, and VGSC must maintain records to demonstrate that the centralization of shared services is cost beneficial to Virginia ratepayers and that such services cannot be obtained more economically at the local level. For all shared services provided by NUI where a market may exist, VGDC, VGPC, and VGSC must investigate whether there are alternative sources from which they could purchase such services. If so, VGDC, VGPC, and VGSC must compare such market prices to NUI's costs and pay the lower of cost or market. Such records shall be available for Commission Staff review upon request.
- 6) Shared service costs passed down from NUI through VGC to VGDC, VGPC, and VGSC shall be directly charged or allocated using a direct cost factor to the greatest extent practicable.
- 7) 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 this Commission.
- 8) VGDC, VGPC, and VGSC shall include the agreements approved herein in their Annual Reports of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting on or before May 1 of each year, which deadline may be extended administratively by the Director of Public Utility Accounting.
- 9) VGDC, VGPC, and VGSC must provide in their Annual Reports of Affiliate Transactions a summary of that year's shared service costs passed down from NUI to VGC, listed by function, direct charge or allocation, allocation factor, and amount, and a similar summary for shared service costs redistributed from VGC to VGDC, VGPC, and VGSC.
- 10) The annual dollar impact on shared service pass-throughs of using a budgeted versus actual payroll variable in the NUI Factor shall be fully disclosed in the Annual Report of Affiliate Transactions submitted by VGDC, VGPC, and VGSC.
- 11) The Computation of the NUI Factor, including the monthly balances for each variable, and the computation of the VGC Factor, including the quarterly balances for each variable, shall be fully disclosed in the Annual Report of Affiliate Transactions submitted by VGDC, VGPC, and VGSC.
- 12) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00130
APRIL 21, 2003**

APPLICATION OF
NORTHERN VIRGINIA ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On April 7, 2003, Northern Virginia Electric Cooperative ("Applicant") filed an application with the Virginia State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia requesting authority to incur long-term debt. Applicant has paid the requisite fee of \$250.

Applicant requests authority to borrow \$13,284,122 from the CoBank ACB ("CoBank") in the form of a variable rate note. The loan funds are expected to be drawn down on or before April 28, 2003. The proceeds will be used to retire a like amount of debt. The CoBank loan will have a thirty-five year maturity. 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 \$13,284,122 from CoBank, under the terms and conditions and for the purposes set forth in the application.
- 2) The authority granted herein shall have no implications for ratemaking purposes.
- 3) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUE-2003-00131
SEPTEMBER 2, 2003**

APPLICATION OF
WASHINGTON GAS LIGHT COMPANY

For approval of amendments to its gas tariff, Va. S.C.C. No. 9, to implement daily balancing for gas suppliers serving interruptible customers

ORDER GRANTING LEAVE TO WITHDRAW APPLICATION

On April 8, 2003, Washington Gas Light Company ("WGL" or the "Company") filed an application with the State Corporation Commission ("Commission") that, among other things, proposed to revise WGL's Rate Schedule No. 7, the Company's Interruptible Delivery Service, and to initiate a new rate schedule, Interruptible Delivery Service Gas Supplier Agreement -- Rate Schedule No. 11. WGL proposed the revisions to Rate Schedule No. 7 and the addition of new Rate Schedule No. 11, among other reasons, to implement daily balancing procedures for suppliers providing natural gas to customers using natural gas on an interruptible basis.

On May 6, 2003, the Commission entered the procedural order for the case. This Order suspended the Company's rate proposals and tariff revisions to and through September 5, 2003, and provided that interested parties could file comments, requests for hearing, and notices of participation on or before June 12, 2003. The Order also directed the Commission Staff to file a Report that could take the form of testimony, if appropriate, by June 30, 2003.

On June 12, 2003, the Virginia Industrial Gas Users' Association ("VIGUA") filed with the Commission a Notice of Participation, Comments, and a Request for Hearing in a single pleading. On the same day, Stand Energy Corporation ("Stand") filed a "Notice of Participation and Request for Hearing."

On June 18, 2003, the Staff, by counsel, filed a Motion requesting suspension of the June 30, 2003, filing date for its Report.

On June 24, 2003, the Commission entered an Order granting Staff's Motion. The June 24, 2003, Order directed the Staff to report to the Commission on the status of its discussions with case participants by no later than thirty (30) days from the entry of that Order.

On July 24, 2003, Staff filed its Report on the status of its discussions with the parties. Staff advised that it had hosted a meeting on the Company's proposal with the case participants and had tentatively scheduled another meeting for August 21, 2003.

On August 29, 2003, WGL, by counsel, filed a "Motion for Leave to Withdraw Application" ("Motion"). The Company stated in its Motion that after extensive discussions with the participants to the proceeding, it now requested leave to withdraw the application without prejudice to file it in a future proceeding. WGL represented that the Staff, VIGUA, and Stand, the only participants to the proceeding, did not object to the withdrawal of the application.

NOW, UPON CONSIDERATION of WGL's August 29, 2003, Motion, and the record developed herein, the Commission is of the opinion and finds that WGL's August 29, 2003, Motion should be granted; that the Company should be permitted to withdraw its application without prejudice; and that this application should be dismissed from the Commission's docket of active proceedings.

Accordingly, IT IS ORDERED THAT:

- (1) WGL's August 29, 2003, Motion is hereby granted.
- (2) The Company shall be permitted to withdraw the captioned application without prejudice.
- (3) This case shall be dismissed from the Commission's docket of active proceedings and the papers filed herein shall be placed in the Commission's files for ended causes.

**CASE NO. PUE-2003-00168
JUNE 16, 2003**

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, the Virginia 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 ("Act"). 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 between September 4, 2002, and March 11, 2003, listed in Attachment A, involving Utiliquest, LLC ("Company"), and alleges that:

- (1) The Company is a contract locator as that term is defined in § 56-265.15 of the Code of Virginia;
- (2) During the aforementioned period the Company violated the Act by committing the following violations:
 - (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 and D of the Code of Virginia.
 - (b) Failing on certain occasions to mark within the time prescribed in the Act, in violation of §§ 56-265.19 A and D of the Code of Virginia.
 - (c) Failing on certain occasions to report to the notification center that lines had been marked or they were not in conflict with the proposed excavation, in violation of §§ 56-265.19 A, B, and 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.

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 8, 2003, 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 \$7,850 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.

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 be, and it hereby is, accepted.
- (2) The sum of \$7,850 tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2003-00171
MAY 8, 2003**

APPLICATION OF
DELMARVA POWER & LIGHT COMPANY

For authority to issue up to \$225,000,000 of debt securities and/or preferred stock

ORDER GRANTING AUTHORITY

On April 21, 2003, Delmarva Power & Light Company, ("Delmarva" or "Applicant") completed an application with the State Corporation Commission ("Commission") requesting authority under Chapter 3 of Title 56 of the Code of Virginia to issue up to \$225,000,000 in debt securities and/or preferred stock (the "Refunding Securities"). The Applicant requested authority to issue the Refunding Securities from time to time, before December 31, 2004. Applicant paid the requisite fee of \$250.

Delmarva requests authority to issue the Refunding Securities to refinance existing securities prior to or at maturity. Applicant proposes to take advantage of the current low rates in the capital markets to lower interest and/or preferred dividend costs. Specifically, Applicant has identified \$66,530,000 of tax-exempt bonds for refinancing; \$15,000,000 of Series 1993A, 6.05% bonds due 2032, \$18,200,000 of Series 1993B, 5.90% bonds due 2021, \$22,230,000 of Series 1999A, variable-rate bonds due 2024, and \$11,000,000 of Series 1999B, variable rate bonds due 2024. Applicant supplied a detailed breakeven analysis estimating the interest cost savings at current market rates.

Applicant also requests authority to refinance up to \$70,000,000 of 8.125% trust preferred securities due 2036. Applicant seeks the flexibility to refinance the trust preferred securities through a combination of debt securities, preferred stock, or a new series of junior subordinated debentures. In conjunction with refinancing the trust preferred securities, Applicant may issue a guarantee of the securities. Applicant provided a breakeven analysis to estimate the savings if the trust securities are refinanced at current market rates.

Applicant also requests authority to refund up to \$87,200,000 of first mortgage bonds coming due in 2003. On June 1, 2003, a \$2,200,000 sinking fund payment is due on Applicant's 6.95% first mortgage bonds, and on July 1, 2003, \$85,000,000 of 6.40% Series first mortgage bond matures. Applicant intends to redeem these maturing securities with a combination of new secured or unsecured debt and cash currently invested in the Pepco Holdings Inc. Money Pool.

Applicant requests broad authority to issue the Refunding Securities in order to obtain the most favorable terms and conditions at the time of issuance. Applicant, therefore, proposes that the securities be sold in one or more underwritten public offerings, negotiated sales, or private placement transactions. Applicant also proposes that the maturity date(s), interest rate(s), redemption provisions, and other terms and provisions of the securities be determined under prevailing market conditions at the time of issuance. Applicant may purchase insurance to provide credit enhancement to lower its effective interest cost.

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 issue up to \$225,000,000 of a combination of secured or unsecured debt, preferred stock and/or junior subordinated debentures under the terms and conditions and for the purposes set forth in the application, through the period ending December 31, 2004.
- 2) 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, a brief cost/benefit analysis if the proceeds of the issue are to refinance the refunding of existing securities, the maturity date, a brief explanation for the maturity and issuance date chosen.
- 3) Within sixty (60) days after the end of each calendar quarter in which any securities are issued pursuant to Ordering Paragraph (1), Delmarva shall file with the Commission a detailed Report of Action with respect to all securities issued and sold during the calendar quarter to include:
 - (a) the issuance date, type of security, amount issued, interest rate, date of maturity, underwriters' names, underwriters' fees, other issuance expenses realized to date, and net proceeds to Applicant;
 - (b) a list of any signed agreements not previously provided which were executed for the purpose of issuing any securities pursuant to Ordering Paragraph (1);
 - (c) the cumulative principal amount issued under the authority granted herein and the amount remaining to be issued;
 - (d) a general statement of the purposes for which the securities were issued, and if the purpose is for the early redemption of an outstanding issue, to provide a schedule all reacquisition losses and overall cost savings from refunding; and
 - (e) a balance sheet that reflects the capital structure following the issuance of the securities.
- 4) Applicant shall file a final Report of Action on or before February 26, 2005, to include all information required in Ordering Paragraph (3) and a detailed account of all the actual expenses and fees paid to date for all securities issued under this authority, with an explanation of any variances from the estimated expenses contained in the Financing Summary attached to the application.
- 5) Approval of the application shall have no implications for ratemaking purposes.
- 6) This matter shall be continued, subject to the continuing review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2003-00172
NOVEMBER 7, 2003**

NOTIFICATION OF
AMVEST OIL & GAS, INC.

To furnish natural gas service pursuant to § 56-265.4:5 of the Code of Virginia

ORDER DISMISSING PROCEEDING

On April 14, 2003, AMVEST Oil & Gas, Inc. ("AOG" or "Company") notified the State Corporation Commission ("Commission"), pursuant to § 56-265.4:5 of the Code of Virginia, of its plans to furnish natural gas services to Car Wash Investments, LC ("Car Wash Investments"), a Virginia limited liability company that is building and intends to operate its Supreme Clean Car Wash ("car wash") located on Woodland Drive Road in Wise, Virginia.

On August 8, 2003, the Commission entered an Order docketing the proceeding and notifying all public utilities providing natural gas service in the Commonwealth of AOG's plans to furnish gas service to the car wash. The utilities were advised they could file an application with the Commission to provide natural gas service within the area identified in the Company's notification documents within sixty (60) days of the entry of the August 8, 2003, Order. The Commission found the car wash not to be located within a territory for which a certificate of public convenience and necessity had been granted; in addition, the facility was found not to be located within any area, territory, or jurisdiction served by a municipal corporation that provided gas distribution service as of January 1, 1992.

Sixty days now have elapsed since the entry of the August 8, 2003, Order, and no jurisdictional public utility has filed an application to provide natural gas service within the area identified in the captioned notification.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that the Company has satisfied the requirements of §§ 56-265.1(b)(4) and 56-265.4:5 of the Code of Virginia, and that there being nothing further to be done herein, the matter should be dismissed.

Accordingly, IT IS THEREFORE ORDERED THAT this matter shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein made a part of the Commission's file for ended causes.

**CASE NO. PUE-2003-00174
JULY 9, 2003**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY
and
DOMINION ENERGY, INC.

For exemption from the filing and prior approval requirements of Chapter 4 of Title 56 of the Code of Virginia or, in the alternative, approval of transfers of inventory

ORDER GRANTING APPROVAL

On April 23, 2003, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company") and Dominion Energy, Inc. (collectively, the "Applicants"), filed an application with the State Corporation Commission ("Commission") under Chapter 4 (§ 56-76, *et seq.*) of Title 56 of the Code of Virginia ("Code") for an exemption from the filing and prior approval requirements or, in the alternative, approval of transfers of inventory.

Dominion Virginia Power is a Virginia public service corporation providing electric service to customers in its service territory in Virginia and North Carolina. The Company is wholly owned by Dominion Resources, Inc. ("DRI"). DRI is a holding company as defined in the Public Utility Holding Company Act of 1935 ("1935 Act") and is subject to regulation as such by the Securities and Exchange Commission.

Dominion Energy, Inc., is a corporation organized under the laws of the Commonwealth of Virginia and is a direct subsidiary of DRI. Dominion Energy, Inc.'s business purpose is non-utility power production through subsidiaries, as well as oil and gas development.

Beginning in March 2001, Dominion Virginia Power's transmission employees began performing construction management services for the following Dominion Energy, Inc., merchant projects ("Projects"): Armstrong Energy Limited Partnership, LLLP, Dresden Energy, LLC, Troy Energy, LLC, Fairless Energy, LLC, and Pleasants Energy, LLC. The employees recorded their time, which was charged through the Dominion Virginia Power Support Agreement ("Support Agreement") with Dominion Resources Services, Inc. ("Dominion Services").¹ The charged time was incorporated in the billings to Dominion Energy, Inc. The services that the employees provided for the Projects were authorized pursuant to the Support Agreement.

The employees mistakenly believed that they could use the inventory for the Projects in performing such services. The physical inventory was transferred to the Project site that needed the inventory, and the transfer amounts were, therefore, erroneously reported to the Commission as services.²

¹ The Commission approved the Support Agreement by Order dated December 15, 2000, effective January 1, 2001, in Case No. PUA-1999-00068.

² Such inventory transfers ceased after January 31, 2003.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

In August 2002, the employees moved to a newly created entity, Dominion Technical Solutions, Inc. ("DTech"), a wholly owned subsidiary of DRI. The employees continued to use the inventory for the Projects, billing through the Support Agreement. The employees used a total dollar amount of inventory of \$1,344,308.17 from March 2001 through January 2003, which was included in the total amount of services billed through Dominion Services and reported to the Commission.

By Order dated January 27, 2003, in Case No. PUE-2002-00572, the Commission granted the Company authority to sell and purchase inventoried material, parts, and equipment to and from the Project entities.

Dominion Virginia Power states that Dominion Energy, Inc., paid the Company's cost for the transferred inventory (including overhead costs) used by employees for services provided for the Projects for which approval is requested in this application.

Dominion Virginia Power states that the transfers were in the public interest because they allowed the Company to obtain necessary equipment for the Projects quickly, thereby decreasing the risk of delays in construction schedules. The Company currently is authorized to purchase power from the Projects, as approved by the Commission in Case No. PUA-2002-00002 and by the Federal Energy Regulatory Commission. The inventory used in providing services to the Projects was Dominion Virginia Power's inventory. Dominion Virginia Power represents that it was compensated for the parts at cost (including overheads), which is the same price that the Company would charge for equipment sold to unaffiliated third parties.

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 an exemption from the filing and prior approval requirements of Chapter 4 of Title 56 of the Code is not in the public interest. Such transfers appear to be in the public interest, and we will grant approval in this instance. We expect, however, the Company to be more diligent in seeking and obtaining prior approval for such affiliate arrangements.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, Dominion Virginia Power's request for exemption from the filing and prior approval requirements of Chapter 4 of Title 56 of the Code is hereby denied.

(2) Pursuant to § 56-77 of the Code, Dominion Virginia Power is hereby granted approval of the transfers of inventory beginning March 2001 through January 2003 at cost as described herein.

(3) The approval granted herein shall have no ratemaking implications.

(4) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

(5) The Commission reserves the authority to examine the books and records of any affiliate in connection with the approval granted herein whether or not the Commission regulates such affiliate.

(6) Dominion Virginia Power shall include the transferred inventory approved herein in its Annual Report of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting.

(7) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then Dominion Virginia Power shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.

(8) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00176
AUGUST 22, 2003**

APPLICATION OF
CHAPARRAL (VIRGINIA) INC.

For early termination of special contract and related findings

FINAL ORDER

On April 29, 2003, Chaparral (Virginia) Inc. ("Chaparral" or the "Applicant") filed an application in both public and confidential versions with the State Corporation Commission ("Commission"). This application requested the Commission to approve the early termination of the Applicant's special rate contract ("Agreement") with Virginia Electric and Power Company ("Virginia Power" or the "Company"). The subject Agreement was approved by the Commission in Application of Virginia Electric and Power Company, For approval of a special rate contract pursuant to § 56-235.2 of the Code of Virginia, Case No. PUE-1998-00333, 1999 S.C.C. Ann. Rep. 419.

In the captioned application, Chaparral represented that it sought approval to terminate service under the Agreement so that Virginia Power would provide service to Chaparral prospectively under Virginia Power's Rate Schedule 10 subject to certain conditions. Specifically, Chaparral proposed, subject to agreement by Virginia Power and certain findings by the Commission providing for average fuel cost treatment for electric service to Chaparral and other protections for Virginia Power, that: (a) Virginia Power forego its right to insist that the Agreement remain in effect through June 30, 2004, and agree to immediate termination of the Agreement; (b) effective as soon as reasonably possible after Commission approval, Virginia Power provide electric service to Chaparral under the Company's Rate Schedule 10; (c) Chaparral contractually agree to curtail its loads upon request by Virginia Power for capacity (as opposed to economic) needs for eighteen months from the date of the application; (d) Chaparral contractually agree to continue to pay for its interconnection facilities; (e) Chaparral contractually agree to address and rectify, as necessary, the flicker factor related to its operations; and (f) the fuel

costs associated with service to Chaparral would be subject to average fuel cost treatment through Virginia Power's fuel factor, as is service to other Rate Schedule 10 customers.

According to Chaparral, the prices charged under its Agreement with Virginia Power have been much higher and more volatile than originally anticipated. Chaparral represented that Virginia Power did not oppose the proposed termination of the Agreement and prospective service under Rate Schedule 10, provided the Commission approves the average fuel cost treatment and other provisions as set forth in the application and finds the proposed changes to the Agreement to be in the public interest, and provided further that Chaparral agreed to the contractual provisions referred to above.

On May 16, 2003, the Commission entered a procedural order in the captioned matter. In that Order, the Commission invited interested parties to comment and request a hearing on the application and directed the Staff to investigate the application and file a report with the Commission that set out Staff's recommendations. The Commission determined Virginia Power to be a necessary party to the proceeding and directed the Company to participate in the matter as a respondent.

On May 22, 2003, Chaparral filed its "Motion of Chaparral (Virginia) Inc. for Approval of Immediate Effective Date and Other Relief" ("Motion"). In that pleading, Chaparral requested an immediate effective date for Rate Schedule 10 rates for accounting purposes, subject to the Commission's approval of its application, and proposed that while its application was under consideration, Virginia Power would calculate a set of "suspended bills" for Chaparral's actual electric usage, applying rates under Rate Schedule 10. Chaparral further explained that Virginia Power would continue to bill and Chaparral would continue to pay for service during the Commission's investigation of the application under the current terms and conditions of the Agreement.

The Applicant maintained that should the Commission ultimately deny the application, no further action would be required, and Chaparral, the Company, and Virginia Power ratepayers would remain unaffected by the Motion. Chaparral also explained that Virginia Power was protected under the terms of its Motion because if the application was denied, the Company would not have to wait for Chaparral to make a large payment to make up the difference in billing between the special contract rate and those in Rate Schedule 10. Instead, Chaparral would continue to pay its monthly bills under the terms and conditions of the Agreement. According to the Applicant, should the Commission ultimately approve the application, the Company would refund to Chaparral the difference between what it actually paid under the suspended bills for Rate Schedule 10, nunc pro tunc to the date the application was filed.

On June 3, 2003, Virginia Power filed its Response to Chaparral's May 22, 2003, Motion. In its Response, among other things, the Company stated that it took no position on the relief requested in the Motion, except as necessary to protect the Company from any potential adverse impact. Virginia Power asserted that in ruling on the Applicant's Motion, the Commission should apply the same standards and impose the same conditions that were set out in Chaparral's application.

By letter dated June 9, 2003, Chaparral, by counsel, advised that it did not intend to file a Reply to Virginia Power's Response.

On June 12, 2003, the Commission entered its Order on Motion, wherein the Commission took Chaparral's Motion under advisement. It directed the Applicant, Virginia Power, other Respondents, and Staff, as they participated further in the case, to address in greater detail the public interest and legal implications of Chaparral's request, including when rebilling should be initiated if Chaparral's Motion was granted. The Commission directed Chaparral to serve a copy of the June 12, 2003, Order on any Respondent, other than Virginia Power, who filed a Notice of Participation.

Virginia Power filed a Notice of Participation in the proceeding on June 13, 2003. No other Notices of Participation were filed, nor were any comments other than those submitted by Virginia Power filed herein.

On June 23, 2003, the Applicant filed its proof of publication and service, required by Ordering Paragraph (5) of the May 16, 2003, procedural order entered herein.

On July 11, 2003, the Commission entered a Protective Order in this case in order to facilitate the proper handling of proprietary and commercially sensitive information and to permit the development of all of the issues in the case, including those involving confidential or commercially sensitive documents.

On July 11, 2003, the Staff filed its Report in both public and confidential versions. In its Report, Staff characterized as flawed Chaparral's comparison of the request made in the May 22, 2003, Motion to requests made under §§ 56-237 and -238 of the Code of Virginia. Staff noted that other Virginia customers move from one rate schedule to another prospectively and are able to receive the benefit of a new tariff after they have requested to change rate schedules but not before. Staff explained that, unlike most other new customers to Rate Schedule 10, Chaparral proposes to pay its existing special contract rate until the Commission decides the case. Staff noted that if the Commission decided in Chaparral's favor and also granted Chaparral's Motion, the lower rates available under Rate Schedule 10 would relate back to the point in time when Chaparral filed its application. Staff further commented that, absent a detrimental effect on other ratepayers, Chaparral's request did not appear to be unreasonable.

Staff analyzed Chaparral's request in terms of its potential for retroactive ratemaking and under the requirements of § 56-234.1 of the Code of Virginia. Staff observed that Virginia Power had not provided any information to Staff that indicated other adverse effects on Virginia Power's other ratepayers aside from a slight increase in fuel costs that may occur if Chaparral's application and Motion were granted. Staff urged that if the Commission granted the Applicant's Motion, it make clear that its decision had no precedential effect for any other case.

In its analysis of Chaparral's application in chief, Staff considered the three criteria set forth under § 56-235.2 of the Code of Virginia, the Commission's Guidelines for Filing an Application to Provide Electric and Gas Service under a Special Rate, Contract or Incentive, 20 VAC 5-310-10 ("Guidelines"), and provisions of the Agreement between Chaparral and Virginia Power.

Staff noted that the Virginia Economic Development Partnership ("VEDP"), the Office of the Mayor of the City of Petersburg ("Petersburg"), Virginia's Gateway Region ("VGR"), and the Board of Supervisors of Dinwiddie County ("Dinwiddie") all provided letters supporting the captioned application and summarizing the benefits the Applicant brought to Virginia. Among the benefits identified by VEDP, Petersburg, VGR, and Dinwiddie were the employment of more than 400 Virginians at an average annual wage, excluding benefits, of \$42,000, paying approximately \$1.8 million in annual property taxes in Dinwiddie County, and attracting \$35 million in additional capital investments with the concurrent creation of new jobs in the area. The

Staff also provided estimates of the relative economic impacts of a suspension or curtailment of operations at the Chaparral facility and the economic impact of the hypothetical increase in dollars recovered through the fuel factor if Chaparral took service under Rate Schedule 10.

As to the effects on reliability of electric service to other ratepayers, Staff noted that the conditions proposed in Chaparral's application addressed changes to Chaparral's facilities arising from the possibility of "flicker" in the system power delivery occurring as a result of Chaparral's operation of its arc furnace. Staff commented that Chaparral proposed to permit interruption of its operations for capacity, but not economic, reliability purposes if requested by Virginia Power during the initial 18 months of its operation under Rate Schedule 10.

Staff concluded that moving Chaparral to Rate Schedule 10 would afford the Applicant the same fuel treatment that would have occurred had Chaparral notified the Company 18 months prior of its intent to transfer to another Virginia Power Schedule and had the Agreement terminated in its normal cycle. Staff determined that if Chaparral's request were granted, there would likely be a slight increase in fuel costs for other ratepayers while producing a slight increase in Dominion's earnings.

Further, according to Staff, Chaparral's agreement to correct any prospective system anomalies arising from the Applicant's operations and to permit interruption of its operations for capacity purposes addressed concerns about system reliability. Staff recommended that: (i) Chaparral's application be granted, (ii) that the Applicant's service under the Agreement with Dominion be terminated, (iii) service under Virginia Power's Rate Schedule 10 be permitted with the conditions proposed by Chaparral, and (iv) the fuel costs for Chaparral's service be afforded the same treatment as all other customers on Rate Schedule 10.

On July 25, 2003, the "Comments and Response of Virginia Power" ("July 25, 2003, Comments") were filed with the Commission. In its July 25, 2003, Comments, Virginia Power noted that it did not oppose the Staff's recommendation that the Commission grant the approval requested by Chaparral to receive Rate Schedule 10 service with the conditions set forth in Chaparral's application.

Virginia Power also maintained that § 56-234.1 of the Code of Virginia had no bearing on the matter and did not apply to special contracts. Among other things, at page 3 of its July 25, 2003, Comments, it concurred that the rates charged to Chaparral pursuant to the Agreement remained just and reasonable and not subject to retroactive changes. It commented that under the special circumstances of the case, the rates under the Agreement were not being lowered; but instead, characterized Chaparral's application as a request to be placed on an existing rate schedule as of a specified date.

Further, the Company related that it amended Section 23.j of the Agreement to read as follows in accordance with the Commission's January 26, 1999, Final Order, entered in Case No. PUE-1998-00333:

Amendments. This Agreement may not be amended, altered, modified, or supplemented except in a writing signed by authorized representatives of the Parties (hereinafter, an "Amendment"); provided, however, that no Amendment to this Agreement shall be effective prior to the date that such Amendment has been approved by the Commission.

July 25, 2003, Comments at 3-4.

Virginia Power asserted that the foregoing provision could be reasonably interpreted to allow Virginia Power and Chaparral to establish an effective date that (1) precedes the Commission's approval of the amendment, but (2) does not become activated unless and until the amendment is approved.

Based on that interpretation of Section 23.j of the Agreement, the Company expressed a willingness to agree to a modification or alteration as of the effective date requested by Chaparral, assuming the other conditions described in Chaparral's application were approved. Virginia Power maintained that this approach would help avoid a question of retroactive ratemaking. However, in footnote 3 at page 4 of its July 25, 2003, Comments, Virginia Power acknowledged that Section 23.j was susceptible of an alternative, narrower construction under which the Amendment would not relate back to the agreed upon effective date but would, instead, take effect on a prospective basis from the date of Commission approval.

Virginia Power stated that it did not oppose a ruling that Chaparral receive Rate Schedule 10 service as of the requested effective date, provided that average fuel treatment is implemented simultaneously and the other enumerated contractual provisions appearing in the application are approved. It urged the Commission to make clear that such action has no precedential effect as to any possible future cases involving a determination of effective dates for ratesetting purposes.

On August 6, 2003, Chaparral filed its "Response of Chaparral (Virginia) Inc. to the Staff Report and the Comments and Response of Virginia Power" ("August 6, 2003, Response"). Chaparral noted in its August 6, 2003 Response that since neither Staff nor Virginia Power opposed Chaparral's application for early termination of its Agreement with Virginia Power and to migrate to Rate Schedule 10, the Commission should grant the relief requested in Chaparral's application and Motion. Chaparral agreed with Staff and Virginia Power that such action should not have precedential effect for any other customer or class of customers. Chaparral asserted that terminating the Agreement and authorizing service under Rate Schedule 10 would lower Chaparral's electricity costs and aid the Applicant in its ongoing efforts to remain competitive.

Chaparral maintained that if its Motion was granted and its application approved, Virginia Power should refund to Chaparral the difference between the rate paid under the Agreement and Rate Schedule 10 rate for the period following the effective date set by the Commission for Chaparral's service under Rate Schedule 10. The Applicant asserted that it was not attempting to go back in time, nor trying to create a new rate. Chaparral supported Virginia Power's interpretation of Section 23.j of the Agreement as a way to address any retroactive ratemaking concerns associated with the application and urged the Commission to act expeditiously and grant the relief requested in the application and the May 22, 2003, Motion.

NOW, UPON CONSIDERATION of Chaparral's application, the pleadings, and record herein, the Commission is of the opinion and finds that Chaparral should be permitted to take service under Rate Schedule 10, effective as of the date of this Order, based on the circumstances of this case. As noted in the application, Chaparral has agreed to interrupt its service for capacity needs for a period of eighteen months from the date of its application. This agreement supplies a benefit not provided by other Rate Schedule 10 customers - priority of service during a capacity-constrained period. In addition, Chaparral has agreed to pay for its interconnection facilities. In return, Virginia Power has agreed, subject to the conditions and the proposed additional

contractual representations noted at pages 4-5 of the application,¹ to the early termination of this contract. In the absence of such agreement, the special rate contract would have expired by June 30, 2004.

While this application involves the early termination, rather than the creation of, a special rate contract, we agree with Staff that the statutory standards found in § 56-235.2 of the Code of Virginia are useful in analyzing Chaparral's application and Motion. That statute provides, in pertinent part, that the Commission shall before approving a special rate

... ensure that such action (i) protects the public interest, (ii) will not unreasonably prejudice or disadvantage any customer or class of customers, and (iii) will not jeopardize the continuation of reliable electric service.

While Chaparral's movement to Rate Schedule 10 will not unreasonably prejudice or disadvantage any customers or class of customers, it will increase the cost of fuel slightly to other Virginia Power customers. However, Chaparral has also agreed to curtail its loads upon Virginia Power for capacity, as opposed to economic, needs for a period of eighteen (18) months from the date of the application, unlike other customers served under Virginia Power's Rate Schedule 10.

Under these factual circumstances, we find it proper to allow Chaparral to take service, effective as of the date of this Order. This effective date, in our view, together with the other provisions and conditions found in Paragraph 9 at pages 4-5 of the April 29, 2003, application, protects the public interest, and is consistent with Section 23.j of the Agreement. Because the effective date for the approval granted herein is the date of this Order, no refunds must be made by Virginia Power to Chaparral.

Accordingly, IT IS ORDERED THAT:

(1) Chaparral's application shall be granted insofar as it seeks authority to terminate the Agreement with Virginia Power immediately and to receive service under Rate Schedule 10. The authorization to take service under Rate Schedule 10 and terminate the Agreement with Virginia Power approved in Case No. PUE-1998-00333 is effective as of the date of this Order.

(2) In accordance with the findings made herein, the authority granted to Chaparral to take service under Rate Schedule 10 is subject to the conditions, representations, and commitments set out in Paragraph 9 at pages 4-5 of the April 29, 2003, Application.

(3) There being nothing further to be done herein, the captioned application shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be made a part of the Commission's files for ended causes.

¹ The conditions and representations found at pages 4-5 of the application include that (a) Virginia Power forego its right to insist that the Agreement remain in effect through June 30, 2004, and agree to immediate termination of the Agreement; (b) effective as soon as reasonably possible after Commission approval, Virginia Power provide electric service to Chaparral under its Rate Schedule 10; (c) Chaparral contractually shall agree to curtail its loads upon request by Virginia Power for capacity (as opposed to economic) needs for eighteen (18) months from the date of this application; (d) Chaparral contractually shall agree to continue to pay for its interconnection facilities; (e) Chaparral contractually shall agree to address and rectify, as necessary, the flicker factor related to its operations; and (f) the fuel costs associated with service to Chaparral shall be subject to average fuel cost treatment through Virginia Power's fuel factor, as is service to other Rate Schedule 10 customers.

**CASE NO. PUE-2003-00176
SEPTEMBER 10, 2003**

APPLICATION OF
CHAPARRAL (VIRGINIA) INC.

For early termination of a special contract and related findings

ORDER ON RECONSIDERATION

On April 29, 2003, Chaparral (Virginia) Inc. ("Chaparral" or the "Applicant") filed an application in both public and confidential versions with the State Corporation Commission ("Commission"). This application requested the Commission to approve the early termination of the Applicant's special rate contract ("Agreement") with Virginia Electric and Power Company ("Virginia Power" or the "Company").

On August 22, 2003, the Commission entered its Final Order in the proceeding. In that Order, the Commission found, among other things, that it was appropriate to permit Chaparral to take service under Virginia Power's Rate Schedule 10, effective as of the date of the August 22, 2003, Order. The Commission noted that the effective date of the Order, together with the other provisions and conditions found in Paragraph 9, pages 4-5 of Chaparral's April 29, 2003, application, protect the public interest, and was consistent with Section 23.j of the Agreement. The Commission further found that because the effective date for the approval granted was the date of the August 22, 2003, Order, no refunds to Chaparral by Virginia Power were necessary.

On September 3, 2003, Chaparral, by counsel, filed the "Petition for Reconsideration of Chaparral (Virginia) Inc." ("Petition") in both public and confidential versions. In its Petition, among other things, Chaparral noted that it proposed a mechanism in its May 22, 2003, Motion, whereby the Applicant would continue to pay the special contract rate during the investigation of the application. According to Chaparral, in the event the Commission ultimately approved the application, Virginia Power had agreed to refund to Chaparral the difference between the special rate contract rate and the Schedule 10 rate during the time the application was under consideration by the Commission.

NOW THE COMMISSION, having considered the Petition, the record in this proceeding, and the applicable law, is of the opinion and finds that the Petition should be denied.

Accordingly, IT IS ORDERED THAT:

- (1) The Petition for Reconsideration of Chaparral (Virginia) Inc. is hereby denied.
- (2) There being nothing further to come before the Commission, this case shall be dismissed and the papers herein placed in the file for ended causes.

**CASE NO. PUE-2003-00179
AUGUST 28, 2003**

APPLICATION OF
DALE SERVICE CORPORATION

For an Annual Informational Filing for Calendar Year 2002

FINAL ORDER

On May 1, 2003, Dale Service Corporation ("Dale Service" or the "Company") filed its initial Annual Informational Filing ("AIF") with the State Corporation Commission ("Commission") in accordance with the Commission's Rules Governing Utility Rate Increase Applications and Annual Informational Filings, 20 VAC 5-200-30 *et seq.* and the Company's last rate Order, issued February 21, 2003, in Case No. PUE-2001-00200 ("Rate Order").¹

On August 1, 2003, the Commission's Staff filed a Staff Report in this case in which Staff determined the Company's fully adjusted Debt Service Coverage Ratio to be 1.08. Therefore, no reduction in quarterly rates in conformance with the Stipulation is necessary.

Following the accounting analysis given in the Staff Report concerning the Company's payment of its bond, the Staff specifically recommended that the Company be required to report on certain items in each future AIF as follows:

- a bond repayment scheduling showing total principal outstanding and annual principal due each year through the final principal payment;
- a schedule showing the portion of the plant financed with the bond and subject to 5% amortization, test year 5% amortization expense recorded on that plant, and accumulated amortization on those same facilities;
- the amount of any retirements of sewage treatment upgrade facilities;
- any further grants received by the Company; and
- a schedule of up-front bond issuance costs and the accumulated amortization of those costs.

The Staff indicated that with these reporting requirements, the Commission, Staff, and Dale Service will be cognizant of any significant disparities between the level of the plant recovered from ratepayers and the amortization booked for those same facilities. The Staff Report concluded that no further action needs to be taken concerning the Company's rates at this time.

On August 23, 2003, Dale Service filed a letter of response to the Staff Report ("Comments"). The Company submitted in its Comments that the Rate Order authorized an 81% rate increase (as opposed to the 104% reported by Staff) when guaranteed imputed revenues from new connections are excluded. The Company offered that the revenue increase thus produced from the Rate Order may be restated in two components: \$2.8 million of operating revenue from its customers; and \$700,000 from the guaranteed imputed revenue. The total increase of \$3.5 million matches the annual increase in revenue reported by Staff.

Finally, the Company commented on the Staff's report that Dale Service has made a claim against the engineering company for damages resulting from cracks discovered in the walls of the newly-constructed sequence batch reactors. The Company explains that it is likely to file such a claim against the engineering company but that Dale Service is presently analyzing the need to file a claim.

The Commission accepts the recommendations contained in the Staff Report and the Comments filed by Dale Service and finds that this case should be closed.

¹ Pursuant to a Stipulation adopted by the Commission in the Company's last rate case:

On May 1, 2003 and on each successive annual filing of the AIF, if Dale Service's AIF filing calculates a DSC [debt service coverage] based on appropriately adjusted test year results that exceeds 1.20, Dale Service agrees to reduce rates going forward as of the next quarterly billing to produce a 1.20 DSC. If the Commission later adjusts Dale Service's AIF such that it results in an increase to the DSC above 1.20 and above that calculated by Dale Service, then rates shall be adjusted on a going forward basis as of the next quarterly billing to produce a 1.20 DSC based on the Commission's adjustments.

Accordingly, IT IS ORDERED THAT:

(1) The Staff's recommended reporting requirements are approved, and Dale Service is hereby ordered to comply by reporting on all items as found hereinabove in each future AIF.

(2) There being nothing further to come before the Commission, this matter is hereby closed.

**CASE NO. PUE-2003-00180
MAY 21, 2003**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For authority to establish credit facility

ORDER GRANTING AUTHORITY

On May 1, 2003, 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 establish a \$1.25 billion 364-day revolving credit and competitive loan facility ("Credit Facility"). 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.

In its application, Virginia Power, along with its parent, Dominion Resources, Inc. ("Dominion"), and affiliate, Consolidated Natural Gas Company ("CNG"), proposes to establish and share access to the Credit Facility. The Credit Facility will have a term of 364 days. The Borrowers have the right to extend the maturity of any loans or drawn amounts for one year from the expiration date of the Credit Facility.

By Commission Order dated May 24, 2002, in Case No. PUF-2002-00248, the Commission granted Virginia Power authority to establish a shared \$2.0 billion syndicated revolving credit and competitive loan facility ("Old Facility") consisting of two portions: 1) a \$1.25 billion 364-day revolving credit and competitive loan facility; and 2) a \$750 million 3-year syndicated revolving credit and competitive loan facility. The Old Facility was also to be shared by Virginia Power, Dominion, and CNG. The Credit Facility proposed herein will replace the \$1.25 billion facility approved by the Commission in Case No. PUF-2002-00248.

Virginia Power's use of the Credit Facility will be for general corporate purposes, including commercial paper liquidity back up.

The New Facility will be available for borrowings by Virginia Power, Dominion, and CNG, subject to the maximum aggregate limit of \$1.25 billion, with the maximum amount fully available to be borrowed by each borrower. The New Facility will incorporate two borrowing arrangements: 1) a revolving credit loan facility; and 2) a competitive loan facility. The revolving credit feature of the facility represents funds that will be provided on a committed basis. The competitive loan feature of the facility represents funds that may be provided on an uncommitted basis through an auction mechanism conducted at the request of the borrower.

Loans under the Credit Facility will bear interest at one of the following rates, depending on the individual borrower's election, plus a margin: 1) the higher of J.P. Morgan Securities Inc.'s prime rate in effect at its New York City office or the fed funds rate plus 0.5%; or 2) the rate for Eurodollar deposits. Loans under the competitive loan arrangement will bear interest at either an absolute rate or a margin above the LIBOR Loan rate.

Commitment fees will accrue and be payable to the lenders based on the full amount of the facility. Virginia Power states that Dominion will be responsible for paying the commitment fee. The commitment fee will be allocated internally among the borrowers.

Each borrower is responsible for its own borrowings under the New Facility.

THE COMMISSION, upon consideration of the application, subsequent information provided by Applicant, and the advice of its Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest.

IT IS ORDERED THAT:

1) Applicant is hereby authorized to establish a \$1.25 billion syndicated revolving credit and competitive loan facility with its parent, Dominion, and its affiliate, CNG, under the terms and conditions and for the purposes set forth in the application.

2) Applicant shall file a copy of the executed credit agreement promptly after it becomes available.

3) Applicant shall pay the facility fee, after internal allocations, based on an implied borrowing capacity of \$312.5 million as stated in the application.

4) On or before June 30, 2004, Applicant shall file a report detailing use of the 364-day portion of the New Facility to include the date, amount, applicable interest rate of any loans under the facility segregated by borrower, and the use of the proceeds. In addition, such report shall include a separate accounting by Virginia Power of its daily short-term debt balance and the source of the borrowings.

5) 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.

- 6) 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.
- 7) The authority granted herein shall have no implications for ratemaking purposes.
- 8) This matter shall remain under the continued review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2003-00187
JULY 9, 2003**

APPLICATION OF
KENTUCKY UTILITIES COMPANY d/b/a OLD DOMINION POWER COMPANY

For approval of a Tax Allocation Agreement with its parent company pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On May 2, 2003, Kentucky Utilities Company d/b/a Old Dominion Power Company ("KU/ODP" or the "Applicant") filed an application with the State Corporation Commission (the "Commission") requesting approval of a Tax Allocation Agreement ("Tax Agreement") pursuant to Chapter 4 of Title 56 of the Code of Virginia (the "Code"). The Applicant also requests ongoing authority to participate in the Tax Agreement effective as of July 1, 2002.

KU/ODP is a wholly owned subsidiary of LG&E Energy Corporation ("LG&E"). KU/ODP provides retail electric service to approximately 471,000 customers in 77 counties and wholesale service to 12 municipalities in Kentucky. In Virginia, KU/ODP provides retail service to approximately 29,500 customers in five counties. KU/ODP also provides retail electric service to five customers in Tennessee and one municipal customer in Pennsylvania.

LG&E is a Kentucky Corporation and the parent for a number of subsidiary corporations, including Louisville Gas & Electric Corporation ("Louisville Gas"). Louisville Gas provides retail electric service to approximately 378,000 customers and retail gas service to approximately 305,000 customers in Kentucky. LG&E is a wholly owned subsidiary of the former Powergen U.S. Investments Corporation, now known as E.ON U.S. Investments Corporation ("U.S. Parent").

U.S. Parent, a 99.5% owned subsidiary of Powergen Ltd. ("Powergen"), is a Delaware Corporation and the parent for Powergen's U.S. based energy businesses, which are primarily located in Kentucky. U.S. Parent is a registered holding company under the Public Utility Holding Company Act of 1935 (the "PUHCA").

Powergen, which is based in Coventry, England, is a vertically integrated Anglo-American energy services business that is one of the United Kingdom's leading integrated electricity and gas companies. Powergen is a wholly owned subsidiary of E.ON AG and a registered holding company under the PUHCA.

E.ON AG is a holding company based in Diisseldorf, Germany. It is Germany's third-largest industrial group, consisting of nearly 2,200 affiliated companies that employ more than 150,000 people and generate approximately 80 billion euros in annual revenues. E.ON AG's core energy business has more than 108,000 employees and generates annual revenues of more than 37 million euros. It is Europe's largest investor-owned energy service provider. Including E.ON AG, thirteen E.ON AG affiliates are registered holding companies under the PUHCA.

Federal Regulations

The Securities and Exchange Commission ("SEC"), through Title 17, Code of Federal Regulations §250.45(c) ("Rule 45(c)"), requires holding companies registered under the PUHCA to file with the SEC written tax allocation agreements covering the holding company, its regulated utilities, and other consolidated subsidiaries (the "Group Members") in order to have the ongoing authority to file consolidated income tax returns with the federal government. In connection with the approval of the acquisition by E.ON AG of Powergen, the SEC approved the Tax Agreement effective July 1, 2002.

Tax Allocation Methodology

Rule 45(c)(2) states that:

The consolidated tax shall be apportioned among the several members of the group in proportion to (i) the corporate taxable income of each such member, or (ii) the separate return tax of each such member, but the tax apportioned to any subsidiary shall not exceed the separate return tax of such subsidiary.

Section 4 of the Tax Agreement describes U.S. Parent's consolidated income tax allocation methodology. Each Group Member, including the holding company, that shows a positive separate return tax liability ("Paying Member") is required to make a payment in the amount of its positive tax liability to U.S. Parent. Each Group Member, excluding the holding company, that shows a negative separate return tax liability ("Loss Member") is entitled to receive a payment in the amount of its negative tax liability from U.S. Parent. The Applicant represents that such tax benefits are allocated to the Loss Members as long as the losses are utilized on the consolidated return. The Loss Members do not have to be able to utilize the benefits on a separate return basis. Any tax benefits generated by the holding company as a Loss Member, excluding amounts associated with acquisition debt, will be allocated proportionately among the Paying Members. The total tax liability allocated to individual Group Members cannot, under any circumstances, exceed their separate return tax liability.

Section 4 also includes provisions to comply with Rule 45(c)(3) requirements regarding intercompany transactions and material items taxed at different rates. Intercompany eliminations that affect the consolidated tax liability will be assigned to the Group Member that necessitated the entry. Material items that are taxed at different rates or involve special benefits or limitations will be allocated to the Group Members responsible for the items.

The Tax Agreement also states that alternative minimum tax ("AMT") liability will be treated as part of a Group Member's separate return tax liability if the entire Affiliate Group incurs an AMT liability.

Holding Company Tax Benefits

The issue of holding company tax benefits stems from a series of changes in the interpretation of Rule 45(c)(5), which generally states that:

[The] agreement may include all members of the group in the tax allocation. An agreement under this paragraph shall provide that those associate companies with a positive allocation will pay the amount allocated and those subsidiary companies with a negative allocation will receive current payment of their corporate tax credits.

In 1981, though, the SEC amended the PUHCA to bar registered holding companies, which are usually Loss Members, from sharing in consolidated tax savings because of concerns about the possibility of improper upstream cash distributions. More recently, the SEC modified its position to allow holding companies to retain consolidated tax savings related to acquisition debt.¹ Therefore, the Tax Agreement includes a provision allowing U.S. Parent to retain the tax benefits related to acquisition debt. The Tax Agreement defines acquisition debt as any debt incurred by U.S. Parent to finance, refinance, or refund acquisitions by its U.S. utility and energy-related businesses. The Applicant justifies U.S. Parent's retention of the acquisition debt tax benefits by representing that the acquisition debt is non-recourse to the LG&E Energy Group, including KU/ODP, and is unrelated to the financing of subsidiary operations.

Net Operating Losses

Rule 45(c)(5) further states that the consolidated tax agreement "shall provide a method of apportioning such payments, and carrying over uncompensated benefits, if the consolidated loss is too large to be used in full." In accordance with this subsection, the Tax Agreement states that, if the tax benefits of the Loss Members cannot be fully utilized, then the Loss Members receive a proportionate allocation of the unused tax credits. Loss Members retain the right to carry forward or carry back any unutilized tax benefits.

State and Local Taxes

In contrast to the single methodology used to allocate consolidated federal income taxes, U.S. Parent employs four different filing methods for allocating state and local income tax liabilities among its Group Members. In a separate entity filing, all tax costs and benefits are calculated for and allocated to the subsidiary that filed the return (a "stand alone return"). In a unitary filing, tax costs and benefits are calculated for and allocated to the business unit that filed the return. In a nexus combined filing, tax costs and benefits are calculated and allocated as if each entity filed a stand alone return. With this method, both apportionment factors and taxable income are considered in the allocation. In a consolidated filing, tax costs and benefits are calculated and allocated as if the entity filed a stand alone return using both (a) the entity's property, payroll, and receipts apportioned to the taxing locality; and (b) its taxable income or loss. Entities lacking a nexus in the taxing locality receive no tax cost or benefit allocations. U.S. Parent uses the consolidated filing method to file KU/ODP's Virginia state income taxes.

Legal Provisions

According to the Tax Agreement, U.S. Parent shall be solely responsible for the preparation, elections, and filing of the consolidated tax return. U.S. Parent will also make all federal corporate income tax payments to the Internal Revenue Service on behalf of the consolidated group. If the consolidated tax liability is adjusted or amended, U.S. Parent will recalculate the effect of the adjustment for each Group Member and will receive payments from or make payments to each Group Member reflecting the adjustment.

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 Tax Agreement as proposed is, in general, an equitable means of assigning consolidated tax liabilities to member companies. The Tax Agreement benefits KU/ODP as a positive separate return company because KU/ODP has the opportunity to receive consolidated tax benefits, which can reduce its tax liability and boost its cash flow. Therefore, we find that the Tax Agreement proposal is in the public interest and should be approved.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code of Virginia, Kentucky Utilities Company d/b/a Old Dominion Power Company is hereby granted approval to participate in the Tax Allocation Agreement between E.ON U.S. Investments Corporation and its subsidiaries under the terms and conditions and for the purposes described herein, effective as of the date of this Order.
- 2) Commission approval shall be required for any changes in the terms and conditions of the Tax Allocation Agreement.
- 3) The approval granted herein shall have no ratemaking implications. The Commission reserves the right to reflect ratemaking adjustments to KU/ODP's income taxes in the course of the Commission's 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 of Virginia 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) KU/ODP shall include the Tax Allocation Agreement approved herein in its Annual Report of Affiliate Transactions submitted to the Director of Public Utility Accounting of the Commission.

¹ National Grid Group plc, HCAR No. 27154 (March 15, 2000).

7) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then KU/ODP shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.

8) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00188
OCTOBER 24, 2003**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY
and
RAPPAHANNOCK ELECTRIC COOPERATIVE

For authority to sell public service corporation property

ORDER GRANTING AUTHORITY

On June 3, 2003, Virginia Electric and Power Company ("Dominion Virginia Power") and Rappahannock Electric Cooperative ("REC") (collectively, the "Applicants") completed an application filed on May 7, 2003, with the State Corporation Commission ("Commission") under the Utility Transfers Act requesting authority for Dominion Virginia Power to sell and REC to purchase certain utility assets.

Dominion Virginia Power is a public service corporation with its principal office in Richmond, Virginia, and is engaged in the business of providing electric utility service in Virginia and northeastern North Carolina.

REC is a rural electric cooperative in Fredericksburg, Virginia, that provides retail electric service in the Counties of Albemarle, Caroline, Culpeper, Essex, Fauquier, Goochland, Greene, Hanover, King & Queen, King William, Louisa, Madison, Orange, Rappahannock, Spotsylvania, and Stafford. REC is a member of Old Dominion Electric Cooperative ("ODEC"), a generation and transmission cooperative. Dominion Virginia Power furnishes electricity to ODEC pursuant to the Amended and Restated Interconnection and Operating Agreement between Virginia Electric and Power Company and Old Dominion Electric Cooperative dated July 29, 1997.

In its application, Dominion Virginia Power proposes to sell and REC proposes to purchase certain distribution facilities located within REC's certificated service territory. Pursuant to the letter of agreement between Dominion Virginia Power and REC dated May 21, 2001, Dominion Virginia Power would sell the facilities to REC for a total price of \$60,964.00, representing the reproduction cost new depreciated value of the facilities as estimated by Dominion Virginia Power of \$59,964.00 plus a legal and administrative fee of \$1,000.00. The Applicants represent that the proposed transaction will promote an economy of service to the public by allowing REC to utilize the assets, now owned by Dominion Virginia Power, to provide electric service to REC customers. The facilities to be conveyed include the portion of Dominion Virginia Power's existing 34.5 kV distribution circuit 699 originating at Pole XL37 located at the intersection of Routes 681 and 211 and extending to REC's Orleans Delivery Point. These assets were being used by Dominion Virginia Power in connection with the sale for resale of electricity to REC and will be used by REC in connection with the distribution and sale of electricity to its retail customers.

The Applicants provide the original cost of the facilities at \$42,367.00, which was determined by using cumulative average cost of facilities. The Applicants represent the net book value of the facilities to be \$21,082.00. The Applicants state that the sales price was established pursuant to arms' length bargaining.

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 above-described transfer of utility assets 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 §§ 56-89 and 56-90 of the Code of Virginia, Dominion Virginia Power and REC are hereby granted authority for Dominion Virginia Power to sell and for REC to purchase the facilities as described herein for a total sales price of \$60,964.00.

(2) The authority granted herein shall not be deemed to include any approvals other than for the transfer of facilities as described herein.

(3) The Applicants shall submit a report of the action taken pursuant to the authority granted herein within thirty (30) days of the 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 sale took place, the actual sales price, and the actual accounting entries reflecting the transaction.

(4) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00189
OCTOBER 10, 2003**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY
and
RAPPAHANNOCK ELECTRIC COOPERATIVE

For authority to sell public service corporation property

ORDER GRANTING AUTHORITY

On June 3, 2003, Virginia Electric and Power Company ("Dominion Virginia Power") and Rappahannock Electric Cooperative ("REC") (collectively, the "Applicants") completed an application filed on May 7, 2003, with the State Corporation Commission ("Commission") under the Utility Transfers Act requesting authority for Dominion Virginia Power to sell and REC to purchase certain utility assets.

Dominion Virginia Power is a public service corporation with its principal office in Richmond, Virginia, and is engaged in the business of providing electric utility service in Virginia and northeastern North Carolina.

REC is a rural electric cooperative in Fredericksburg, Virginia, that provides retail electric service in the Counties of Albemarle, Caroline, Culpeper, Essex, Fauquier, Goochland, Greene, Hanover, King & Queen, King William, Louisa, Madison, Orange, Rappahannock, Spotsylvania, and Stafford. REC is a member of Old Dominion Electric Cooperative ("ODEC"), a generation and transmission cooperative. Dominion Virginia Power furnishes electricity to ODEC pursuant to the Amended and Restated Interconnection and Operating Agreement between Virginia Electric and Power Company and Old Dominion Electric Cooperative dated July 29, 1997.

In its application, Dominion Virginia Power proposes to sell and REC proposes to purchase certain distribution and substation facilities located within REC's certificated service territory. Pursuant to the letter of agreement between Dominion Virginia Power and REC dated August 3, 2001, Dominion Virginia Power would sell the facilities to REC for a total price of \$28,967.00, representing the reproduction cost new depreciated value of the facilities as estimated by Dominion Virginia Power of \$27,967.00 plus a legal and administrative fee of \$1,000.00. The Applicants represent that the proposed transaction will promote an economy of service to the public by allowing REC to utilize the assets, now owned by Dominion Virginia Power, to provide electric service to REC customers. The facilities to be conveyed include the portion of Dominion Virginia Power's existing 34.5 kV distribution circuit 375 originating at the pole located just south of Pole KH73 and extending to, and including certain equipment within, Dominion Virginia Power's Cuckoo substation. These assets were being used by Dominion Virginia Power in connection with the sale for resale of electricity to REC and will be used by REC in connection with the distribution and sale of electricity to REC retail customers.

The Applicants provide the original cost of the facilities at \$22,331.00, which was determined by using cumulative average cost of facilities. The Applicants represent the net book value of the facilities to be \$10,997.00. The Applicants state that the sales price was established pursuant to arms' length bargaining.

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 above-described transfer of utility assets 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 §§ 56-89 and 56-90 of the Code of Virginia, Dominion Virginia Power and REC are hereby granted authority for Dominion Virginia Power to sell and for REC to purchase the facilities as described herein for a total sales price of \$28,967.00.
- (2) The authority granted herein shall not be deemed to include any approvals other than for the transfer of facilities as described herein.
- (3) The Applicants shall submit a report of the action taken pursuant to the authority granted herein within thirty (30) days of the 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 sale took place, the actual sales price, and the actual accounting entries reflecting the transaction.
- (4) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00190
JUNE 19, 2003**

REQUEST OF
THE POTOMAC EDISON COMPANY d/b/a ALLEGHENY POWER

For waiver of a provision of the Rules Governing Retail Access to Competitive Energy Services

ORDER GRANTING PARTIAL WAIVER

On March 20, 2003, The Potomac Edison Company d/b/a Allegheny Power ("AP" or the "Company") filed a request with the State Corporation Commission ("Commission") for partial waiver of 20 VAC 5-312-20 P of the Rules Governing Retail Access to Competitive Energy Services ("Retail Access Rules"). The Retail Access Rules provide that a request for waiver of its provisions 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.

Rule 20 VAC 5-312-20 P requires, by March 31 of each year, the provider of electricity supply service to report to its customers and file a report with the Commission stating to the extent feasible, fuel mix and emissions data for the prior calendar year. In support of its request, AP States that it is faced with a unique situation this year as a result of joining PJM West ("PJM") as of April 1, 2002. According to the Company, it has two different generation mix data sets for calendar year 2002 - the first data set is applicable to January 1, 2002 - March 31, 2002, and is representative of AP's generation supplier mix during this time period, and the second data set is applicable to April 1, 2002 -- December 31, 2002, and is representative of PJM's generation mix.

AP requests a partial waiver of Rule 20 VAC 5-312-20 P with respect to its bill insert for customers. The Company states that it believes supplying customers with two separate generation mix labels will be confusing, and would like to provide customers with only the PJM generation mix label that is applicable to April 1 - December 31, 2002. AP states that this will mitigate customer confusion, and will allow customers to accurately compare the 2002 label with the PJM emissions data that will be reported in future years.

On May 13, 2003, the Commission entered an Order Permitting Responses to Request giving interested parties and the Staff an opportunity to respond to AP's request on or before June 11, 2003. The Staff filed its comments on the request on June 9, 2003. The Staff does not object to granting a partial waiver of 20 VAC 5-312-20 P to the Company since it believes that combining differing data from two time periods would be complicated and confusing to customers. The Staff states, however, that it is not opposed to permitting AP to report to its customers generation mix data from PJM for the period April 1, 2002, through December 31, 2002, providing that: (1) such data clearly identifies the applicable time period and PJM as the source of data, and (2) such recognition is not construed as a Staff recommendation in Case No. PUE-2000-00736, the docket in which the Commission is considering AP's request to join PJM.

No other comments were filed in response to AP's request for partial waiver.

NOW THE COMMISSION, having considered the request, the Staff's comments, and the applicable statutes and rules, finds that AP's request for partial waiver of 20 VAC 5-312-20 P should be granted. However, our granting of this request does not reflect any Commission position on AP's request to transfer functional control of its transmission assets to PJM-West in Case No. PUE-2000-00736.

Accordingly, IT IS ORDERED THAT:

- (1) AP's request for partial waiver of 20 VAC 5-312-20 P of the Retail Access Rules is granted, subject to the condition that the reporting of generation mix data to customers clearly identifies the applicable time period and PJM as the source of data.
- (2) AP shall complete release of its 2002 generation mix data to its customers by bill insert within 90 days of the date of this Order.
- (3) There being nothing further to be done, this matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUE-2003-00191
MAY 21, 2003**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For authority to establish a credit facility

ORDER GRANTING AUTHORITY

On May 9, 2003, Virginia Electric and Power Company ("Virginia Power" or "Applicant") filed an application under Chapter 3 of Title 56 of the Code of Virginia requesting authority to establish a revolving credit facility. Applicant paid the requisite fee of \$250.

In its application, Virginia Power proposes to establish a \$200 million 3-year syndicated revolving credit facility. This facility will replace two existing credit facilities totaling \$196.6 million.

Loans under the revolving credit facility will bear interest at one of the following rates, depending on the borrower's election, plus a margin based on the credit rating of the borrower: 1) the higher of J.P. Morgan's prime rate or the fed funds rate plus 0.5% or 2) the rate for Eurodollar deposits. Commitment fees will accrue and be payable based on the full amount of the credit facility. This fee will accrue at an annual rate based on the highest rating of the Company's senior unsecured long-term debt.

The proceeds of any borrowings by the Applicant under the credit facility will be used to purchase its tax-exempt variable rate securities in the event that these securities cannot be remarketed for any reason. Borrowings under the credit facility will be accounted for on the Applicant's books as short-term debt.

THE COMMISSION, upon consideration of the application and the advice of 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 establish a 3-year \$200 million syndicated revolving credit facility under the terms and conditions and for the purposes set fourth in the application.
- 2) Applicant shall file a copy of the executed credit facility agreement promptly after it becomes available.

- 3) The authority granted herein shall have no implications for ratemaking purposes.
- 4) On or before June 30th of 2004, 2005 and 2006, Applicant shall file a report detailing use of the 3-year credit facility to include date, amount, applicable interest rate of any loans under the facility, and the use of the proceeds. In addition, such report shall include a separate accounting by Virginia Power of its daily short-term debt balance and the source of its borrowings.
- 5) This matter shall remain under the continued review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2003-00210
JUNE 12, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION
v.
COLUMBIA GAS OF VIRGINIA, INC.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia, the Virginia 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 June 20, 2002, Godsey & Son, Inc., damaged a one-inch plastic gas service line operated by Columbia Gas of Virginia, Inc. ("Company"), located at or near 4410 West Hundred Road, Chester, Virginia, while excavating;
- (2) On or about August 21, 2002, R.S. Melanson Mini-Excavating damaged a one-inch plastic gas service line operated by the Company located at or near 8357 Tillet Loop, Manassas, Virginia, while excavating;
- (3) On or about October 18, 2002, Raco, Inc., damaged a one-half inch plastic gas service line operated by the Company located at or near Route 57, Manassas, Virginia, while excavating;
- (4) On or about November 7, 2002, Compton Construction damaged a one-inch plastic gas service line operated by the Company located at or near 202 Main Street, Narrows, Virginia, while excavating;
- (5) On or about November 15, 2002, the Lynchburg Redevelopment & Housing Authority damaged a one-half inch plastic gas service line operated by the Company located at or near 1104 89 Bell Terre Drive, Lynchburg, Virginia, while excavating;
- (6) On or about December 10, 2002, Powers Paving, Inc., damaged a one-half inch plastic gas service line operated by the Company located at or near 507 Appomattox Court, Hopewell, Virginia, while excavating;
- (7) On or about February 24, 2003, D.L.B., Inc., damaged a one-inch plastic gas service line operated by the Company located at or near 1313 Churchville Avenue, Staunton, Virginia, while excavating;
- (8) On or about March 18, 2003, Land Tech, Inc., damaged a one-inch plastic gas service line operated by the Company located at or near 3821 Peakland Place, Lynchburg, Virginia, while excavating;
- (9) On or about March 20, 2003, Lite-Tech, Incorporated, damaged a one-half inch plastic gas service line operated by the Company located at or near 4621 Leeward Drive, Chesapeake, Virginia, while excavating; and
- (10) On the occasions set out in paragraphs (1) through (9) 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 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.

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 \$6,750 to be paid contemporaneously with the entry of this Order. This payment will be made by cashier's check or money order, payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.
- (2) Any 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.

THE COMMISSION, being advised by the Staff and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

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 be, and it hereby is, accepted.
- (2) The sum of \$6,750 tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2003-00215
JULY 24, 2003**

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, the Virginia 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"), charged with the investigation of probable violations of the Act, has completed investigations of certain incidents between March 22, 2002, and April 09, 2003, 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 of Virginia;
- (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 and D of the Code of Virginia.
 - (b) Failing on certain occasions to mark within the time prescribed in the Act, in violation of § 56-265.17 C and § 56-265.19 A and D of the Code of Virginia.
 - (c) Failing on certain occasions to report to the notification center that lines had been marked or they were not in conflict with the proposed excavation, in violation of § 56-265.19 A and 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.

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 6, 2003, 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 \$12,900 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.

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 be, and it hereby is, accepted.
- (2) The sum of \$12,900 tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2003-00217
AUGUST 15, 2003**APPLICATION OF
SOUTHSIDE ELECTRIC COOPERATIVE

For review of tariffs and terms and conditions of service

FINAL ORDER

On May 8, 2003, Southside Electric Cooperative, Inc. ("Southside" or the "Cooperative"), filed an application for State Corporation Commission ("Commission") approval of the Cooperative's retail access tariffs and terms and conditions of service as required by paragraph (3) of the Commission's Final Order issued on December 18, 2001, in the Cooperative's case for functional separation, Case No. PUE-2000-00749. Southside stated in its application that it anticipates commencing retail access in its service territory on October 1, 2003.

Southside's retail access tariff filing includes: (1) Unbundled Tariffs and Rate Schedules for all customer classes; (2) terms and conditions for providing electrical service updated for unbundled service; (3) a Competitive Service Provider Agreement; (4) a Competitive Service Provider Dispute Resolution Procedure; (5) a Competitive Service Provider Coordination Tariff; (6) an Electronic Data Interchange ("EDI") Trading Partner Agreement; (7) a Transmission Customer Designation Form; (8) an Aggregator Agreement; (9) a Market Rate and Competitive Transition Charge Calculation; (10) an Old Dominion Electric Cooperative ("ODEC")/Southside letter, constituting a binding agreement, on sharing of competitive transition charges; and (11) an Education Plan for Customers on Price to Compare.

On May 29, 2003, the Commission issued an Order Prescribing Notice and Inviting Comments and Requests for Hearing ("Order") in this proceeding, whereby it directed the Cooperative to publish notice of its application, and directed the Staff to investigate the application and file a report detailing its findings and recommendations. On July 3, 2003, the Cooperative filed its required proof of publication of notice and proof of notice to local governments, as required by the Order. On July 23, 2003, the Staff filed its Report in this proceeding wherein it recommended that the Commission approve Southside's tariffs and terms and conditions with the adoption of certain modifications recommended by Staff.

Staff stated in its report that the methodology employed by Southside in calculating projected market prices for generation applicable for the rate classes that will participate in retail choice, was the methodology set forth in the electric cooperatives' Comprehensive Wires Charges Proposal, approved by Commission Order issued May 24, 2002, in Case No. PUE-2001-00306 ("Wires Charges Case"). The Staff stated that it supports Southside's methodology for calculating the Cooperative's projected market prices, but noted a technical error in the calculation of the proposed wires charges. Staff indicated in its Report that Southside has agreed with Staff that there was an error in the calculation, and the Cooperative has provided Staff with the corrected tables, which are attached to its Report as Appendix A. Staff further found that the Cooperative's methodology for calculation of competitive transition charges ("CTCs") was appropriate; however, Staff recommended that the value currently used for the Cooperative's Wholesale Fuel Adjustment factor be updated to reflect the most recent actual monthly fuel adjustment available prior to initiating retail access on October 1, 2003.

The Staff does not oppose the Cooperative's proposal, as reflected in its filed commitment document, for the allocation of wires charges revenue between ODEC and the Cooperative. If the agreement is renegotiated after December 31, 2003, the Staff stated that the renegotiated agreement must be submitted to the Commission for approval as required by § 56-484 of the Code of Virginia.

The Staff also stated in its Report that the Cooperative's proposed retail access schedules are consistent with the currently effective bundled service schedules, and the rates proposed for each service class reflect the rates in effect as of January 1, 2002, that were unbundled in Case No. PUE-2000-00749. Further, according to Staff, the CTCs included in the proposed retail access rates are supported by the Cooperative's Market Price Analysis. The Staff does not oppose Southside's proposal to offer Schedule SL to customers as a bundled lighting service only.

With respect to the Cooperative's proposed Terms and Conditions of service, the Staff made several recommendations for clarification and modification of existing and proposed language.

With respect to Customer Information, the Staff recommended that the Cooperative provide Competitive Service Providers ("CSPs") with historical energy usage information pursuant to Rule 20 VAC 5-312-60 D. Rule 60 D requires a CSP to obtain customer authorization prior to requesting any customer usage information not included on the mass list available from the local distribution company. The Staff recommended that the Cooperative amend its tariffs to release historical usage information that does not appear on the mass list to a CSP upon request at pre-enrollment, during enrollment and post-enrollment.

Staff recommends acceptance of the cost-based fees proposed by the Cooperative, namely the CSP Registration Fee, Technical Support ("IT") and Customer Service Representative ("CSR") Fees.

Staff also recommends acceptance of the Competitive Service Provider, Aggregator and Trading Partner Agreements, as attachments to the Cooperative's Competitive Service Provider Coordination Tariff.

Finally, the Staff found that the proposed dispute resolution procedure was appropriate and should be accepted.

Southside did not file any comments on the Staff Report.

NOW THE COMMISSION, having considered the Cooperative's application, the Staff Report, and applicable law, finds that Southside's tariffs and terms and conditions of service should be approved, as modified and recommended by the Staff.

We incorporate, by reference, our findings in the Wires Charges Case (Case No. PUE-2001-00306). The Cooperative's proposed CTC reflects the appropriate fuel adjustments and wires calculation. The wires charges calculated are subject to the limitation of Va. Code § 56-583, which permits adjustments no more frequently than annually. Thus, these wires charges are effective until December 31, 2004, in conformance with Ordering

Paragraph (5) of the May 24, 2002, Order in the Wires Charges Case. As discussed above, the value used for the fuel adjustment to base generation should be updated to reflect the most recent actual monthly fuel adjustment available prior to Southside initiating retail access in its service territory.

With respect to Southside's commitment document with ODEC to reflect the allocation of wires charge revenue, we accept the Cooperative's proposal, however, with the condition that if the commitment agreement is renegotiated to change the revenue sharing ratio, Southside must submit the renegotiated agreement to the Commission for further approval. As we have previously discussed in Case No. PUE-2002-00575¹, Virginia Code § 56-584 states, in pertinent part:

To the extent not preempted by federal law, the establishment by the Commission of wires charges for any distribution cooperative shall be conditioned upon such cooperative entering into binding commitments by which it will pay to any power supply cooperative of which such distribution cooperative is or was a member, as compensation for such power supply cooperative's stranded costs, all or part of the proceeds of such wires charges, as determined by the Commission.

In that proceeding, we found that the plain language of the statute specifies that the allocation of wires charges between a power supply cooperative and a distribution cooperative is established "*as determined by the Commission.*" Thus, any change to the commitment agreement must be submitted to the Commission for approval.

With respect to Southside's proposed unbundled lighting service schedule, we will accept the Cooperative's proposed schedules. We have previously approved such schedules in Southside's functional separation case, Case No. PUE-2000-00749.

With respect to the proposed new CSP Registration, IT and CSR fees, we adopt these fees as proposed by Southside.

With respect to the CSP, Aggregator and Trading Partner Agreements, we accept their inclusion as attachments to the CSP Coordination Tariff.

Accordingly, IT IS ORDERED THAT:

(1) Southside's tariffs and terms and conditions of service, as modified by the Staff's recommendations and subject to the modifications discussed herein, are hereby approved.

(2) Southside shall file revised tariffs and terms and conditions of service reflecting the findings herein, as soon as practicable after the date of this order.

(3) Southside may initiate retail choice in its service territory upon the filing required by paragraph (2) above.

(4) This case is hereby dismissed, and the papers shall be placed in the file for ended causes.

¹ Application of Shenandoah Valley Electric Cooperative, for approval of retail access tariffs and terms and conditions of service for retail access, Case No. PUE-2002-00575, Final Order issued April 2, 2003, at 6-7.

CASE NO. PUE-2003-00218 NOVEMBER 4, 2003

PETITION OF
URCHIE B. ELLIS

Regarding a request for the State Corporation Commission to create and/or designate a special Staff to represent the interests of the general public

FINAL ORDER

On May 14, 2003, Urchie B. Ellis, a resident of the City of Richmond, Virginia, filed a petition ("Petition") with the State Corporation Commission ("Commission").¹ In the Petition, Mr. Ellis states that he is greatly concerned about the lack of public representation and voice in the numerous cases and dockets related to electric deregulation. Mr. Ellis specifically requests the Commission to act and take steps to create, and/or designate, a special Staff to represent the general public, such as homeowners, tenants, and small businesses. Mr. Ellis states that the basis for his request is that the general public does not have a professional staff and the business leverage to negotiate and get favorable rates in a deregulated environment, as do the parties pushing for electric deregulation. Further, Mr. Ellis indicates that the Virginia Constitution imposes on the Commission the duty to ensure that the interests of the consumers of Virginia are represented.

On July 11, 2003, the Commission issued an Order Inviting Comments ("Order Inviting Comments"), which docketed this proceeding, provided interested persons an opportunity to submit comments on the Petition on or before August 6, 2003, and permitted Mr. Ellis to respond to any comments on or before August 29, 2003. The Order Inviting Comments also explained that the legal issue central to the Petition is whether the Commission has the authority to grant Mr. Ellis' request, taking into consideration Article IX, Section 2 of the Virginia Constitution and Va. Code § 2.2-517. The Order Inviting Comments encouraged comments on both legal and factual issues raised by the Petition.

¹ Mr. Ellis' filing was styled as an application. The Commission re-styled the filing as a petition because the filing falls under 5 VAC 5-20-100 B of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 et seq.

On July 20, 2003, Charles E. Webber, Jr., of Richmond submitted comments agreeing with Mr. Ellis. Mr. Webber states that the consumer would be better served by a special consumer staff at the Commission.

On July 21, 2003, Laura B. Greer of Richmond submitted comments asking the Commission to act favorably on the Petition. Ms. Greer states that this is an issue of tremendous concern to all consumers but that its impact is difficult to understand and assess.

On July 28, 2003, Gary C. Heath, former executive director of the California Electricity Oversight Board, submitted correspondence supporting the Petition. Mr. Heath states that a special staff is necessary due to the complexity of this issues and the voluminous filings that are required at the state and federal levels. Mr. Heath hopes that Virginia learns from California's mistakes and gives its consumers a stronger voice in these matters.

On July 31, 2003, the Honorable Thomas K. Norment, Jr., Member, Senate of Virginia, submitted a letter in this matter. Senator Norment states that "it seems prudent – indeed mandatory – for the Commission to determine if it has jurisdiction" to consider the matters raised in the Petition before proceeding further. Senator Norment requests that the Commission bifurcate this case, preserving the current comment schedule for jurisdictional questions and reserving comments on the merits until it is determined whether the Commission has jurisdiction to entertain the issues raised in the Petition. In addition, Senator Norment states: "To the extent necessary, please consider this letter as a motion for such action."

On August 1, 2003, the Commission issued an Order, which provided that the letter received from Senator Norment shall be treated as comments and as a motion to bifurcate this proceeding, and which established dates for the filing of any response and reply to such motion.

On August 1, 2003, C. William Uhr, Jr., Managing Partner, UHR Technologies, submitted comments supporting the creation of a special Staff to represent the general public with respect to how small consumers might be better served by regulated utilities and properly represented in dockets related to electric deregulation.

On August 4, 2003, the Honorable William J. Howell, Speaker, Virginia House of Delegates, submitted comments stating that he shared the concerns contained in Senator Norment's correspondence and that he joined in Senator Norment's formal request that the Commission amend the Order Inviting Comments to first consider only the jurisdictional question of whether the Commission has the requisite authority to grant the relief sought by Mr. Ellis.

On August 5, 2003, Jack Greenhalgh, President, New Era Energy, Inc., submitted comments supporting Mr. Ellis' Petition. Mr. Greenhalgh states that the Commission should establish full-time, dedicated, technically competent and adequately compensated staff positions to represent the interests of residential and small business consumers.

On August 6, 2003, John D. Golden of Richmond submitted comments in support of Mr. Ellis' position that the Commission appoint an advocate to represent consumers on issues regarding electric deregulation.

On August 6, 2003, Donna Reynolds of Richmond submitted comments in support of any effort to increase consumer protections as Virginia begins to deregulate electricity. Ms. Reynolds recommends that any new effort by the Commission should be charged with developing creative ways to engage the public's participation and encourage understanding of electric deregulation.

On August 6, 2003, Harry L. Cohn of Richmond submitted comments supporting the Petition. Mr. Cohn states that the public is unaware of the proposals to deregulate the power industry and asks the Commission to protect the consumer.

On August 6, 2003, Irene E. Leech, Ph.D., President, Virginia Citizens Consumer Council, filed comments concluding that one way to improve the current situation would be to take the step proposed by Mr. Ellis. Ms. Leech asserts that the Virginia Attorney General's Office does not have sufficient staff to address every consumer issue, and that the Attorney General's Office must balance its concerns for residential consumers with those of other consumers. Ms. Leech explains that it is appropriate to consider which government entities represent consumers, the extent of resources available to those entities, and ways to improve the current situation.

On August 6, 2003, Atmos Energy Corporation, Dale Service Corporation, Delmarva Power & Light Company, Kentucky Utilities Company d/b/a Old Dominion Power Company, Roanoke Gas Company, Southwestern Virginia Gas Company, Virginia-American Water Company, and the Virginia Telecommunications Industry Association ("Commenting Companies") filed joint comments. The Commenting Companies assert that the Commission lacks the authority to appoint a special Staff, and that creation of a special Staff is not necessary, would be duplicative of existing entities' responsibilities, and would be a significant waste of precious and limited state resources.

On August 6, 2003, the following former Attorneys General of Virginia submitted joint comments: the Honorable Andrew P. Miller; the Honorable Anthony F. Troy; the Honorable Marshall Coleman; the Honorable Gerald L. Baliles; the Honorable William G. Broaddus; the Honorable Stephen D. Rosenthal; the Honorable James S. Gilmore, III; the Honorable Richard Cullen; the Honorable Mark L. Earley; and the Honorable Randolph A. Beales ("Former Attorneys General"). The Former Attorneys General state that for more than three decades, the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel") has served as an effective and persuasive advocate for the rights of consumers throughout the Commonwealth in regulatory proceedings, and that creation of an additional function or office within the Commission Staff would simply duplicate the functions that have been handled ably and conscientiously by Consumer Counsel. The Former Attorneys General also state that the General Assembly has provided for the representation of consumer interests through the creation and maintenance of Consumer Counsel as contemplated under Article IX, Section 2 of the Constitution of Virginia.

On August 6, 2003, Consumer Counsel filed a Motion to Dismiss and Comments. Consumer Counsel states that the Commission lacks the authority to grant the relief sought by Mr. Ellis. Consumer Counsel also asserts that a special Staff would be redundant and unnecessary, and likely would present difficult procedural and substantive issues that would hinder the Commission in its ability to continue adjudicating matters in an efficient and organized manner generally acceptable to all case participants. In addition, Consumer Counsel explains that it ably represents the interests of consumers before the Commission, and that it participates in the vast majority of the more controversial and issue-laden electric utility cases where the issues translate into real dollars to consumers.

On August 19, 2003, Mr. Ellis filed a reply. Mr. Ellis states that while no member of the public filed in opposition to his Petition, "there was some formidable opposition ... concentrated largely on the legal issues of Commission authority to do as requested, and to a small degree on the need to do so."

Mr. Ellis asserts that the "authority of the Attorney General to participate on behalf of the public in matters before the Commission is not an exclusive delegation, and does not obligate that [the Attorney General] do so. He has complete discretion." In addition, Mr. Ellis states that the "Commission has a Constitutional duty, which still remains, and has been augmented by various specific references in the [Virginia Electric Utility Restructuring Act ('Act')]." Mr. Ellis concludes that there is an acute need for more public voice in connection with electric deregulation.

Mr. Ellis also requests the Commission not to confine its consideration of a special Staff to representation only in Commission proceedings. Mr. Ellis contends that there is an acute need for better voices before the General Assembly's Commission on Electric Utility Restructuring and the Consumer Advisory Board, and he urges the Commission to consider a special Staff to participate in such matters on behalf of consumers.

Finally, Mr. Ellis states that several papers were filed in opposition to his Petition, and that these papers were signed by experienced attorneys who failed to have the courtesy to send him copies and some were submitted directly to the Commissioners. As a result, Mr. Ellis requests that the Commission strike all of the comments submitted in opposition to the Petition, except Consumer Counsel's comments, which were served on Mr. Ellis. Mr. Ellis also asserts that there is no reason to bifurcate this proceeding: "The issues are simple and clear and can easily be handled in one decision."

On August 20, 2003, the Commenting Companies filed a response to Senator Norment's motion. The Commenting Companies state that their prior comments adopt a position similar to that of Senator Norment. Also on August 20, 2003, Consumer Counsel filed a response supporting Senator Norment's motion.

NOW THE COMMISSION, having considered the pleadings and the applicable law, finds as follows. We decline the request to create a special Staff that represents only consumers. The Staff's role in Commission cases is necessarily broader than that sought by Mr. Ellis, and the General Assembly has designated Consumer Counsel as the statutory representative of consumer interests.

In regulatory proceedings, the Commission's Staff appears in order to ensure that pertinent issues on behalf of the general public interest are clearly presented to the Commission.² The public interest is not limited to the interests of the consumers for which Mr. Ellis seeks special representation. The public interest is broader and encompasses, for example, public utilities, alternative providers, customers of all sizes, Virginia's citizens, and other concerns related to the unique facts and circumstances presented in each case. Conversely, as established by the General Assembly in Va. Code § 2.2-517, it is the responsibility of Consumer Counsel to represent solely the interests of consumers in matters before the Commission.

Mr. Ellis also requests that special Staff be created to give the general public a greater voice and more involvement in matters before the General Assembly. Consistent with the discussion above, however, the Commission Staff's participation before the General Assembly involves the general public interest. Article IX, § 2 of the Constitution of Virginia requires the Commission, "in proceedings before it," to ensure that the interests of the consumers of the Commonwealth are represented. We certainly do not have the authority to decide who represents the "consumer" before the General Assembly.

Although Mr. Ellis' Petition focuses on proceedings concerning electric deregulation, the matters regulated by the Commission, and involving Commission Staff, obviously extend well beyond electric deregulation. Staff is involved, for example, in matters relating to electricity, natural gas, telecommunications, water and sewer service, insurance, financial institutions, and securities. In addition, Consumer Counsel often participates in such matters on behalf of the interests of consumers.

We also recognize that the Virginia Constitution and statutes do not prohibit Commission Staff from focusing on consumer issues from time to time or on a regular basis. For example, the Act requires the Commission to "establish or maintain a complaint bureau for the purpose of receiving, reviewing and investigating complaints by retail customers against public service companies, licensed suppliers, aggregators and other providers . . ."³ As another example, the General Assembly established the Office of Managed Care Ombudsman within the Commission to help Virginia consumers who have health care insurance provided by a managed care health insurance plan. Moreover, Staff in the Commission's Bureaus of Financial Institutions and Insurance, and in the Divisions of Energy, Communications, and Securities and Retail Franchising regularly address consumer complaints, provide assistance to consumers, and develop educational materials for consumers. These various consumer-related activities, however, are distinct from, and do not encompass, the representation solely of consumer interests in proceedings before the Commission.

In proceedings before the Commission, the objective of the Commission's Staff is, and must continue to be, to protect the public interest. Staff's participation in Commission proceedings encompasses protection of consumer interests but is not limited to those interests. Rather, Staff must take into account consumer interests as part of the overall public interest.⁴ Consumer Counsel, on the other hand, is statutorily charged with representing the interests of consumers in matters before the Commission.⁵ Indeed, Consumer Counsel notes that the Commission may request Consumer Counsel to participate in proceedings if the Commission concludes that separate consumer representation is needed.⁶

Finally, we will not strike any of the documents discussed in this Order. We note that comments and motions were submitted to the Commission but not provided to Mr. Ellis. However, there does not appear to be any undue prejudice to Mr. Ellis as a result of these failures.

² See, e.g., 5 VAC 5-20-80.

³ Va. Code § 56-592 E.

⁴ The creation of a special Staff to represent certain consumer interests also would create the situation where, in Commission proceedings, the "special" Staff could be participating against the "regular" Staff.

⁵ Consumer Counsel asserts that the roles of a special Staff and of Consumer Counsel apparently would be indistinguishable.

⁶ Comments of the Division of Consumer Counsel at 4-6.

Accordingly, IT IS ORDERED THAT:

- (1) The Petition is hereby denied.
- (2) This matter is dismissed.

**CASE NO. PUE-2003-00219
AUGUST 13, 2003**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For approval of gas supply and other related supply arrangements pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On May 19, 2003, Columbia Gas of Virginia, Inc. ("CGV" or the "Applicant"), filed an application with the State Corporation Commission (the "Commission") under Chapter 4, Title 56 of the Code of Virginia (the "Affiliates Act"), requesting approval of standardized base contracts ("Base Contract(s)") governing gas supply and other related supply arrangements with Columbia Gas of Ohio, Inc. ("COH"), Columbia Gas of Kentucky, Inc. ("CKY"), Columbia Gas of Pennsylvania, Inc. ("CPA"), Columbia Gas of Maryland, Inc. ("CMD"), Northern Indiana Public Service Company ("NIPSCO"), Northern Indiana Fuel and Light Company ("NIFL"), Kokomo Gas and Fuel Company ("Kokomo"), Bay State Gas Company ("Bay State"), Northern Utilities, Inc. ("NU"), and Energy USA-TPC Corporation ("TPC"). The Applicant requests approval of the Base Contracts without time limitation restrictions and without further approval from the Commission. In addition, CGV requests approval to execute Base Contracts with future affiliated regulated distribution companies without further approval of the Commission. The Applicant also requests approval of a Gas Supply Policy ("GSP") under which CGV will enter into gas supply transactions with affiliates. Finally, the Applicant requests approval without the necessity of a public hearing. By Commission Order dated July 11, 2003, the Commission extended the period for review of the application through August 17, 2003.

The current application is the successor to CGV's initial application for approval of the Base Contracts and GSP, Case No. PUA-2001-00068, which was filed November 20, 2001. In the Order for that case, issued February 19, 2002, the Applicant received approval for the Base Contracts and GSP for 18 months from the date of the Commission's Order. The Commission stated that "this limited approval period will allow Staff to re-evaluate such transactions to ensure that the gas supply agreements and arrangements continue to be in the public interest."

CGV is a natural gas distribution company serving approximately 193,000 customers in central Virginia, southside Virginia, Piedmont Virginia, and most of the Shenandoah Valley as well as portions of Northern and Southwest Virginia. CGV is a wholly owned subsidiary of the Columbia Energy Group ("CEG").

CEG is the holding company for CGV, COH, CKY, CPA, and CMD, which collectively provide natural gas distribution service to approximately 2.1 million residential, commercial, and industrial customers in Virginia, Ohio, Kentucky, Pennsylvania, and Maryland. CEG is a registered holding company under the Public Utility Holding Company Act of 1935 (the "PUHCA"), and a wholly owned subsidiary of NiSource, Inc. ("NiSource").

NIPSCO, NIFL, and Kokomo provide natural gas distribution service to approximately 770,000 customers in northern Indiana. NIPSCO, NIFL, and Kokomo are wholly owned subsidiaries of NiSource.

Bay State and NU provide natural gas distribution service to more than 329,000 customers in Massachusetts, Maine, and New Hampshire. Bay State and NU are wholly owned subsidiaries of NiSource.

TPC is an energy marketing company that is engaged in the business of selling, purchasing, and exchanging natural gas commodities and other related services. TPC is a wholly owned subsidiary of Energy USA, Inc., which is a wholly owned subsidiary of NiSource.

NiSource is an energy holding company whose subsidiaries provide natural gas, electricity, and other products and services to approximately 3.7 million customers located within a corridor that runs from the Gulf Coast through the Midwest to New England. Effective November 1, 2001, NiSource became a registered holding company under the PUHCA. For the fiscal year ending 2002, NiSource reported gross revenues of \$6.5 billion, total assets of \$16.9 billion, and 9,307 employees. On July 3, 2003, NiSource reached agreements to sell its exploration and production subsidiary, Columbia Energy Resources, and the assets of its cogeneration subsidiary, Primary Energy, Inc., in order to focus on its core regulated businesses.

Base Contracts

CGV states that, in the natural gas industry, it is customary for buyers and sellers to negotiate a Base Contract to facilitate gas sales, purchases, exchanges, and other supply transactions. A Base Contract creates a contractual framework within which the parties can enter into one or more individual gas supply transactions ("transactions") by means of a "Transaction Confirmation" that generally incorporates by reference the standardized terms and conditions of the Base Contract. Under a Base Contract, either party can be the buyer or seller. A Transaction Confirmation specifies the details of a particular transaction with respect to such key contract terms as quantity, price, term, delivery and receipt points, and any other special provisions in the transaction. The purpose of the Base Contract structure is to allow the parties to quickly execute market orders and to avoid costly delays caused by extensive contract negotiations over specific sales and purchases. Each Base Contract has a term of one month and continues from month to month unless terminated by either party with 30 days advance notice.

Gas Supply Policy

The GSP governs CGV's management of gas supply transactions with its affiliates. The GSP states that its purpose is to ensure that CGV obtains the least cost-reliable supply of gas for the benefit of its ratepayers.

To fulfill its obligation as a supplier of economic-reliable gas supplies to its customers, CGV monitors and participates in the gas marketplace to obtain and, at times, reduce its available gas supplies. This process includes obtaining market information from a pool of gas suppliers, including CGV's affiliates, that may be interested in doing business with the Applicant. CGV uses the information to determine current market prices and measure the availability of gas supplies.

Under the GSP, when CGV buys gas it uses the market information to obtain the lowest price for gas purchases that meets its reliability requirements. In non-emergency situations, CGV purchases gas from affiliates only if the offer price is at or below current market prices.

Under the GSP, when CGV sells gas it uses the market information to obtain the highest price for its gas sales. In non-emergency situations, CGV sells gas to affiliates only if the offer price is at or above current market prices.

During emergency situations, CGV represents that its relationships with other NiSource gas utilities give it access to a larger gas supply market than it would have available as a stand alone utility. In these situations, the GSP states that gas sales and purchases will be made at the current market price.

NOW THE COMMISSION, upon consideration of the application and representations of Applicants and having been advised by its Staff, is of the opinion and finds that the Base Contract agreements and the GSP described above are in the public interest and should be approved, subject to certain conditions we find necessary in this instance to protect the public interest.

Since the Order in Case No. PUA-2001-00068 granting 18-month approval of the Base Contracts and GSP was issued, only four gas supply transactions have taken place. Three of the four transactions were with COH; the other was with CPA. All four transactions occurred this past winter, in January, February, and March of 2003. The three COH transactions were temporary gas exchanges that allowed CGV to mitigate firm capacity constraints. The CPA transaction was a gas purchase that allowed CGV to avoid a temporary spike in local city gate prices. In the transactions to date, the Base Contract arrangements and GSP appear to have benefited CGV. However, we believe that four transactions in 18 months do not provide a sufficient sample for the Commission to make a definitive statement about the long-term merits of the gas supply arrangements. Therefore, we find that the Base Contracts should be approved for another 24 months with the same monitoring requirements that we approved in Case No. PUA-2001-00068.

Regarding the proposed GSP, the Commission believes that market pricing is appropriate as long as the market price used for CGV purchase transactions is the lowest available delivered market price to CGV, and the market price for CGV sales transactions is highest available delivered market price available to CGV. Therefore, we find that the GSP should be approved as requested.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code of Virginia, CGV is hereby granted approval to enter into Base Contracts with COH, CKY, CPA, CMD, NIPSCO, NIFL, Kokomo, Bay State, NU, and TPC, with the authority to execute individual Transaction Confirmations without Commission approval at the prevailing market price as long as such price is the delivered market price, for a period of 24 months from the date of this Order.
- 2) Pursuant to § 56-77 of the Code of Virginia, CGV is hereby granted approval to enter into Base Contracts with future regulated affiliate distribution companies without further Commission approval, for a period of 24 months from the date of this Order, to the extent that such Base Contracts are under the same terms and conditions and follow the pricing policy as approved herein. CGV shall promptly notify the Commission of any Base Contracts entered into with any future regulated affiliate distribution companies.
- 3) Pursuant to § 56-77 of the Code of Virginia, CGV is hereby granted approval of the Gas Supply Policy as requested.
- 4) Commission approval shall be required for any changes in the terms and conditions to the Base Contracts and Gas Supply Policy from those contained herein.
- 5) 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.
- 6) CGV shall file a new application to extend the approval granted herein for the Base Contracts beyond 24 months from the date of this Order.
- 7) The approvals granted herein shall have no ratemaking implications for annual informational filings ("AIF") or future rate proceedings.
- 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 this Commission.
- 9) CGV shall bear the burden of proving, in any AIF or rate proceeding, that gas supply purchases from affiliates were made at the lowest possible cost and that sales to affiliates were made at the highest possible price. CGV shall maintain the records necessary to show that gas supply purchases from affiliates were made at the lowest possible cost to meet CGV's needs at a particular time, and that sales to affiliates were made at the highest possible price.
- 10) CGV shall maintain a log of all transactions authorized pursuant to the Base Contracts and Gas Supply Policy approved herein and will submit quarterly reports to the Division of Energy Regulation. The log shall, at a minimum, note the dates of individual transactions, provide a description of each transaction including the reasons underlying the transaction, explain the basis for the market price ascribed to each transaction, and, in instances where CGV is selling gas to an affiliate, note CGV's actual cost of gas resold.
- 11) CGV shall provide to Staff any information deemed necessary to enable Staff to monitor effectively such transactions.
- 12) CGV shall include the Base Contracts approved herein in its Annual Report of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting on or before May 1 of each year, which deadline may be extended administratively by the Director of Public Utility Accounting.

13) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then CGV shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.

14) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00220
JUNE 12, 2003**

APPLICATION OF
SHENANDOAH VALLEY ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On May 21, 2003, Shenandoah Valley Electric Cooperative ("Applicant" or "Shenandoah"), filed an application under Chapter 3 of Title 56 of the Code of Virginia ("Code") with the State Corporation Commission ("Commission"). In its application, Shenandoah requests authority to incur long-term indebtedness from the United States of America through the Rural Utilities Service ("RUS"). Applicant has paid the requisite fee of \$25.

Applicant requests authority to borrow up to \$18,000,000 ("Proposed Debt") from RUS. The proceeds from the loan will be used to finance construction of additional electric distribution, transmission and service lines consistent with its approved three year work plan. Applicant states that these improvements will provide service to approximately 1,789 additional customers.

The Proposed Debt will be issued in the form of a Mortgage Note secured by all the assets of Shenandoah, pursuant to the terms and conditions of the RUS Loan Contract and Mortgage Note as set out in Exhibits A and B of the application. The Proposed Debt will have a final maturity term of 35 years, during which portions may be advanced within an initial four year Fund Advance Period. Over the 35-year final maturity term, interest rates will be based on the Treasury Rate Loan Program. For each advance under this program, Applicant has the option to select the current Treasury rate commensurate with interim terms of 1,2,3,5,7,10,20, or 30 years. Alternatively, Applicant may select the current 30-year United States Treasury ("Treasury") rate to apply over the entire 35 year period. At the end of each interim term, Applicant would select a subsequent term that falls within the remainder of the 35-year final maturity term.

THE COMMISSION, upon consideration of the application and having been advised by Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest. Accordingly,

IT IS ORDERED THAT:

- 1) Applicant is hereby authorized to incur up to \$18,000,000 in long-term debt from the RUS 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 RUS, 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 selected, and the interest rate term.
- 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-2003-00221
JUNE 27, 2003**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For authority to assume indebtedness

ORDER GRANTING AUTHORITY

On May 23, 2003, Columbia Gas of Virginia, Inc. ("CGV" or "Applicant"), filed an application with the State Corporation Commission ("Commission") under Chapter 3 of the Code of Virginia for authority to assume indebtedness in the amount of \$1,065,000. Applicant paid the requisite fee of \$250.

In its application, CGV requests approval to assume an outstanding loan issued to Patio Plaza, L.C., a Virginia limited liability company from which CGV is purchasing real property located in the City of Portsmouth, Virginia. The current principal amount of the Promissory Note is \$1,065,000. The initial interest rate on the note is 7.71%. If the note is not paid by May 1, 2011, the interest rate becomes the greater of 7.71% and the Treasury Rate plus two (2) percentage points. Payments are owed monthly and the note matures May 1, 2011. CGV intends to defease the note on or soon after August 1, 2003.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

THE COMMISSION, upon consideration of the application and the advice of 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 assume the outstanding loan issued to Patio Plaza, L.C. in the amount of \$1,065,000 under the terms and conditions and for the purposes set fourth in the application.
- 2) The authority granted herein shall have no implications for ratemaking purposes.
- 3) Approval of Applicant assuming the loan does not guarantee recovery of the loan for ratemaking purposes.
- 4) If Applicant sells the property at a later date, the Commission reserves the right to decide how to treat the proceeds of such sale at that time.
- 5) Applicant shall file a report of action on or before September 30, 2003 to include all relevant details concerning the defeasance of the note, as well as copies of the executed agreements between CGV and Patio Plaza, L.C. concerning the assumption of the note.
- 6) This matter shall remain under the continued review, audit, and appropriate directive of the Commission.

CASE NO. PUE-2003-00222
JUNE 11, 2003

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For authority to establish an inter-company credit agreement

ORDER GRANTING AUTHORITY

On May 23, 2003, 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 establish a \$1 billion inter-company credit agreement ("Credit Agreement") with its parent, Dominion Resources, Inc. ("Dominion"). Loans under the Credit Agreement will be in the form of short-term demand notes with maturities of less than 365 days. 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 DRI-consolidated basis, the best use of this available cash may be to pay-off outstanding debt at Virginia Power. Approval of the Credit Agreement will provide a means to execute such a transaction. The Credit Agreement does not allow for borrowings by DRI from Virginia Power.

The Credit Agreement will have a termination date of May 30, 2005. 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 establish a \$1 billion credit agreement with its parent, Dominion, under the terms and conditions and for the purposes set forth in the application.
- 2) Applicant shall file a copy of the executed Credit Agreement promptly after it becomes available.
- 3) On or before June 30th of 2004 and 2005, 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.
- 4) The authority granted herein shall not preclude the Commission from applying the provisions of § 56-78 and § 56-80 of the Code of Virginia hereafter.
- 5) The Commission reserves the right, pursuant to § 56-79 of the Code of Virginia, to examine the books and records of any affiliate in connection with the authority granted herein, whether or not such affiliate is regulated by this Commission.
- 6) The authority granted herein shall have no implications for ratemaking purposes.
- 7) This matter shall remain under the continued review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2003-00223
JULY 28, 2003**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For approval of intercompany financing

ORDER GRANTING AUTHORITY

On May 23, 2003, Columbia Gas of Virginia, Inc. ("CGV" or "Applicant"), filed an application with the State Corporation Commission ("Commission") under Chapters 3 and 4 of Title 56 of the Code of Virginia for authority to borrow and invest up to \$75,000,000 through the NiSource Intrasystem Money Pool ("Money Pool").¹ CGV amended the investment limitation to \$30,000,000 in a letter dated June 13, 2003. The amount of short-term debt authority requested in the application is in excess of twelve (12) percent of total capitalization as defined in § 56-65.1 of the Code of Virginia. Applicant paid the requisite fee of \$250.

CGV requests authority to borrow up to \$75,000,000 and invest excess short-term funds up to \$30,000,000 in the Money Pool for the period July 1, 2003, through December 31, 2005. The proceeds will be used to finance peak short-term requirements, including gas purchases and gas stored. The interest rate on short-term borrowings from and lending to the Money Pool will equal the weighted average daily interest rate on (i) short-term extended borrowings by NiSource Finance Corp. ("NFC") plus (ii) earnings on external investments by NFC.

CGV requests authority to participate in the Money Pool with borrowing and investment limitations different than those established by the Commission in the Applicant's most recent financing application, Case No. PUE-2002-00310. In Case No. PUE-2002-00310, CGV received authority to borrow up to \$45 million in short-term debt and invest up to \$45 million in short-term funds through the Money Pool.²

THE COMMISSION, upon consideration of the application and the advice of its Staff, is of the opinion and finds that approval of the application, subject to the modifications detailed herein, will not be detrimental to the public interest.

The Commission notes that participants in the Money Pool include both regulated and non-regulated participants. The non-regulated participants have less certain revenues and more business risk than rate-regulated participants. Such risks increase the likelihood of bankruptcy by those participants. In the event of a bankruptcy by one of the non-regulated participants, CGV's investment might be lost. Therefore, the Commission grants authority to CGV to participate in the Money Pool, on the condition that the non-regulated participants that may borrow from the Money Pool shall not be allowed to borrow, in the aggregate, more than the amount that the non-regulated participants (including NiSource, Inc., and NFC) have invested in the Money Pool. Additionally, the Commission is aware of the on-going debate over the possible repeal or amendment of the Public Utility Holding Company Act of 1935 ("PUHCA"). Therefore, the authority granted herein is subject to PUHCA remaining materially unaltered.

Accordingly, IT IS ORDERED THAT:

- 1) CGV is hereby authorized to borrow up to \$75,000,000 from the NiSource Money Pool from the date of this order through December 31, 2005, under the terms and conditions and for the purposes set forth in the application consistent with the findings and subject to the modifications detailed herein.
- 2) CGV is hereby authorized to invest temporary excess cash up to \$30,000,000 in the NiSource Money Pool from the date of this order through December 31, 2005, under the terms and conditions and for the purposes set forth in the application, subject to the modifications detailed herein.
- 3) In the event that the PUHCA is repealed or materially amended before December 31, 2005, this authorization shall expire unless otherwise ordered in this case.
- 4) Should any of the terms and conditions of the NiSource Money Pool change from those approved herein, Applicant shall seek Commission approval for such changes.
- 5) Should Applicant wish to obtain authority to participate in the NiSource Money Pool beyond December 31, 2005, it shall file an application requesting such authority no later than November 1, 2005.
- 6) The application referenced in Ordering Paragraph (5) above shall include proforma sources and uses of funds schedules for the next three years; a monthly projection of money pool borrowing and lending balances; and documentation supporting the need of the requested short-term borrowing limit and the requested short-term investment limit.
- 7) The authority granted herein shall have no implications for ratemaking purposes.
- 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 each affiliate is regulated by the Commission.
- 9) The approvals granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

¹ Based on a response from the Applicant to a data request from our Staff, it appears that participants in the Money Pool are both regulated and non-regulated entities.

² Order Granting Authority, Case No. PUE-2002-00310, June 28, 2002.

10) Applicant shall file quarterly reports of action within 60 days of the end of each calendar quarter during the authorization period July 1, 2003, through December 31, 2005, for each preceding calendar quarter, with the last quarterly report being filed February 28, 2006. Such updates shall include:

- a) a monthly schedule of Nisource Money Pool borrowings, segmented by borrower; and
- b) a monthly schedule that separately reflects interest expenses, each type of allocated fee, and an explanation of how both the interest rate and allocated fees have been calculated.

11) This case shall remain open and the matter shall remain under the continued review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2003-00223
AUGUST 15, 2003**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For approval of intercompany financing

ORDER GRANTING RECONSIDERATION

On May 23, 2003, Columbia Gas of Virginia, Inc. ("CGV" or "Applicant"), filed an application with the State Corporation Commission ("Commission") under Chapters 3 and 4 of Title 56 of the Code of Virginia for authority to borrow and invest up to \$75,000,000 through the NiSource Intrasystem Money Pool ("Money Pool").¹ CGV amended the investment limitation to \$30,000,000 in a letter dated June 13, 2003. The amount of short-term debt authority requested in the application is in excess of twelve (12) percent of total capitalization as defined in § 56-65.1 of the Code of Virginia. Applicant paid the requisite fee of \$250.

CGV requested authority to borrow up to \$75,000,000 and invest excess short-term funds up to \$30,000,000 in the Money Pool for the period July 1, 2003, through December 31, 2005. The proceeds will be used to finance peak short-term requirements, including gas purchases and gas stored. The interest rate on short-term borrowings from and lending to the Money Pool will equal the weighted average daily interest rate on (i) short-term extended borrowings by Nisource Finance Corp. ("NFC") plus (ii) earnings on external investments by NFC.

CGV requested authority to participate in the Money Pool with borrowing and investment limitations different than those established by the Commission in the Applicant's most recent financing application, Case No. PUE-2002-00310. In Case No. PUE-2002-00310, CGV received authority to borrow up to \$45,000,000 in short-term debt and invest up to \$45,000,000 in short-term funds through the Money Pool.²

On July 28, 2003, the Commission issued an Order Granting Authority, which permitted CGV to participate in the Money Pool subject to certain restrictions and conditions. On August 12, 2003, CGV filed a Petition for Reconsideration and/or Partial Suspension of Order Granting Authority ("Petition"). CGV requests that the Commission reconsider and/or partially suspend its Order Granting Authority and that such Order be revised to provide for the following:

(1) In the event the Public Utility Holding Company Act of 1935 ("PUHCA") is repealed or materially amended, CGV shall have ninety (90) days from the date of said repeal or material amendment to petition the Commission and suggest imposition of conditions, if any, that will substitute for the safeguards provided by PUHCA. The Commission may impose additional reasonable conditions on the authority granted in order to replace the safeguards provided by PUHCA, and CGV shall be allowed a reasonable period of time to implement those conditions.

(2) Should non-regulated participants that may borrow from the Money Pool borrow, in the aggregate, more than the amount that the non-regulated participants have invested in the Money Pool ("Imbalance Event"), then CGV shall so notify the Commission Staff within ten (10) days of the end of the month in which the Imbalance Event occurs. Within ninety (90) days of such occurrence of the Imbalance Event, CGV shall either file with the Commission a Petition that sets forth how, if at all, the Imbalance Event should affect its participation in the Money Pool, along with any requests for modification of the Order Granting Authority that may be appropriate or CGV shall cure the Imbalance Event. While the Commission considers such a Petition, CGV shall be allowed to participate in the Money Pool according to the terms and conditions imposed by the Order Granting Authority, as modified.

(3) The quarterly reports of action described in the Order Granting Authority shall be filed with the Commission Staff.

CGV also requests that the Commission only partially suspend its Order Granting Authority during its consideration of this Petition and allow CGV to participate in the Money Pool pending entry of its Order on Reconsideration. Finally, CGV requests such further relief as may be appropriate.

NOW THE COMMISSION, having considered the Petition, is of the opinion and finds as follows. We grant the Petition for the purpose of continuing our jurisdiction over this matter and considering such Petition. The July 28, 2003, Order Granting Authority shall remain in effect, in its entirety, pending further order of the Commission.

¹ Based on a response from the Applicant to a data request from our Staff, it appears that participants in the Money Pool are both regulated and non-regulated entities.

² Order Granting Authority, Case No. PUE-2002-00310, June 28, 2002.

Accordingly, IT IS ORDERED THAT:

- (1) The Petition is hereby granted for the purpose of continuing our jurisdiction over this proceeding and considering such Petition.
- (2) The Order Granting Authority of July 28, 2003, shall remain in effect, in its entirety, pending further order of the Commission.
- (3) This matter is continued pending further order of the Commission.

**CASE NO. PUE-2003-00223
SEPTEMBER 25, 2003**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For approval of intercompany financing

ORDER ON RECONSIDERATION

On May 23, 2003, Columbia Gas of Virginia, Inc. ("CGV" or "Applicant"), filed an application with the State Corporation Commission ("Commission") under Chapters 3 and 4 of Title 56 of the Code of Virginia, for authority to borrow and invest up to \$75,000,000 through the NiSource Intrasystem Money Pool ("Money Pool").¹ CGV amended the investment limitation to \$30,000,000 in a letter dated June 13, 2003. The amount of short-term debt authority requested in the application is in excess of twelve (12) percent of total capitalization as defined in § 56-65.1 of the Code of Virginia. Applicant paid the requisite fee of \$250.

CGV requested authority to borrow up to \$75,000,000 and invest excess short-term funds up to \$30,000,000 in the Money Pool for the period July 1, 2003, through December 31, 2005. The proceeds will be used to finance peak short-term requirements, including gas purchases and gas stored. The interest rate on short-term borrowings from and lending to the Money Pool will equal the weighted average daily interest rate on (i) short-term extended borrowings by Nisource Finance Corp. ("NFC") plus (ii) earnings on external investments by NFC.

CGV requested authority to participate in the Money Pool with borrowing and investment limitations different than those established by the Commission in the Applicant's most recent financing application, Case No. PUE-2002-00310. In Case No. PUE-2002-00310, CGV received authority to borrow up to \$45,000,000 in short-term debt and invest up to \$45,000,000 in short-term funds through the Money pool.²

On July 28, 2003, the Commission issued an Order Granting Authority, which permitted CGV to participate in the Money Pool subject to certain restrictions and conditions. On August 12, 2003, CGV filed a Petition for Reconsideration and/or Partial Suspension of Order Granting Authority ("Petition"). CGV requested that the Commission reconsider and/or partially suspend its Order Granting Authority and that such Order be revised to provide for the following:

(1) In the event the public Utility Holding Company Act of 1935 ("PUHCA) is repealed or materially amended, CGV shall have ninety (90) days from the date of said repeal or material amendment to petition the Commission and suggest imposition of conditions, if any, that will substitute for the safeguards provided by PUHCA. The Commission may impose additional reasonable conditions on the authority granted in order to replace the safeguards provided by PUHCA, and CGV shall be allowed a reasonable period of time to implement those conditions.

(2) Should non-regulated participants that may borrow from the Money Pool borrow, in the aggregate, more than the amount that the non-regulated participants have invested in the Money Pool ("Imbalance Event"), then CGV shall so notify the Commission Staff within ten (10) days of the end of the month in which the Imbalance Event occurs. Within ninety (90) days of such occurrence of the Imbalance Event, CGV shall either file with the Commission a Petition that sets forth how, if at all, the Imbalance Event should affect its participation in the Money Pool, along with any requests for modification of the Order Granting Authority that may be appropriate or CGV shall cure the Imbalance Event. While the Commission considers such a Petition, CGV shall be allowed to participate in the Money Pool according to the terms and conditions imposed by the Order Granting Authority, as modified.

(3) The quarterly reports of action described in the Order Granting Authority shall be filed with the Commission Staff.

CGV also requested that the Commission only partially suspend its Order Granting Authority during its consideration of the Petition and allow CGV to participate in the Money Pool pending entry of its Order On Reconsideration. Finally, CGV requested such further relief as may be appropriate.

On August 15, 2003, the Commission issued an Order Granting Reconsideration. We granted the Petition for the purpose of continuing our jurisdiction over this matter and considering such Petition. We also ruled that the July 28, 2003, Order Granting Authority will remain in effect, in its entirety, pending further order of the Commission.

NOW THE COMMISSION, upon consideration of the application, the Petition, and the advice of its Staff, is of the opinion and finds as follows.

¹ Based on a response from the Applicant to a data request from our Staff, it appears that participants in the Money Pool are both regulated and non-regulated entities.

² Order Granting Authority, Case No. PUE-2002-00310, June 28, 2002.

Ordering Paragraph (3) of the July 28, 2003, Order Granting Authority, states as follows: "In the event that the PUHCA is repealed or materially amended before December 31, 2005, this authorization shall expire unless otherwise ordered in this case." CGV asserts that "[s]imply ordering the authorization to abruptly expire upon PUCHA's repeal or material amendment could create immediate and detrimental financial consequences to CGV."³ We will modify this requirement as follows: (1) within thirty (30) days after PUHCA is repealed or materially amended, CGV shall file an application with the Commission to continue the authority granted in this proceeding; and (2) the authority granted in this proceeding shall expire ninety (90) days after PUHCA is repealed or materially amended unless otherwise ordered by the Commission.

The July 28, 2003, Order Granting Authority also permitted CGV to participate in the Money Pool, "on the condition that the non-regulated participants that may borrow from the Money Pool shall not be allowed to borrow, in the aggregate, more than the amount that the non-regulated participants . . . have invested in the Money Pool." If this condition is violated, CGV requests that it be allowed to continue to participate in the Money Pool. Specifically, CGV asks that the Commission allow CGV to file a request for modification of its approval within ninety (90) days of a violation of this condition, or CGV may take steps over the same time frame either to remedy the violation or to remove itself from participation in the Money Pool. CGV also states that it will notify the Staff of the violation within ten (10) days of the end of the month in which a violation of this condition occurs.

The authority granted to CGV in this proceeding to participate in the Money Pool remains conditioned on the requirement that non-regulated participants shall not be allowed to borrow, in the aggregate, more than the amount that the non-regulated participants have invested in the Money Pool. We will, however, modify this condition to provide that CGV's authority to participate in the Money Pool is not immediately withdrawn if the condition is violated. Rather, when a violation of this condition occurs: (1) CGV will be deemed to have discovered the violation on the business day following its occurrence; (2) CGV shall notify the Commission's Division of Economics and Finance in writing that a violation has occurred within five (5) business days following the discovery of such violation and shall identify the steps taken to remedy the violation and to comply with the requirements of this Order; (3) CGV shall invest no additional funds in the Money Pool during the violation; and (4) if CGV does not remedy the violation within two (2) business days following the discovery of such violation, the authority provided in this proceeding to invest in the Money Pool is withdrawn and CGV shall immediately withdraw all of its investment in the Money Pool.

Finally, CGV requests the Commission to clarify that the quarterly reports required by the July 28, 2003, Order Granting Authority may be filed with the Staff. We grant this clarification and further clarify that such reports shall, among other things, certify that there were no violations other than those reported to Staff as required by the discussion above.

Accordingly, IT IS ORDERED THAT:

- (1) The text of Ordering Paragraph (3) of the July 28, 2003, Order Granting Authority is hereby stricken and replaced with the following:

As a condition of the authority granted in this proceeding, in the event that PUHCA is repealed or materially amended before December 31, 2005: (a) within thirty (30) days after PUHCA is repealed or materially amended, CGV shall file an application with the Commission to continue the authority granted in this proceeding; and (b) the authority granted in this proceeding shall expire ninety (90) days after PUHCA is repealed or materially amended unless otherwise ordered by the Commission.

(2) As a condition of the authority granted in this proceeding, the non-regulated participants that may borrow from the Money Pool shall not be allowed to borrow, in the aggregate, more than the amount that the non-regulated participants (including NiSource, Inc., and NiSource Finance Corp.) have invested in the Money Pool.

(3) In the event of a violation of Ordering Paragraph (2), above: (a) CGV will be deemed to have discovered the violation on the business day following its occurrence; (b) CGV shall notify the Commission's Division of Economics and Finance in writing that a violation has occurred within five (5) business days following the discovery of such violation and shall identify the steps taken to remedy the violation and to comply with the requirements of this Order; (c) CGV shall invest no additional funds in the Money Pool during the violation; and (d) if CGV does not remedy the violation within two (2) business days following the discovery of such violation, the authority provided in this proceeding to invest in the Money Pool is withdrawn and CGV shall immediately withdraw all of its remaining investment in the Money Pool.

(4) The quarterly reports required by Ordering Paragraph (10) of the July 28, 2003, Order Granting Authority may be filed with the Commission's Division of Economics and Finance and such reports shall, among other things, certify that there were no violations other than those reported to Staff as required by Ordering Paragraph (3), above.

- (5) This case shall remain open and the matter shall remain under the continued review, audit, and appropriate directive of the Commission.

³ Petition at 2.

**CASE NO. PUE-2003-00224
JUNE 2, 2003**

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

Ex Parte: In the Matter Adopting a Revised Rule Governing Utility Customer Deposits

ORDER ESTABLISHING INVESTIGATION AND INVITING COMMENTS

On February 22, 1983, the State Corporation Commission ("Commission") issued its Final Order in Case No. PUE-1982-00073, revising the rate of interest that utilities must pay on customer security deposits held longer than 90 days.¹ Pursuant to that Order, the interest rate for investor-owned utilities is set annually in January at a rate equal to the average of the one-year Treasury bill rates for October, November, and December of the preceding year. Non-profit utilities that are owned by their customers pay an interest rate that is two percent (2%) less than the rate paid by the investor-owned utilities.

The interest rate for calendar year 2003 was calculated to be 1.5% for investor-owned utilities. The cooperatives paid no interest on customer deposits as a consequence of the two percent (2%) discount.

Because the Rule has not been revisited since 1983 and because the Commission is concerned that some customers are receiving no interest on their deposits, we are of the opinion that this matter should be docketed, and that the public should be afforded the opportunity to comment on the issues presented herein.

Following a thorough review of any responses and comments received herein, including a review of any suggested Rules, we will direct our Staff to propose revisions to the Rules regarding the interest rate paid on utility customer deposits, where appropriate. We will seek further public comment on Staff's proposals and conduct further proceedings as may be necessary herein.

Therefore, we find that this matter should be docketed; that notice should be published in major newspapers of general circulation throughout the Commonwealth; that this Order should be forwarded to the Virginia Register of Regulations; that interested persons should be afforded an opportunity to file written comments concerning the issues identified in this Order; and that the Staff should file a Report responding to the comments filed herein and proposing further revisions to the Rules, where appropriate.

Accordingly, IT IS ORDERED THAT:

- (1) The matter be docketed and assigned Case No. PUE-2003-00224.
- (2) Interested persons may obtain a copy of this Order by directing a request in writing for the same on or before July 30, 2003, to Farris Maddox, Division of Economics and Finance, P.O. Box 1197, Richmond, Virginia 23218.
- (3) A copy of this Order shall be made available for public review at the Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, during the Commission's regular hours of operation, Monday through Friday, from 8:15 a.m. to 5:00 p.m. Interested persons may also review a copy of this Order on the Commission's website, <http://www.state.va.us/scc/caseinfo.htm>.
- (4) On or before June 30, 2003, the Commission's Division of Information Resources shall cause the following notice to be published as classified advertising on one occasion in newspapers of general circulation throughout the Commonwealth of Virginia:

NOTICE OF INVESTIGATION AND INVITING COMMENTS
BY THE STATE CORPORATION COMMISSION TO CONSIDER REVISIONS
TO THE RULES GOVERNING THE RATE OF
INTEREST FOR UTILITY CUSTOMER DEPOSITS
CASE NO. PUE-2003-00224

On February 22, 1983, the State Corporation Commission ("Commission") issued its Final Order in Case No. PUE-1982-00073, revising the rate of interest that utilities must pay on customer security deposits held longer than 90 days. Pursuant to that Order, the interest rate for investor-owned utilities is set annually in January at a rate equal to the average of the one-year Treasury bill rates for October, November, and December of the preceding year (the rules adopted in the Commission's Final Order are codified at 20 VAC 5-10-20). Non-profit utilities that are owned by their customers pay an interest rate that is two percent less than the rate paid by the investor-owned utilities.

The interest rate for calendar year 2003 was calculated to be 1.5 percent for investor-owned utilities. The cooperatives paid no interest on customer deposits as a consequence of the two percent discount.

Because this Rule has not been revisited since 1983 and because the Commission is concerned that some customers are receiving no interest on their deposits, we are now soliciting comments on whether, and if so, how, the Rule should be revised.

Interested persons may obtain a copy of the Commission's Order by directing a written request for a copy of the same on or before July 30, 2003, to Farris Maddox, Division of Economics and Finance, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218 and referencing Case No. PUE-2003-

¹ The rules adopted in the Commission's Final Order are codified at 20 VAC 5-10-20.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

00224. Interested persons may also obtain a copy of the Order from the Commission's website, <http://www.state.va.us/scc/caseinfo.htm>.

On or before July 30, 2003, any person desiring to comment on this matter may do so by directing such comments in writing to the Clerk of the Commission at the address set forth below. Interested persons desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.state.va.us/scc/caseinfo/notice.htm>.

All written communications to the Commission concerning this matter 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, and shall refer to Case No. PUE-2003-00224.

(5) On or before July 30, 2003, any person desiring to comment on this matter may do so by directing an original and fifteen (15) copies of such comments in writing to Joel H. Peck, Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. PUE-2003-00224. Interested persons desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.state.va.us/scc/caseinfo/notice.htm>.

(6) On or before September 5, 2003, the Division of Economics and Finance shall file a report, summarizing and responding to the comments received herein, and proposing revisions to the Rule, where appropriate. The Division of Economics and Finance shall mail a copy of its report to all parties of record.

(7) On or before October 1, 2003, interested persons may file with the Clerk of the Commission an original and fifteen (15) copies of any response to the Staff Report. Interested persons desiring to submit responses electronically may do so by following the instructions found on the Commission's website: <http://www.state.va.us/scc/caseinfo/notice.htm>.

(8) The Commission's Division of Information Resources shall forthwith cause this Order to be forwarded for publication in the Virginia Register of Regulations.

(9) On or before July 16, 2003, the Division of Information Resources shall file with the Clerk of the Commission proof of publication of the notice required in Ordering Paragraph (3) herein.

**CASE NO. PUE-2003-00224
DECEMBER 23, 2003**

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

Ex Parte: In the Matter Adopting a Revised Rule Governing Utility Customer Deposits

FINAL ORDER

On February 22, 1983, the State Corporation Commission ("Commission") issued its Final Order in Case No. PUE-1982-00073, revising the rate of interest that utilities must pay on customer security deposits held longer than 90 days.¹ Pursuant to that Order, the interest rate for investor-owned utilities is set annually in January at a rate equal to the average of the one-year U.S. Treasury bill rates for October, November and December of the preceding year. Non-profit utilities that are owned by their customers ("cooperatives") pay an interest rate that is two percent (2%) less than the rate paid by the investor-owned utilities.

The interest rate for calendar year 2003 was calculated to be 1.5% for investor-owned utilities. The cooperatives, as a consequence of the 2% discount, paid no interest on customer deposits.

Because the Rule has not been revisited since 1983 and because the Commission is concerned that some customers are receiving no interest on their deposits, we issued an Order Establishing Investigation and Inviting Comments on June 2, 2003, affording the public an opportunity to comment on the issues presented in that Order.

Comments were received which provided the individual or collective responses of: four investor-owned electric utility companies; 12 electric cooperatives and the Virginia, Maryland, & Delaware Association of Electric Cooperatives ("Association of Electric Cooperatives"); three investor-owned gas utilities, one water company, and the Virginia Telecommunications Industry Association (collectively, the "Combined Companies"); and the Division of Consumer Counsel for the Office of the Attorney General. Staff filed its Report on September 5, 2003. Responses to the Staff Report were filed on October 1, 2003, by the Association of Electric Cooperatives and the Division of Consumer Counsel.

On October 24, 2003, we issued an Order for Notice and Comment or Requests for Hearing, publishing Staff's proposed Deposit Rules and establishing the procedural schedule for considering Staff's proposed rules. Pursuant to that Order, comments to the proposed Deposit Rules were filed on December 1, 2003, by Dominion Virginia Power, the Division of Consumer Counsel, and the Combined Companies. None of the commenters requested a hearing and all of the comments supported the proposed changes to the Deposit Rules. In addition to the proposed changes that were noticed, the Division of Consumer Counsel recommended that the benchmark rate used to establish the Customer Deposit rate be amended from the yield on one-year U.S. Treasury bills to the one-year Constant Maturity Treasury rate. This change was proposed because the Treasury no longer issues one-year Treasury bills; however, the Federal Reserve interpolates yields on actively traded Treasury securities to derive the Constant Maturity Treasury rates.

¹ The rules adopted in the Commission's Final Order of February 22, 1983, are codified at 20 VAC 5-10-20.

As directed by the Commission's Order dated October 24, 2003, Staff filed a report on December 12, 2003. Staff's report summarized the comments received, and supported the Division of Consumer Counsel's recommendation to change the benchmark interest rate to more accurately reflect currently available market rate information.

Responses to the Staff's report were due no later than December 22, 2003. No responses were received.

NOW UPON CONSIDERATION of the comments filed herein, we find that we should adopt the rules appended to this order as Attachment A, effective upon filing with the Virginia Registrar of Regulations, revising both the method of calculating the interest rate paid by utilities on customer deposits and the benchmark used to set the interest rate. We briefly summarize the rules we adopt ("Final Rules") below.

The Final Rules change the prior year period used to calculate the interest rate on all customer deposits from the three-month period ending in December, to the three-month period ending in November. The Final Rules also change the calculation of the interest rate on customer deposits for cooperatives from the investor-owned utility rate less a fixed rate of 2.0% (*e.g.*, 2.0% less 2.0% = 0%), to 75% of the investor-owned utility rate (*e.g.*, 2.0% x 0.75 = 1.5%). Based on comments received, the Final Rules change the benchmark interest rate used to calculate the consumer deposit from the annual yield on one-year Treasury bills, to the one-year constant maturity Treasury rate as calculated by the Federal Reserve. This change is necessary since one-year Treasury bills are no longer being issued. However, the Federal Reserve calculation of a one-year constant maturity Treasury rate provides a reasonable substitute that is derived from the interpolation of yield curve data from Treasury securities that are issued and traded.

Accordingly, IT IS ORDERED THAT:

- (1) We hereby adopt the Rules Governing Utility Customer Deposits, appended hereto as Attachment A.
- (2) A copy of this Order and the rules adopted herein shall be forwarded forthwith 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 Utility Customer Deposits" 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-2003-00257
SEPTEMBER 16, 2003**

APPLICATION OF
THE POTOMAC EDISON COMPANY D/B/A ALLEGHENY POWER

For a determination that the Commission's July 11, 2000, Order Approving Phase I Transfers of Allegheny Power's functional separation plan covers the December 22, 2000, Release and Guarantee Agreement between Allegheny Power, Allegheny Energy Supply Company, LLC and the Holders of Certain Pollution Control Notes, or in the alternative, for approval of the said Agreement Nunc Pro Tunc

ORDER GRANTING APPROVAL

On June 5, 2003, the Potomac Edison Company d/b/a Allegheny Power ("AP" or "Company"), filed with the State Corporation Commission ("Commission") an application ("Application"), pursuant to §§ 56-76 to 56-92 of Chapters 4 and 5 of Title 56 of the Code of Virginia ("Code"), seeking a determination that the Commission's July 11, 2000, Order in Case No. PUE-2000-00280 provided AP with the authority to enter into the December 22, 2000, release and guarantee agreement between AP, its affiliate, Allegheny Energy Supply Company, LLC ("AE Supply"), and the holders of certain pollution control notes.¹ The Company also requests in its Application that, in the alternative, if the Commission finds that approval is needed under § 56-59 of the Code or any other applicable Code sections, the Commission approve the Application, Nunc Pro Tunc.

On May 25, 2000, AP filed Phase I of its application for approval of a functional separation plan ("Phase I Application"). AP's Phase I Application was docketed as Case No. PUE-2000-00280. In its Phase I Application, AP requested all necessary approvals under §§ 56-76 to 56-92 of Chapters 4 and 5 of Title 56, and § 56-590 B of the Virginia Electric Utility Restructuring Act, § 56-576 *et seq.*, for certain transactions. By its Order Approving Phase I Transfers, entered July 11, 2000, the Commission found that "[t]he approvals sought by AP pursuant to the Affiliates Act, Chapter 4 of Title 56 of the Code of Virginia, and the Transfers Act, Chapter 5 of Title 56 of the Code of Virginia, are granted as requested in the application and as modified by the terms of the Memorandum of Understanding, as supplemented on July 7, 2000, and subject to the Stipulation entered into between AP and Consumer Counsel."²

¹ We note that AE Supply may sell some of its generation assets that are associated with these notes to unaffiliated third parties. In that regard, AP has filed a letter with the Commission seeking the Commission's endorsement of AP's plans to seek reclassification of certain generation assets as eligible facilities under Section 32 of the Public Utility Holding Company Act of 1935 ("PUHCA"), 15 U.S.C.S. Sec. 79z-5a, thereby enabling such generation assets to be owned and operated by exempt wholesale generators. See Allegheny Power Letter of May 9, 2003, to Hullihen Williams Moore, Chairman.

² Application of The Potomac Edison Company d/b/a Allegheny Power, Case No. PUE-2000-00280, 2000 S.C.C. Ann Rep. 530-532. In its Phase I Application, AP filed a Memorandum of Understanding that the Company reached with the Commission's Staff. The MOU contained certain representations and undertakings that AP made in order to comply with the requirements of the Act. Furthermore, in Case No. PUE-2000-00280, the Division of Consumer Counsel, Office of the Attorney General ("AG") filed comments and a Stipulation the AG reached with AP. In the Stipulation, AP advised the Commission that it would not impose a wires charge but would recover its stranded costs solely through capped rates.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Company represents in its current Application that, by agreement dated August 1, 2000, AP conveyed nearly all of its generating assets at book value to an affiliate. AP asserts in its Application that prior to its Phase I Application, AP had issued \$104.2 million in Pollution Control Notes ("Notes") under the financing authority granted to it by the Commission, among others, secured by pollution control property conveyed to AE Supply as part of the generating assets. According to AP, \$3.2 million of these Notes matured and were retired in 2002.³ AP further represents that by an Assumption and Indemnity Agreement dated August 1, 2000, AE Supply assumed responsibility for the interest and principal payments on the Notes and agreed to indemnify AP for any payments it was required to make on the Notes issued by AP and secured by assets conveyed to AE Supply.

Furthermore, AP states that on December 22, 2000, AP, AE Supply and the holders of the Notes entered into an agreement denominated a Release and Guarantee Agreement ("Agreement") in which holders of the Notes released AP "from all its obligation under the Notes." According to AP, all references to AP as the issuer in the Notes were thereafter deemed to be references to AE Supply the obligor, as per the Agreement. AP states that the holders released AP from its obligations as issuer upon two conditions: (i) AE Supply delivering to holders a financial guaranty insurance policy; and (ii) AP guaranteeing, for the benefit of the holders, the payment of principal and interest on the Notes. According to the Company, as a result of the Agreement, AP was relieved of its obligations as issuer of the Notes, and thereafter, AE Supply was considered the issuer of the Notes. In addition, according to AP, AE Supply had provided the holders of the notes with a MBIA Insurance Company financial guaranty insurance policy, and AP had provided the holders of the notes with a guarantee.

AP asserts in its Application that the Agreement is in the best interests of AP's ratepayers because the Agreement memorializes the Note holders acceptance of AE Supply's substitution as issuer for AP, thereby relieving AP of its primary obligation as issuer of the Notes. In addition, AP asserts that the Agreement removes the liability connected with the Notes from AP's balance sheet, thus, improving AP's financial status. Furthermore, AP asserts that an agreement with the holders of the Notes, to release AP from its primary obligations as issuer under the Notes, is an integral part of the process of separation approved by the Commission in Case No. PUE-2000-00280. AP further asserts that the Company requested all necessary approvals to complete the separation plan, including approvals under § 56-82 of the Code, which statutory provision governs the assumption of a guarantee for an affiliated company. AP further asserts that in entering into the Agreement, the Company acted in accordance within its understanding of the authority granted to it by the Commission in its July 11, 2000, Order in Case No. PUE-2000-00280. AP contends in its Application that if the Commission issues an order finding that the Agreement is null and void, AP could return to its former issuer status and the bond obligations would be returned to AP's balance sheet.

AP also states that the Commission Staff has informed the Company that the Staff believes AP should have received a separate approval for the Agreement under § 56-59 of Chapter 3 of Title 56. AP requests that to the extent that the Commission agrees that approval is needed under § 56-59 of the Code, such approval should be given Nunc Pro Tunc, so as not to create uncertainty regarding the legality of the Agreement.

On June 27, 2003, the Commission issued an Order Establishing Proceeding and Inviting Comments and Requests for Hearing, which docketed this proceeding and established a procedural schedule. On July 18, 2003, the Commission Staff filed a Report in this matter. Staff concludes that AP did not receive authority to act as a guarantor on the pollution control notes under either Chapters 3 or 4 of Title 56 of the Code. In addition, Staff states that it would be contrary to the public interest for the Commission to authorize AP to guarantee the obligations of AE Supply in light of the fact that both Allegheny Energy, Inc., and Supply have defaulted on some of its trading partner agreements and due to their continued diminishing financial status.

The Division of Consumer Counsel, Office of the Attorney General ("Consumer Counsel") filed comments on July 18, 2003. Consumer Counsel asserts that the Commission did not previously grant necessary approval of the Agreement. Consumer Counsel argues that Nunc Pro Tunc approval is an inappropriate remedy. Consumer Counsel also states that the Agreement has created an unacceptable risk to rate-paying customers of AP, especially given the current financial condition of AE Supply. Consumer Counsel concludes that AP has failed to demonstrate that the Agreement is in the public interest.

On July 31, 2003, AP filed reply comments. AP requests that the Commission find that AP's signing of the Agreement, thereby providing a second guarantee for the pollution control bonds in question: (1) was a necessary step to remove the pollution control debt as an obligation on AP's books; (2) was further an inherent part of the Phase I transfers authorized by the Commission in its July 11, 2000, Order in Case No. PUE-2000-00280; and (3) was at the time the obligation was undertaken, and continues now to be, in the public interest. In the alternative, should the Commission find that approval under § 56-59 of the Code was necessary for AP to assume secondary guarantor status on these bonds, AP requests that the Commission recognize the public interest benefit of such guarantee and grant such authority after the fact.

NOW THE COMMISSION, having considered the pleadings and the applicable law, is of the opinion and finds as follows.

Pursuant to § 56-59, which is part of Chapter 3 of Title 56 of the Code:

No public service company shall henceforth assume any obligation or liability as guarantor, indorser, surety or otherwise in respect to the securities of any other person, firm, association or corporation, when such securities are payable at periods of twelve months or more after the date thereof, without having first secured from the Commission an order authorizing it so to do. (Emphasis added.)

Accordingly, § 56-59 of the Code requires AP to obtain authorization from the Commission prior to assuming an obligation as guarantor under the Agreement. Our July 11, 2000, Order in Case No. PUE-2000-00280, however, neither explicitly nor implicitly authorizes AP to assume an obligation as guarantor under the Agreement.

In addition, the Agreement represents a contract by AP with an affiliated interest under Chapter 4 of Title 56 of the Code (§ 56-76 et seq.). Thus, AP must file the Agreement with, and receive approval from, the Commission pursuant to Chapter 4. The Agreement, however, was not filed by AP in

³ According to the Company, the \$101 million of pollution control financings presently outstanding are as follows: Pollution Control Notes April 1, 1993, \$8.6 million for the Fort Martin Power Station approved in Case No. PUF-1993-00005; May 15, 1995, \$21 million for the Pleasants Power Station approved in Case No. PUF-1993-00061; February 1, 1998, \$30 million for the Pleasants Power Station approved in Case No. PUF-1997-00031; and April 1, 1999, \$9.3 million for the Pleasants Power Station approved in Case No. PUF-1998-00015 – and Solid Waste Disposal Notes April 15, 1992, \$6.55 million for the Harrison Power Station approved in Case No. PUF-1992-00011; May 1, 1993, \$13.99 million for the Harrison Power Station approved in Case No. PUF-1992-00042; and July 15, 1994, \$11.56 million for the Harrison Power Station approved in Case No. PUF-1992-00042.

Case No. PUE-2000-00280. Moreover, the Commission's July 11, 2000, Order in that case neither explicitly nor implicitly provides approval of the Agreement under Chapter 4 of Title 56.

Having found that AP is required to obtain the Commission's approval of the Agreement under Chapters 3 and 4 of Title 56 of the Code, but has not yet done so, we now turn to whether approval should be granted. The Commission's July 11, 2000, Order in Case No. PUE-2000-00280 does not prohibit AP from remaining the primary obligor under the Notes after the transfer of generation assets. When AP's generation assets were transferred, the Commission's July 11, 2000, Order did not require that the Notes also be amended such that AP would have no liability with respect to the Notes. In August 2000, when the generation assets were transferred, the Notes were not amended and AP remained the only obligor to the noteholders.⁴ Thus, AP asserts that it is in the public interest for AP to assume secondary guarantor status, as opposed to serving as the primary obligor and carrying the pollution control debt on its balance sheet. We agree and find that approval of the Agreement is in the public interest.

In the future, however, we expect the Company, in cases where it is requesting Commission approval, to file all agreements that will be entered into with respect to proposed transactions. The Company's application in such instances should be clear as to how its proposed transactions will be accomplished, and all necessary arrangements and agreements should be filed and explicitly approved as part of such proceeding.

Accordingly, IT IS ORDERED THAT:

- (1) AP is hereby authorized to provide guarantees for a maximum amount of \$101 million pursuant to the Release and Guarantee Agreement in the form filed with the Commission.
- (2) AP is hereby authorized to execute the Release and Guarantee Agreement in the form filed with the Commission.
- (3) The guarantee authority for the Release and Guarantee Agreement granted herein shall automatically decrease with the repayment of principal.
- (4) As a condition of our approval herein, AP shall not seek to recover in rates any expenses or debt service obligations related to the Release and Guarantee Agreement.
- (5) The authority granted herein shall have no implications for ratemaking purposes.
- (6) Any subsequent financing arrangements or affiliate agreements shall require separate authority, which shall not be implied by approval of the Release and Guarantee Agreement herein.
- (7) Approval of the Release and Guarantee Agreement shall not preclude the Commission from applying the provisions of § 56-78 of the Code hereafter.
- (8) Approval of the Release and Guarantee Agreement is expressly conditioned upon the reserved power of the Commission to revise and amend the terms and conditions of the Release and Guarantee Agreement if, when, and as necessary to protect and promote the public interest.
- (9) The Commission reserves the right to examine the books and records of any affiliate, whether or not such affiliate is regulated by the Commission.
- (10) Within ten (10) days of AE Supply defaulting on the Notes, AP shall notify the Commission's Division of Economics and Finance of such default.
- (11) This matter shall remain under the continued review, audit, and appropriate directive of the Commission.

⁴ As noted above, when the assets were transferred, AE Supply assumed responsibility for the interest and principal payments on the Notes and agreed to indemnify AP for any payments it was required to make on the Notes issued by AP and secured by assets conveyed to AE Supply. AE Supply, however, was not an obligor on the Notes, and AP remained the sole obligor on the Notes.

**CASE NO. PUE-2003-00270
JULY 24, 2003**

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, the Virginia 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"), charged with the investigation of probable violations of the Act, has completed investigations of certain incidents between August 12, 2002, and May 12, 2003, 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 of Virginia;

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- (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 and D of the Code of Virginia.
 - (b) Failing on certain occasions to mark within the time prescribed in the Act, in violation of § 56-265.19 A and D of the Code of Virginia.
 - (c) Failing on certain occasions to report to the notification center that lines had been marked or they were not in conflict with the proposed excavation, in violation of § 56-265.19 A, and 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.

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 June 3, 2003, 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 \$9,350 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.

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 be, and it hereby is, accepted.
- (2) The sum of \$9,350 tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2003-00274
NOVEMBER 7, 2003**

APPLICATION OF
SKYLINE WATER CO., INC.

For authority to acquire and to dispose of utility assets and for certificates of public convenience and necessity authorizing it to provide water service

PRELIMINARY ORDER

On June 11, 2003, Skyline Water Co., Inc. ("Skyline" or "Company"), filed with the State Corporation Commission ("Commission") its Application for Certificate ("Certificate Application"). As set out in the Certificate Application, Skyline proposes to operate twelve water systems formerly operated by Overlook Heights Water Company, Inc., Pelham Manor Water Supply, Inc., TWW, Inc., MTV, Inc., Wildwood Water Company, Inc., Rebel Water Works, Inc., Small Water Works Consolidated, Inc., and Skyline in the counties of Culpeper, Orange, and Fauquier. These systems include systems of Pelham Manor Water Supply, Inc., and Wildwood Water Company, Inc., for which certificates of public convenience and necessity had been issued by the Commission. Skyline proposes that the certificates held by Pelham Manor Water Supply, Inc., and Wildwood Water Company, Inc., would be replaced by a certificate issued to Skyline. The Certificate Application includes a proposed schedule of rates and charges, including increased rates for Pelham Manor Water Supply, Inc., and Wildwood Water Company, Inc.

On June 20, 2003, Overlook Heights Water Company, Inc., Pelham Manor Water Supply, Inc., TWW, Inc., MTV, Inc., Wildwood Water Company, Inc., Rebel Water Works, Inc., Small Water Works Consolidated, Inc., and Skyline filed with the Commission their Application for Approval of Merger and Transfer ("Merger and Transfer Application"). The Merger and Transfer Application was complete on July 23, 2003. The Merger and Transfer Application provides that Overlook Heights Water Company, Inc., Pelham Manor Water Supply, Inc., TWW, Inc., MTV, Inc., and Wildwood Water Company, Inc., propose to merge with Skyline. Skyline would be the surviving corporation and would provide water service using the facilities currently owned by the non-surviving corporations. The Merger and Transfer Application also provides that Rebel Water Works, Inc., and Small Water Works Consolidated, Inc., propose to transfer three water systems to Skyline.

Both the Certificate Application and the Merger and Transfer Application have been supplemented by additional information supplied by the Company.

On June 24, 2003, Pelham Manor Water Supply, Inc., and Wildwood Water Company, Inc., which had been issued certificates of public convenience and necessity, were merged into Skyline, which does not have a certificate of public convenience and necessity.

On July 30, 2003, the Commission entered an Order for Notice and Comment docketing the Certificate Application, as supplemented, and the Merger and Transfer Application, as supplemented (collectively, the "Applications"). The Order for Notice and Comment directed Skyline to serve copies of the order on the chairs of the Board of Supervisors of Culpeper, Orange, and Fauquier Counties and on all customers in its proposed service territory, which may be made by mailing the notice with bills. The Order for Notice and Comment also directed the Staff of the Commission ("Staff") to investigate the Applications and file its report ("Staff Report") by October 3, 2003, permitted the Company to file comments by October 17, 2003, and required that comments on the Applications and requests for a hearing be filed by September 10, 2003.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Comments and requests for a hearing have been filed with the Clerk of the Commission by Robert and Jacqueline Borges; Kenneth C. Cranston, Jr.; Pauline Wilmore; Bruce A. and Beverly J. Baker; Laurence R. and Jean E. Brakowiecki; Lucy K. Powers; Lee and Laura Hart; Morris and Ada Foster; Charles and Frances Berry; Christina and Alan Powers; David R. Rawls; Douglas J. and Carolyn G. Stephens; Russell Lane; and David Ruckman.

On October 21, 2003, the Board of Supervisors of Orange County submitted a copy of a Resolution stating that Skyline's acquisition of the waterworks in the Wolftrap subdivision in Orange County will not interfere with the mission and operation of the Rapidan Service Authority and that the proposed \$10,000 disconnection fee is contrary to the best interests of the residents of the subdivision.

On September 25, 2003, the Staff filed a motion requesting that the date for the filing of the Staff Report be extended from October 3, 2003, to October 17, 2003, and that the date for the filing of comments by the Company be extended from October 17, 2003, to October 31, 2003. On September 30, 2003, the Commission entered an Order revising the procedural schedule as requested by the Staff's motion.

On October 14, 2003, the Staff filed a second motion requesting that the date for the filing of the Staff Report be extended from October 17, 2003, to November 10, 2003, and that the date for the filing of comments be extended from October 31, 2003, to November 21, 2003. On October 16, 2003, the Commission entered an Order further revising the procedural schedule as requested by the Staff's motion.

On October 20, 2003, the Company filed a Motion to Increase Rates for the water service provided by the Pelham Manor and Wildwood waterworks, beginning with the periods September 25, 2003, to October 25, 2003. The Company's motion requests that the increases be approved by October 27, 2003, in order to avoid financial deficiencies to meet certain obligations, and be instituted subject to refund.

NOW THE COMMISSION, having considered the Certificate Application, the Merger and Transfer Application, the Motion to Increase Rates for the Pelham Manor and Wildwood waterworks, the comments and requests for a hearing that have been submitted, and applicable law, finds that Skyline's rates proposed in the Certificate Application shall be interim and subject to refund until such time as an investigation by Staff has been completed and the appropriateness of the rates has been determined.

Currently Skyline is providing water service to more than 50 customers without having obtained a certificate of public convenience and necessity, and therefore we find that it is in violation of Va. Code § 56-265.3.

We will grant the request for a hearing and will appoint a hearing examiner to conduct all further proceedings in this matter.

Accordingly, IT IS ORDERED THAT:

(1) Skyline's proposed rates and charges as set forth in the Certificate Application for Pelham Manor and Wildwood may take effect for service provided in billing periods commencing subsequent to September 25, 2003, subject to the Commission's power to fix and order substituted just and reasonable rates, charges, terms, and conditions, and to order refunds and credits.

(2) Skyline's proposed rates and charges as set forth in the Certificate Application for all of its other water systems may take effect on such date as Skyline elects, provided such rates and charges shall be subject to the Commission's power to fix and order substituted just and reasonable rates, charges, terms, and conditions, and to order refunds and credits.

(3) Pursuant to 5 VAC 5-10-520 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 December 1, 2003, any person desiring to participate in this proceeding as a Respondent, as defined in Rule 5 VAC 5-20-80 B, shall file an original and twenty (20) copies of a Notice of Participation with the Clerk of the Commission and shall serve a copy of the same upon Skyline's counsel, Daniel J. Smith, Esquire, Keeler Obenshain, PC, 100 10th Street, N.E., Suite 300, Charlottesville, Virginia 22902; David K. Travers, President, Skyline Water Co., Inc., 8284 James Madison Highway, Rapidan, Virginia 22733; and upon other parties of record. The Notice of Participation 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.

(5) On or before November 24, 2003, Skyline shall file with the Clerk of the Commission an original and twenty (20) copies of any direct testimony and exhibits, in addition to or in lieu of information submitted by Skyline with its Applications and other pleadings, including responses to Staff's data requests, that Skyline intends to present in support of its Applications and other pleadings.

(6) Any person who expects to submit evidence, cross-examine witnesses, or otherwise participate in the hearing in this proceeding as a Respondent shall file on or before December 22, 2003, an original and twenty (20) copies of the prepared testimony and exhibits the Respondent expects to present at the hearing, with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, referring to Case No. PUE-2003-00274, and shall simultaneously send a copy thereof to Skyline, Skyline's counsel, and to any other Respondents. Any corporate entity that wishes to submit evidence, cross-examine witnesses, or otherwise participate as a Respondent must be represented by legal counsel in accordance with the requirement of Rule 5 VAC 5-20-30 of the Commission's Rules of Practice and Procedure.

(7) The Commission's Staff shall present its findings and recommendations in prepared testimony and exhibits which shall be filed on or before January 9, 2004, in an original and twenty (20) copies. The filing of the Staff's prepared testimony and exhibits as provided in this Ordering Paragraph shall be in lieu of the requirement in the July 30, 2003, Order for Notice and Comment, as amended, that Staff file its Report on or before November 10, 2003. Staff counsel shall simultaneously serve a copy of Staff's testimony and exhibits on Skyline and its counsel and to each Respondent.

(8) On or before January 12, 2004, Skyline shall file with the Clerk of the Commission an original and twenty (20) copies of the any testimony it expects to introduce in rebuttal to the direct prefiled testimony of the Staff and Respondents. Additional rebuttal evidence may be presented without pre-filing, provided it is in response to evidence which was not prefiled but was elicited at the time of the hearing and, provided further, the need for additional rebuttal evidence is timely addressed by motion during the hearing and leave to present said evidence is granted by the Hearing Examiner. A copy of the prefiled rebuttal evidence shall be served upon the Commission Staff and all other parties to the proceeding on or before January 12, 2004.

(9) Skyline shall respond to written interrogatories, data requests, or requests for the production of documents within five (5) business days after the receipt of the same. Respondents shall provide to Skyline, other Respondents, and Staff, any workpapers or documents used in the preparation of their filed testimony promptly upon request. Except as so modified, discovery shall be in accordance with Part VI of the Commission's Rules of Practice and Procedure.

(10) Staff's counsel is directed to send a copy of this order to all persons who have filed comments or requests for a hearing with the Clerk of the Commission in this proceeding. Such copies shall be sent by first class mail, postage prepaid, to those persons who submitted comments or requests in writing, or electronically to those persons who submitted comments or requests electronically.

(11) Except as modified herein, all other provisions of our July 30, 2003, Order for Notice and Comment shall remain in effect.

**CASE NO. PUE-2003-00275
AUGUST 26, 2003**

JOINT PETITION OF
CHINCOTEAGUE BAY TRAILS END ASSOCIATION, INC.
and
LOU AND JUDITH E. SAYLAND

For approval of the purchase of the stock of Trails End Utility Company, Inc., pursuant to Chapter 5 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On June 30, 2003, Chincoteague Bay Trails End Association, Inc. (the "Association"), and Lou and Judith E. Sayland (the "Saylands") (collectively the "Petitioners"), filed a completed joint petition with the State Corporation Commission (the "Commission") seeking approval pursuant to Chapter 5 of Title 56 (the "Utility Transfers Act") of the Code of Virginia (the "Code") for the Association to purchase from the Saylands all of the outstanding stock of Trails End Utility Company, Inc. (the "Utility"), for the sum of \$810,000, and thereafter to operate the Utility for the benefit of the Association's members.

Trails End Utility Company, Inc., is a Virginia Corporation under the Small Water and Sewer Public Utility Act providing water to the Chincoteague Bay Trails End Subdivision in Accomac County, also known as Trails End Campground (the "Campground"), under a certificate of public convenience and necessity dated February 5, 1995. The Campground is situated in the northern part of Accomac County and contains 2,567 lots that are mostly used by transient vacationers that stay in tents, mobile homes, travel trailers, and the like for limited periods of time. One hundred people, representing 53 family units and owning 72 lots, are permanent residents of the Campground. The Utility, which was initially incorporated on September 26, 1977, is a completely self-sufficient, self-contained water utility with its own mains, wells, storage tanks, control building and equipment. The water system consists of three wells, two 2,000 gallon hydropneumatic tanks, one 60,000 gallon bulk storage tank, two 15 horsepower transfer pumps, and the distribution system. The Utility has an operation permit dated March 7, 1997, issued by the Virginia Department of Health allowing the Utility to pump 238,400 gallons per day. The Utility supplies water to the Campground's swimming pool, office and administrative buildings as well as all of the Campground's lots.

Lou and Judith E. Sayland are the sole stockholders of the Utility, which stock they acquired from Dallas D. Swan, Jr., through a Stock Acquisition Agreement dated September 30, 1991.

Chincoteague Bay Trails End Association, Inc., is a Virginia non-stock corporation and the property association for the lot owners ("Members") of the Campground. The Association is charged with furthering and promoting the common interests of the Campground's Members, which includes regulating, maintaining, and controlling all recreational and common facilities, including parks, swimming pools, playgrounds, streets, and other common facilities and properties. The Association also provides or authorizes commercial services and activities within the Campground, including the general store, marina, restaurant, miniature golf, recreational boat rental, and other enterprises. The Association has the authority to charge lot assessments, entry fees, and user fees. The Association is managed by a five to seven person Board of Directors (the "Board"), which is elected by the Members (one vote per lot), and serve a term of three years. The Board is authorized to buy and sell real and personal property and borrow money on the Association's behalf.

The Association plans to finance the acquisition of the Utility's stock with a \$10,000 earnest deposit upon execution of the Agreement, a \$190,000 cash down payment upon closing, and a \$610,000 loan obtained from a commercial bank or provided by the Saylands. If seller-financed, the loan will have a 15-year amortization, carry an 8.5% annual interest rate, and be payable in ten equal, annual payments of principal and interest, with a balloon payment for unpaid principal and accrued interest due at the end of year ten. As of July 1, 2003, the Utility's outstanding debt consisted of a loan from the Saylands for \$384,356, which will be paid off by the proceeds from the stock acquisition.

The \$810,000 acquisition price represents a \$110,000 premium over the price that the Saylands paid to acquire the Utility in 1991. The Association states that it will account for the premium as an Acquisition Adjustment.

Notice of Proposed Acquisition

The Association represents that, via a Special Assessment Notice Letter dated September 24, 2001, a public general meeting held October 20, 2001, a Chincoteague Bay Trails End Newsletter dated November 2001, and a public notice posted in the Association's office, the Association noticed all Campground lot owners of its intent to acquire the Utility and its intent to fund the cash down payment through a special assessment fee. The Association supplied copies of the above-referenced Special Assessment Notice Letter and Chincoteague Bay Trails End Newsletter to the Commission.

Chancery Cause 02CH001

On January 2, 2002, Faith J. Lynch, a lot owner at the Campground, filed a Bill of Complaint for Declaratory Judgment and Injunctive Relief with the Circuit Court (the "Court") of Accomac County. In her lawsuit, Ms. Lynch alleged that the Association was in violation of the governing covenants, Bylaws, and Code, to the extent that the Association:

1. Permitted the construction of homes on campsites for use as permanent residences;
2. Permits the overuse of the [Utility's] water system;
3. Has levied a special assessment against lot owners for a purpose not permitted by law;
4. Has contracted to purchase an asset, the [Utility], through a method not permitted by law;
5. Is violating its own prohibition against exceeding its budget by more than 10% for non-emergency expenditures;
6. Has refused to comply with the provisions of Virginia Code § 55-510; and
7. Permits Board Members to vote proxies on lots owned by the Association.

The Hearing was held September 13, 2002, and on March 6, 2003, the Court issued its Final Decree ("Decree"). In the Decree, the Court found that:

1. There are campsites within the Campground that are being used as permanent residences. However, the Court accepted an Amended Declaration of Covenants ("Amended Declaration") for the Association recorded November 29, 2002, which allows Association employees and retired persons 55 years of age or older to use Campground sites as permanent residences. The Court enjoined the Association to comply with the Amended Declaration, to maintain detailed records showing compliance, and to make such records available for inspection pursuant to § 55-510 of the Code.
2. There is no evidence to conclude that the Association permitted the overuse of the Utility's water system.
3. The Association's special assessment of \$100 per lot is a valid assessment in accordance with the Amended Declaration and in accordance with the law.
4. The [Agreement] between the Association and the Saylands for the Association to acquire the common stock of the Utility is a valid and enforceable contract.
5. The Association has complied with its rules for expenditures, which is not material to the issues of the case.
6. The Association is enjoined from voting any lot owned by the Association on any matter the lot owners are permitted to vote, including the election of Directors.
7. The Complainant is denied all further relief, and each party shall pay its own attorneys' fees and costs.

The Decree is final as of that date since no motion to set it aside or appeal it to the Virginia Supreme Court was made within the statutory time limit.

NOW THE COMMISSION, upon consideration of the joint petition and representations of Petitioners and having been advised by its Staff, is of the opinion and finds that the proposed purchase of the Utility's stock by the Association from the Saylands will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates.

We believe the proposed acquisition is reasonable because it transfers ownership to the party that has the greatest economic interest in the Utility. Unlike a private owner who may be interested in maximizing his personal income, the Association, as the representative of the Campground's lot owners, will be motivated to keep water rates down while maintaining a quality water system. The Association is already extensively involved in the Utility's day-to-day operation. Association Members currently identify and report leaks and provide maintenance and security services for the Utility. The acquisition will allow the Association to extend and even enhance these services. We also believe that, with more than 2,000 Members, the Association is likely to have greater resources than the Saylands for financing, managing, and operating the water system. The Association has already collected through the special assessment fee \$205,700, or 25%, of the acquisition price of the Utility. We, therefore, believe that the proposed acquisition should be approved.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-88.1 and 56-90 of the Code of Virginia, Chincoteague Bay Trails End Association, Inc., is hereby granted approval to purchase from Lou and Judith E. Sayland all of the outstanding stock of Trails End Utility Company, Inc., for the sum of \$810,000, and thereafter to operate the Utility for the benefit of the Association's members.
- 2) The approval granted herein shall in no way be deemed to include approval of any acquisition adjustment for ratemaking purposes related to the above-referenced acquisition, and shall have no other ratemaking implications.
- 3) Within 30 days of completing the transaction, subject to extension by the Commission's Director of Public Utility Accounting, Trails End Utility Company, Inc., shall file a Report of Action with the Commission. Included in the Report of Action shall be the date of acquisition, the price of the acquisition, a settlement sheet showing all receipts and disbursements related to the acquisition, and the accounting entries made to record the acquisition.
- 4) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00279
DECEMBER 23, 2003**

APPLICATION OF
A&N ELECTRIC COOPERATIVE

For review of tariffs and terms and conditions of service for retail access

FINAL ORDER

On June 24, 2003, A&N Electric Cooperative ("A&N" or the "Cooperative") filed an application with the State Corporation Commission ("Commission") for approval of the Cooperative's retail access tariffs and terms and conditions of service for retail access as required by Ordering Paragraph (3) of the Commission's December 18, 2001, Final Order issued in A&N's case for functional separation,¹ Case No. PUE-2001-00008, and pursuant to the Virginia Electric Utility Restructuring Act (the "Act"), Chapter 23 of Title 56 (§ 56-576 *et seq.*) of the Code of Virginia.

A&N's retail access tariff filing includes: (1) Terms and Conditions of Service (including Terms and Conditions of Service for Retail Access); (2) Tariffs and Rate Schedules (including Unbundled Tariffs and Rate Schedules and Retail Access Tariffs and Rate Schedules); (3) a Competitive Service Provider ("CSP") Coordination Tariff (including the Competitive Service Provider Agreement, Electronic Data Interchange (EDI) Trading Partner Agreement, Transmission Customer Designation Form, CSP Dispute Resolution Procedure, and Aggregator Agreement); (4) Adjusted Market Rate and Competitive Transition Charges ("CTCs") Calculations; (5) Plan to Provide Price to Compare Information and assistance to customers; (6) Letter of Agreement between A&N and Old Dominion Electric Cooperative ("ODEC") regarding the terms of the binding commitment with regard to wires charges (competitive transition charges) required by § 56-584 of the Code of Virginia. A&N represented that its application was submitted for Commission approval in anticipation of the Cooperative commencing retail access in its service territory, effective January 1, 2004.

On July 14, 2003, the Commission issued its Order Prescribing Notice and Inviting Comments and Requests for Hearing. On July 17, 2003, the Commission entered an Amending Order to correct Ordering Paragraph (4) of the July 14, 2003, Order to require A&N to serve a copy of the July 14, 2003 Order on local officials within A&N service territory. In the July 14, 2003 Order, the Commission directed the Cooperative to publish notice of its application in the latest issue of Cooperative Living and directed the Staff to investigate the application and file a report detailing its findings and recommendations.

On August 13, 2003, the Commission entered an Order permitting the Cooperative to file a response to the Staff Report and to any comments or responses to the Staff Report filed in the captioned docket. On the same day, Staff counsel mailed a copy of the Commission's July 14, 2003 "Order Prescribing Notice and Inviting Comments and Requests for Hearing" to all of the licensed CSPs in the Commonwealth of Virginia.

On October 2, 2003, A&N filed its proof of publication of notice and proof of notice to local officials as required by the Commission's Orders of July 14, 2003, July 17, 2003, and August 13, 2003.

On October 17, 2003, the Staff filed its Report in the proceeding, wherein it recommended that the Commission approve A&N's tariffs and terms and conditions of service, subject to the adoption of certain modifications recommended by the Staff.

Staff stated in its Report that the methodology employed by A&N in calculating projected market prices for generation applicable for the rate classes that will participate in retail choice, was the methodology set forth in the electric Cooperatives' Comprehensive Wires Charges Proposal ("Comprehensive Plan"), approved by the Commission in Case No. PUE-2001-00306 ("Wires Charges Case"). The Staff noted its support for A&N's methodology for calculating projected market prices, but Staff commented that the current base market prices are to be updated following the Commission's Final Order on Virginia Electric and Power Company's ("DVP's") fuel factor application, Case No. PUE-2003-00285, in which the Commission was expected to specify ten days from which base forward market information will be collected in order to determine market prices for 2004.² Staff recommended that A&N's projected market prices incorporate the up-to-date market information specified in the DVP Order to reflect current market conditions.

Staff reported that Table 2 of the Market Price Tables included with the Cooperative's application contained data that was improperly tabulated with the result that market prices and wires charges contained in A&N's filing were incorrect. The Staff stated that upon notification of the error, A&N provided Staff with revised Market Price Tables containing the appropriate correction. The revised tables were attached as Appendix A to the Staff Report. Further, Staff noted that the value (\$0.00921/kWh) used for the fuel adjustment to base generation in determining the CTC should be updated to the most recent actual monthly fuel adjustment available prior to A&N's initiation of retail access in its service territory.

The Staff did not oppose the Cooperative's proposal, as reflected in A&N's filed commitment document for the allocation of wires charges revenue between A&N and its electric supply cooperative ODEC. Staff commented that if the agreement is renegotiated, the renegotiated agreement must be submitted to the Commission for approval as required by § 56-584 of the Code of Virginia. The Staff observed that by its terms, the commitment document provides that termination of the agreement at any time prior to the end of the capped rate period or July 1, 2007, eliminates any subsequent application of wires charges in retail access rates by the Cooperative.

Staff further found that the proposed retail access schedules were consistent with A&N's currently effective bundled service schedules, and that the rates proposed for each service class properly reflected the pricing approved by the Commission in A&N's functional separation case, Case No. PUE-2001-00008.

¹ See Application of A&N Electric Cooperative, For approval of a functional separation plan pursuant to the Virginia Electric Utility Restructuring Act, Case No. PUE-2001-00008, 2001 S.C.C. Ann. Rep. 529, 531.

² The Order Establishing 2004 Fuel Factor in Case No. PUE-2003-00285 was issued on December 12, 2003. Consequently, A&N can now update this information.

The Staff commented that the unbundled tariffs, with suffixes ending in "-U", include the generation and transmission charges to be applied for default energy supply service. Staff noted that Retail Access Rule 20 VAC 5-312-90 I (3) identifies the components of the customer bill using the description of "electricity supply service" for the default provision of electric supply service. Staff recommended that for clarity purposes, the Cooperative should identify these items on its service schedules using the same terminology as will be used on the customer bill. Staff proposed that Section II under the Monthly Rate portion of the unbundled tariffs should be labeled: "II. Electricity Supply Service."

Additionally, Staff indicated that A&N did not propose a retail access (unbundled) lighting service schedule in this proceeding. Staff noted that in A&N's functional separation case, the Commission approved the Cooperative's proposal to offer unmetered lighting service to its customers only as a bundled service. Staff did not oppose A&N offering unmetered lighting service only as bundled service.

With regard to the Terms and Conditions of Service that would apply to the Cooperative and any member who by default or by choice does not select an alternative energy supplier, the Staff observed that in numerous instances, A&N has added language that formalizes current practices or Cooperative policies. Staff commented that in instances where these additions did not appear to create any additional costs or impediments to obtaining or retaining service, it did not oppose the Cooperative's proposals to formalize such practices.

With regard to Section IV. "Requirements for Securing Electric Service B. Deposits," Staff noted that the last sentence in Subsection 1 should be deleted. Staff advised that the Cooperative concurred with this change. With regard to Subsection 2 of Section IV. "Requirements for Securing Electric Service B. Deposits", Staff recommended that the last sentence of Subsection 2 should also be deleted. That sentence states "[i]ninstallments shall not be available to any Customer who has not honored a previous installment agreement." Staff opposed this proposed language as raising a barrier to the restoration of service to A&N's customers.

Staff proposed that the last sentence of Subsection 1 of Section V. "Use of Electric Service B. Notification and Approval of Unusual Equipment Added by Customer" should be deleted. That sentence states "[t]he Cooperative reserves the right to charge for any in-depth studies required in order to determine the effect of the apparatus on the Cooperative's system." Staff commented that this language represents a change from the Cooperative's current Terms and Conditions of Service and creates a new charge for A&N's customers.

With regard to Section XI. "Meters and Metering. A. Ownership and Location", the Staff recommended that the fourth sentence of the section be deleted. This sentence states: "[t]he Cooperative may furnish the meter socket, or at its discretion may require the Customer to provide a meter socket approved by the Cooperative, which shall be installed by the Customer as a part of the service entrance." This language represents a change in the current Terms and Conditions that provides that the Cooperative will furnish the meter socket. Staff recommended that the Cooperative retain the existing language in its current Terms and Conditions rather than the proposed language because the proposed language raises the possibility of increasing costs to customers. Staff recommended that the sentence should be revised to read "[t]he Cooperative will furnish the meter socket which shall be installed by the Customer."

According to Staff, the third sentence of Section XI. "Meter and Metering. E. Tests Requested by Customer" should also be revised to read: "[i]f the test of the meter finds it to be more than two percent (2%) inaccurate, the deposit will be refunded and proper adjustment made." The language proposed by the Cooperative's application states "[s]uch fees are refundable only if the percentage registration of the meter exceeds 102%."

A&N set out the retail access general rates and regulations in Appendix B to its application. These rules and regulations supplement the general terms and conditions for customers electing to purchase energy from a CSP. The terms and conditions applicable to a CSP are included in the proposed Competitive Service Provider Coordination Tariff. Staff noted that the information in this Appendix generally summarizes the requirements in the Retail Access Rules as they relate to shopping customers. Staff commented on "IV. Customer Information, E.", where the Cooperative proposes that if a customer's historical energy usage information is available in interval meter data form, it will be provided only to the customer prior to enrollment by a CSP. Staff noted that Retail Access Rule 20 VAC 5-312-60 D requires a CSP to obtain customer authorization prior to requesting any customer usage information not included on the mass list available from the local distribution company ("LDC"). Staff noted that under this Rule, the CSP is responsible for providing proof that it has the customer's authorization to receive this information upon request by the customer or the Commission. Staff concluded that A&N should release historical information, including that in interval meter data form to a CSP upon request at pre-enrollment, during enrollment and post-enrollment and, therefore, should modify the language in its Retail Access General Rules and Regulations to reflect this change.

Staff also commented on A&N's Technical IT Fee, CSR Fee, and Wire Transfer Charge set out in A&N's Competitive Service Provider Coordination Tariff's Schedule of Fees. Staff agreed that the cost data provided by A&N supported the proposed Technical IT and CSR fees. However, Staff recommended that the Wire Transfer fee be limited to \$15.00 to cover only the bank fee associated with wire transfers. The Cooperative's proposed Wire Transfer fee of \$35.00 includes 0.25 hours of administrative labor costs in addition to the bank fee. Staff noted that administrative costs would be incurred regardless of the method of payment, *i.e.*, by wire or otherwise, used by the CSP.

Staff reported that the Competitive Service Provider, Aggregator and Trading Partner Agreements were identified as attachments to the Cooperative's Competitive Service Provider Coordination Tariff. Staff stated that it had no objection to the inclusion of these agreements in the application.

Finally, Staff noted that the Dispute Resolution Procedure attached to the Competitive Service Provider Coordinator tariff provides the steps for resolution of disputes between the CSP and A&N as required by 20 VAC 5-312-110 A of the Retail Access Rules. Staff found the proposed procedure appropriate and recommended that the Commission accept the same.

No comments from Respondents were filed in the case. A&N filed a Response to the Staff Report ("Response") on November 13, 2003.

In its Response, the Cooperative noted that it has corrected and provided to Staff Table 2 of the Market Price Tables. A&N represented that it intended to include updated market price projections in a compliance filing made with the Commission prior to the commencement of retail access in the Cooperative's service territory. It also acknowledged that its CTC calculations are to be reviewed for updating prior to the commencement of retail access. A&N stated that it intends to incorporate the most current fuel factor adjustment available in the compliance filing to be submitted in response to the Commission's Final Order in this proceeding.

With regard to its commitment document, A&N asked the Commission to recognize that a "new agreement could be negotiated to replace the current agreement at its termination, which new agreement (as approved by the Commission) would permit the continued collection of wires charges."

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

A&N represented that, subject to the updating and correction as discussed in its Response to the Staff Report, A&N's rate schedules will be ready for implementation on January 1, 2004. A&N committed to update its tariffs and rate schedules in a single compliance filing after the Commission's Final Order is issued.

The Cooperative accepted Staff's recommendation to change references to "Generation and Transmission Charges" in the general default service tariffs to "Electricity Supply Service."

A&N accepted the Staff's changes to IV.B.1 and IV.B.2 of the Cooperative's Terms and Conditions as well as the deletion of the final sentence in Subsection V.B.1. A&N also determined not to challenge the Staff's recommendation as to the fourth sentence of Subsection XI.A and agreed to preserve the language recommended by Staff for Subsection XI.E.

With regard to Appendix B, Subsection IV.E., the Cooperative maintained that in the Rappahannock Electric Cooperative and Shenandoah Valley Cooperative retail access cases, such interval data was to be provided directly to the customer. Additionally, the Cooperative asserted that Retail Access Rule 20 VAC 5-312-60 D does not require a local distribution company to release any available historical energy usage information at CSP's request. According to A&N, this Rule instead requires CSPs to obtain customer authorization before requesting information not on the Mass List, and that CSPs must be able to provide evidence of such authorization. A&N asserts that the language included in IV.E was intended to protect sensitive customer information and to prohibit the release of such information without the customer's knowledge and express authorization. As an alternative, A&N agreed to amend Subsection IV.E as follows:

Due to the sensitive nature of the information, historical energy usage information of Customers that have interval metering may be made available to the Customer or CSP upon request by the Customer to the Cooperative. The historical energy usage information will be made available by an appropriate, cost-effective electronic medium.

With respect to the CSP Coordination Tariff, the Cooperative continued to support the \$20.00 cost component attributable to 0.25 hours of administrative time spent processing the wire transfer and its \$35.00 wire transfer fee.

With regard to its Competitive Service Provider, Aggregator and Trading Partner Agreements, the Cooperative requested that the Commission accept the form of agreements submitted by A&N as part of its filed CSP Coordination Tariff. A&N requested the Commission to: (i) consider the comments offered in its Response; (ii) enter an Order accepting and approving its Unbundled Tariffs and Rate Schedules for All Customer Classes, Terms and Conditions for Providing Electric Service and Competitive Service Provider Coordination Tariff, and the related agreements and procedures, with the changes recommended by Staff, subject to the modification proposed in A&N's Response; (iii) accept and approve its proposed calculations of adjusted market rates and CTCs, subject to such updating as is appropriate; and (iv) provide for such further relief as the Commission deems appropriate.

On November 21, 2003, the Staff filed its Reply to the Cooperative's Response ("Reply"). In its Reply, the Staff asserted that the language in its Report reflects the specific language used in the documentation of A&N's commitment with ODEC. Staff noted that under § 56-584 of the Code of Virginia, A&N's binding commitment with ODEC is a precondition for the establishment of wires charges. Staff commented that the terms of that commitment governs the Cooperative's allocation of wires charges, as determined by the Commission.

With regard to the issue of the provision of a customer's historical energy usage information in interval meter data form, the Staff noted that a CSP must obtain customer authorization prior to requesting any customer usage information not included on the mass list as available from the LDC. Staff explained that the CSP, not the LDC, is responsible for obtaining customer authorization. Staff asserted that interval meter data is not on the mass list and that the Cooperative's proposal in IV.E "Customer Information" does not capture the essence of the Commission's findings in the Shenandoah Electric Cooperative's retail access or Community Electric Cooperative's retail access cases. Staff observed that the language proposed by A&N as an alternative was not consistent with the language in VII.G "Load Profiles" portion of the Cooperative's Retail Access General Rules and Regulations. Staff noted that one way to address the apparent inconsistencies between Subsection IV.E "Customer Information" and Subsection VII.G "Load Profiles" is to remove IV.E "Customer Information" from the Cooperative's Retail Access Rules and Regulations.

In regard to the Wire Transfer Fee issue, Staff noted that currently the Cooperative sometimes receives the transfer of funds, albeit infrequently. Staff contended that A&N's rates already include a component to recover administrative costs associated with process of payment media, and that the data provided by A&N in its application does not explain why the cost of processing a wire transfer is higher than the administrative components for other means of payment already recovered in the Cooperative's rates. Staff further contended that the addition of a \$20.00 add-on charge for CSPs that use wire transfers imposes an additional charge for service not imposed on nonshopping Cooperative customers or upon CSPs that do not use wire transfers. Staff contended that the administrative fee of \$20.00 could be viewed as not advancing competition.

Finally, Staff agreed with A&N that it was appropriate to accept the Competitive Service Provider, Aggregator and Trading Partner Agreements as attachments to the CSP Coordination Tariff.

On December 5, 2003, A&N filed its Response to the Reply of the Staff of the State Corporation Commission ("Response to the Reply"). In its Response to the Reply, the Cooperative asserted that the amended binding commitment letter filed by BARC differed only slightly from the language used in A&N's commitment with ODEC.

Further, A&N, among other things, asserted that Rule 20 VAC 5-312-60 D does not require that an LDC release any available historical energy usage information upon a CSP's request, and maintained that the goal of Subsection IV.E of its Retail Access General Rules and Regulations is to protect sensitive customer information by prohibiting the release of such information without proof of the customer's knowledge. The Cooperative continued to argue that no change to Subsection IV.E was needed and requested that the Commission find that the Cooperative has the right to verify that the customer has authorized the CSP to receive interval meter data.

A&N continued to assert that its cost for 0.25 hours of administrative time should be included in its wire transfer fee, and the wire transfer fee of \$35.00 should be accepted by the Commission. A&N explained that while the costs of processing a wire transfer are not necessarily higher than other payment media, there are increased costs to processing such transfers.

NOW THE COMMISSION, having considered the Cooperative's application, the Staff Report, A&N's Response to the Report, the responsive pleadings of the Staff and the Cooperative, and applicable statutes, hereby approve A&N's application as recommended by Staff and subject to the modifications prescribed below.

We incorporate, by reference, our findings in the Wires Charge Case (Case No. PUE-2001-00306). The methodology for the proposed CTC must reflect the appropriate fuel adjustments and wires calculation. The wires charges calculated are subject to the limitation of § 56-583 of the Code of Virginia, which permits adjustments no more frequently than annually. Thus, the effective date of A&N's wires charges must conform with Ordering Paragraph (5) of the May 24, 2002, Order in the Wires Charges Case. As noted in the foregoing discussion, the value used for the fuel adjustment to base generation should be updated to reflect the most recent actual monthly fuel adjustment available prior to A&N initiating retail access in its service territory. As agreed to by A&N, the Cooperative shall resubmit updated Market Price Tables following the Commission's Final Order on DVP's fuel factor application, Case No. PUE-2003-00285, and should update the value (\$0.00921/kWh) to include the most recent actual monthly fuel adjustment prior to initiating retail access on January 1, 2004.

With respect to A&N's commitment document with ODEC, we note that the plain language of Virginia Code § 56-584 provides that the establishment by the Commission of wires charges is conditional upon such cooperative "entering into binding commitments by which it will pay to any power supply cooperative of which such distribution cooperative is or was a member, as compensation for such power supply cooperative's stranded costs, all or part of the proceeds of such wires charges, as determined by the Commission." This statute therefore assumes that there must be an active, unterminated commitment in place between the Cooperative and ODEC, A&N's power supply cooperative, and that the allocation between the power supply cooperative and a distribution cooperative is established "as determined by the Commission." While the Cooperative may not charge a wires charge without an active binding commitment, nothing prevents A&N from entering into a new agreement. Under those circumstances, the Cooperative must have the binding commitment establishing the wires charge approved by the Commission. It is our expectation that the Cooperative would file any new agreement for approval with the Commission before the existing agreement terminates.

With respect to A&N's proposed unbundled lighting service schedule, we will accept this schedule. We note that this Schedule was previously approved in A&N's functional separation case, Case No. PUE-2001-00008.

With regard to Subsection IV. "Customer Information E., we note that Retail Access Rule 20 VAC 5-312-60 D allows customers or the Commission to require the CSP to provide proof of its authorization. LDCs were not mentioned in this Rule to avoid opportunities for anticompetitive actions by the LDCs since LDCs or their affiliates may compete with the CSP to provide service to customers.

The Final Orders entered in Shenandoah's³ and Community's⁴ retail access cases do not plainly address whether the cooperatives are entitled to verify a CSP's entitlement to gain access to customer information. The authority to verify a CSP's entitlement to information not on the mass list has been deliberately lodged with the customer or the Commission. See Retail Access Rule 20 VAC 5-312-60 D and 20 VAC 5-312-80 B. A&N should, therefore, modify its Retail Access General Rules and Regulations to remove IV. "Customer Information E."

With respect to the wire transfer charge fee, the Cooperative proposes a \$35.00 wire transfer fee consisting of \$15.00 associated with charges made to A&N by its bank and \$20.00 attributable to costs associated with the Cooperative's administrative support. The Cooperative has not, in our view, demonstrated support for the \$20.00 administrative component of this charge vis-à-vis other means of payment media. For example, there are costs associated with writing, processing and mailing a check. The Cooperative has not demonstrated that the administrative costs associated with a wire transfer exceed the costs for payment by check. A&N is directed to reduce its wire transfer fee to \$15.00 to recover the costs charged to A&N by its bank for wire transfers. The remaining fees proposed by A&N are approved.

With regard to the CSP, Trading Partner, and Aggregator Agreements, we accept the inclusion of these arguments as attachments to the CSP Coordination Tariff.

Accordingly, IT IS ORDERED THAT:

- (1) A&N's tariffs and terms and conditions of service as recommended by Staff and subject to the modifications discussed herein are hereby approved.
- (2) A&N shall file revised tariffs and terms and conditions of service reflecting the findings made herein with the Commission's Division of Energy Regulation as soon as practicable after the date of this Order.
- (3) A&N may initiate retail choice in its service territory upon the filing required by Ordering Paragraph (2) herein.
- (4) This case shall be dismissed, and the papers filed herein shall be made a part of the Commission's files for ended causes.

³ See Application of Shenandoah Valley Electric Cooperative, Application for approval of retail access tariffs and terms and conditions of service for retail access, Case No. PUE-2002-00975, Slip op. (April 2, 2003 Final Order).

⁴ Application of Community Electric Cooperative, Application for approval of retail access tariffs and terms and conditions of service for retail access, Slip op. (July 30, 2003 Final Order).

**CASE NO. PUE-2003-00280
DECEMBER 22, 2003**

APPLICATION OF
GROUNDHOG MTN. WATER & SEWER CO., INC.

For an increase in rates, fees, and charges pursuant to the Small Water or Sewer Public Utility Act

ORDER

By notice dated April 30, 2003, pursuant to the Small Water or Sewer Public Utility Act, §§ 56-264.13.1 *et seq.* of the Code of Virginia ("Code"), Groundhog Mountain Water and Sewer Company, Inc. ("Company"), notified its customers and the State Corporation Commission ("Commission") of its intent to increase rates, charges, and fees for water and/or sewer service effective July 1, 2003.

The Company proposed to increase its quarterly rates as follows:

WATER RATES

<u>Current</u>	<u>Proposed</u>
\$140.25 minimum charge	\$164.00 minimum charge

SEWER RATES

\$95.00 minimum charge	\$118.00 minimum charge
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The Company proposed a fee of \$3,000.00 for new customers desiring to connect to the water system and a fee of \$3,000.00 for customers desiring to connect to the sewer system. The Company also proposed to increase its bad check charge from \$6.00 to \$25.00 and to increase its maximum required customer deposit from the customer's estimated liability for two months' usage to the customer's estimated liability for one calendar quarter of usage. In addition, the Company proposed certain additional changes in its rules and regulations of service.

On June 27, 2003, the Commission issued a Preliminary Order declaring the Company's proposed rates, charges, and fees interim and subject to refund with interest. The Commission further directed the Company to file certain financial information on or before July 25, 2003.

On July 9, 2003, the Commission entered an Order for Notice and Hearing, wherein we appointed a Hearing Examiner to hear this case, scheduled a public hearing for the purpose of receiving evidence relevant to the Company's proposed tariff revisions, and directed the Company to provide notice to each of its customers of its proposed tariff revisions and the public hearing.

On November 5, 2003, counsel for Doe Run Properties, LLC ("Doe Run"), a respondent in this matter, filed on behalf of Doe Run and the Company a joint motion ("Joint Motion") requesting a limited stay of proceedings and an expedited consideration and approval of a settlement agreement ("Settlement Agreement").¹ The Settlement Agreement resolves all disputes and differences among the parties – including disputes outside the jurisdiction of the Commission. On November 6, 2003, the public hearing was convened as scheduled in the Roanoke City Council Chamber. The Commission's Staff ("Staff") appeared by its counsel, Wayne N. Smith, Esquire. The Company appeared by its counsel, Wilburn C. Dibling, Esquire. Doe Run appeared by its counsel, Thomas B. Nicholson, Esquire. No public witnesses appeared at the hearing. Staff, the Company, and Doe Run filed comments on the Joint Motion and Settlement Agreement subsequent to the hearing.

On December 2, 2003, the Company filed an Amended Application Requesting Expedited Consideration of Revised Tariff, Transfer of Utility Assets, and Amendments to Certificates of Public Convenience and Necessity as to Service Territories ("Amended Application"). The Amended Application reflects the Settlement Agreement and explains that the Settlement Agreement is conditioned upon closing occurring on or before December 31, 2003. The Amended Application explains that the Settlement Agreement provides, among other things, that: (1) Doe Run will transfer certain water and sewer facilities to Groundhog Mtn. Property Owners, Inc. ("GMPO") or to the Company; (2) the parties agree to water and sewer rates recommended by Staff and set out in the revised tariff; (3) the parties agree to water and sewer connection fees attached to the prefiled testimony of Company witness Viele; (4) the parties agree as to the number of Quarterly Minimum Service Charges to be charged to the Doe Run Lodge Commercial Complex ("Complex"); and (5) the parties agree as to the amendments to the rules and regulations set out in the revised tariff. The Amended Application also includes the utility assets proposed to be transferred, the consideration being paid by the Company, and other relevant information.²

On December 2, 2003, Staff filed a letter to the Examiner in which Staff, among other things, stated that it reserved judgment on the allocation of water and sewer service charges to Doe Run reflected in the Settlement, and that it cannot recommend to the Commission that these provisions be accepted in this proceeding.

On December 5, 2003, Hearing Examiner Michael D. Thomas issued his Report in this matter. The Examiner concluded that the Settlement Agreement is reasonable and in the best interests of the Company and its customers. The Examiner also found that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by approving the Company's acquisition of utility assets. The Examiner explained that the Settlement Agreement adopts rates and tariff revisions recommended by Staff, and that it changes the allocation of equivalent residential connections to the Complex. The Examiner concluded that the resulting allocation of equivalent residential connections to the Complex is driven primarily by the number of pool chalets

¹ Exh. 6.

² On December 18, 2003, the Company filed verified signatures for the Amended Application as required by § 56-90 of the Code.

that are part of the Complex and is not *per se* unreasonable. The Examiner further stated that the Company is acquiring additional water supply sources, storage capacity, and an additional sewage treatment facility, and found that the Settlement Agreement will improve the level of service for all customers. Thus, the Hearing Examiner determined that the public interest would best be served by the Commission's approval of those portions of the Settlement Agreement over which it has jurisdiction.

On December 8, 2003, the Company submitted comments in support of the Hearing Examiner's Report. On December 8, 2003, Doe Run filed a letter stating that it supports the Company's comments generally, and that it fully supports the findings and recommendations in the Examiner's Report.

On December 10, 2003, Staff filed a response ("Response") to the Examiner's Report. Staff states, among other things, that the Company's proposed acquisition of facilities under the Settlement Agreement requires approval under the Utility Transfers Act, §§ 56-88 to -92 of the Code. Staff contends the Commission has routinely determined that the sound administration of § 56-90 of the Code requires an opportunity to request a hearing after notice. Staff further states that prior to acquiring facilities outside its service territory, the Company needs approval under the Utility Facilities Act, §§ 56-265.1 to -265.9 of the Code. Specifically, Staff asserts that the Company needs a "facilities" certificate pursuant to § 56-265.2 A and E of the Code, along with a modification of its "territorial" certificate pursuant to § 56-265.3 of the Code. Staff states that § 56-265.2 A requires an opportunity for a hearing and due notice to interested parties.³ Staff concludes that the general body of ratepayers is unaware of the proposal in the Settlement Agreement, and, as result, the Commission cannot approve the Settlement Agreement without providing notice and opportunity for hearing of the same.

On December 10, 2003, the Commission issued an Order permitting parties to file, on or before 5:00 p.m. on December 15, 2003, a reply to Staff's Response.

On December 15, 2003, Doe Run filed a reply to Staff's Response. Doe Run contends that additional notice is not required under the Utility Transfers Act. Doe Run further notes that it has agreed to sell utility assets to either GMPO or the Company. If the assets are transferred to GMPO, Doe Run states that approval under the Utility Facilities Act is unnecessary, since GMPO is not a "public utility" under § 56-265.1 of the Code. If the Company is the acquirer of the utility assets, Doe Run asserts that the Commission could discharge its duties under the Utility Facilities Act by issuing an order that conditionally approves the Settlement Agreement, subject to additional notice.

On December 17, 2003, the Company filed a Motion Requesting Extension of Time in which to File a Response to Staff Response and filed a Response to Commission Staff Response. The Company asserts that § 56-90 of the Code does not require notice in the case of every transfer, and that the Settlement Agreement and Amended Application are supported by the sole commercial customer (Doe Run) and the entity representing all residential property owners on Groundhog Mountain (GMPO). Thus, the Company asserts that requiring additional notice is unnecessary under § 56-90 if the Commission is satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the transfer. The Company further explains that GMPO may initially acquire the utility facilities from Doe Run under the Settlement Agreement, and that there may be some delay in transferring any such facilities from GMPO to the Company. Thus, with respect to approval under the Utility Facilities Act, the Company states that at the appropriate time it can, if required, come back to the Commission and request the Commission's approval with respect to its acquisition of utility assets from GMPO. The Company concludes that under this circumstance, the Commission may condition any order approving the Settlement Agreement upon the Company's providing due notice to any interested parties under § 56-265.2 A with respect to the proposed acquisition of utility facilities within the context of this proceeding.

NOW THE COMMISSION, having considered the record, the Hearing Examiner's Report, the pleadings, and the applicable law, is of the opinion and finds as follows.

We grant the Company's Motion Requesting Extension of Time in which to File a Response to Staff Response. We also accept the Company's Amended Application as part of this proceeding. As explained by the Hearing Examiner, the Settlement Agreement and Amended Application provide an opportunity to resolve the continuing disputes regarding water and sewer service in the Groundhog Mountain community.

We adopt the rates, rules, and regulations of water and sewer service contained in the Settlement Agreement, and recommended by the Hearing Examiner, which do not appear unjust and unreasonable. The Settlement Agreement adopts the water and sewer rates recommended by Staff: \$145.00 per quarter for water; and \$128.00 per quarter for sewer. The Settlement Agreement also specifies that: (1) for water service, thirteen (13) Quarterly Minimum Service Charges will be applied to the Complex (one each for the pool chalets and three for the restaurant and conference center); and (2) for sewer service, fourteen (14) Quarterly Minimum Service Charges will be applied to the Complex (one each for the pool chalets and four for the restaurant and conference center). The Settlement Agreement also establishes water and sewer connection fees and agrees to the amendments to the rules and regulations set out in the revised tariff.

The Settlement Agreement currently provides that closing shall take place no later than December 31, 2003. As noted by Doe Run and the Company, the utility facilities initially may be transferred from Doe Run to GMPO, and then from GMPO to the Company. GMPO is a party to the Settlement Agreement. Furthermore, the Amended Application explains that all property owners on Groundhog Mountain are represented by GMPO, states that GMPO joins in requesting the expedited approvals sought by the Company, and is signed by GMPO's counsel.⁴

If the utility assets are transferred from Doe Run to GMPO, based on the facts and circumstances herein it is not clear whether the Utility Transfers Act applies to GMPO's acquisition. To the extent that such approval is necessary, however, we find in this instance that the transfer of these assets from one customer (Doe Run) to an entity representing the other customers (GMPO) of the same utility will not impair or jeopardize adequate service to the public at just and reasonable rates. In addition, we agree with Doe Run and the Company that GMPO's acquisition of utility facilities from Doe Run does not require approval under the Utility Facilities Act. Accordingly, the parties may comply with the Settlement Agreement by transferring the utility assets from Doe Run to GMPO on or before December 31, 2003.

³ Staff also states that the Commission could determine that notice is appropriate under § 56-265.3 B of the Code.

⁴ The Amended Application also states that GMPO owns all the stock of the Company and all utility assets used by the Company to provide water and sewer service, and that all existing utility assets and utility assets proposed to be acquired from Doe Run have been or will be licensed by GMPO to the Company.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

We also find that interested persons should receive due notice, pursuant to §§ 56-90, -265.2, and -265.3 of the Code, regarding the Company's proposed acquisition of facilities and modification of service territory contained in the Amended Application. We direct the Company to provide notice to each of its customers, in the form provided below, of its proposed acquisition of facilities and modification of service territory by first-class mail on or before January 9, 2003. Interested persons will be permitted to comment and/or request a hearing by January 30, 2003.

Accordingly, IT IS ORDERED THAT:

- (1) The Company's Motion Requesting Extension of Time in which to File a Response to Staff Response is hereby granted.
- (2) Doe Run may transfer utility assets to GMPO pursuant to the Settlement Agreement.
- (3) The Company shall make a copy of its Amended Application available for public inspection during regular business hours at Hillsville Public Library, 101 Beaverdam Road, Hillsville, Virginia 24343.
- (4) On or before January 9, 2003, 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), to all customers in its service territory:

NOTICE TO THE PUBLIC OF AN APPLICATION BY
GROUNDHOG MTN. WATER & SEWER COMPANY, INC.,
TO ACQUIRE UTILITY FACILITIES AND TO MODIFY ITS
EXISTING WATER AND SEWER SERVICE TERRITORIES
CASE NO. PUE-2003-00280

TAKE NOTICE THAT Groundhog Mtn. Water & Sewer Company ("Company"), pursuant to the Utility Transfers Act, §§ 56-88 to -92 of the Code of Virginia, and the Utility Facilities Act, §§ 56-265.1 to -265.9 of the Code of Virginia, filed an Amended Application with the State Corporation Commission ("Commission") on December 2, 2003. The Company requests authority to acquire certain utility assets, including water supply sources, storage capacity, and a sewage treatment facility, previously owned by Doe Run Properties, LLC, to be operated for the benefit of water and sewer customers on Groundhog Mountain. The Company also requests amendments to its existing certificates of public convenience and necessity to modify its water and sewer service territories.

A copy of the Company's Amended Application is available for public inspection during regular business hours at Hillsville Public Library, 101 Beaverdam Road, Hillsville, Virginia 24343. A copy also is available Monday through Friday, 8:15 a.m. to 5:00 p.m., at the Commission's Document Control Center located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23218.

Any person desiring to comment and/or request a hearing in writing on the Amended Application may do so by directing such comments on or before January 30, 2003, to Joel H. Peck, Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and refer to Case No. PUE-2003-00280. Any request for hearing must identify why a hearing is necessary, the factual issues likely in dispute, and the type of evidence expected to be produced at the hearing. Interested persons desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.state.va.us/scc/caseinfo.htm>. If written comments and/or requests for hearing are submitted, a copy of such shall be simultaneously served upon the Company's counsel, Wilburn C. Dibling, Jr., Esquire, Gentry Locke Rakes & Moore, P.O. Box 40013, Roanoke, Virginia 24022-0013.

GROUNDHOG MTN. WATER & SEWER COMPANY, INC.

- (5) On or before January 9, 2003, the Company shall serve a copy of this Order on the Chairman of the Board of Supervisors of each county in which the Company offers service, and/or the Mayor or Manager of every city and town (equivalent officials in the counties, cities, and towns having alternate forms of government) in which the Company offers or proposes to offer service. Service shall be made by first-class mail or delivery to the customary place of business or to the residence of the person served.
- (6) On or before January 30, 2003, the Company shall file with the Commission proof of the notice required herein.
- (7) On or before January 30, 2003, any person desiring to comment and/or request a hearing in writing on the Amended Application may do so by directing such comments on or before January 30, 2003, to Joel H. Peck, Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and refer to Case No. PUE-2003-00280. Any request for hearing must identify why a hearing is necessary, the factual issues likely in dispute, and the type of evidence expected to be produced at the hearing. Interested persons desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.state.va.us/scc/caseinfo.htm>. If written comments and/or requests for hearing are submitted, a copy of such shall be simultaneously served upon the Company's counsel, Wilburn C. Dibling, Jr., Esquire, Gentry Locke Rakes & Moore, P.O. Box 40013, Roanoke, Virginia 24022-0013.
- (8) The rates, rules, and regulations for the provision of water and sewer services reflected in the Settlement Agreement and recommended by the Hearing Examiner are hereby approved.
- (9) The Company may assess a quarterly charge of \$145.00 for water service and \$128.00 for sewer service from the date of this Order.
- (10) The remaining charges, fees, and terms and conditions of service shall be as approved in this Order or, if not addressed in this Order, as recommended by the Hearing Examiner.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(11) Within thirty (30) days from the date of this Order, the Company shall file with the Commission's Division of Energy Regulation rates, rules, and regulations of service consistent with the terms of this Order.

(12) On or before April 1, 2004, the Company shall commence refunds, with interest as directed below, for all water revenues collected from the application of the interim rates that were effective for service beginning on July 1, 2003, to the extent that such revenues exceed the revenues produced by the rates approved herein.

(13) Interest upon the ordered refunds shall be computed from the date payment of each quarterly bill was due during the interim period or the date payment of the connection fee was due until the date refunds are made, at an average prime rate for each calendar quarter. The applicable 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 G.13), for the three months of the preceding calendar quarter.

(14) The interest required to be paid shall be compounded quarterly.

(15) The refunds ordered herein may be accomplished by credit to the appropriate customer's account for current customers (each such refund category being shown separately on each customer's bill). Refunds to former customers shall be made by a check to the last known address of such customers. When the refund amount is \$1 or more the Company 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. The Company may retain refunds owed to former customers when such refund amount is less than \$1; however, the Company will prepare and maintain a list detailing each of the former accounts for which refunds are less than \$1, and in the event such former customers contact the Company and request refunds, such refunds shall be made promptly. All unclaimed refunds shall be handled in accordance with § 55-210.6:2 of the Code of Virginia.

(16) On or before June 1, 2004, the Company 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, *inter alia*, computer costs, and the personnel-hours, associated salaries and cost for verifying and correcting the refund methodology and developing the computer program.

(17) The Company shall bear all costs of the refunding directed in this Order.

(18) This matter is continued pending further order of the Commission.

**CASE NO. PUE-2003-00281
JUNE 21, 2003**

APPLICATION OF
A&N ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On June 26, 2003, A&N Electric Cooperative ("Applicant") filed an application with the Virginia State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia requesting authority to incur long-term debt. Applicant has paid the requisite fee of \$250.

Applicant requests authority to borrow up to \$3,614,943 from the National Rural Utilities Cooperative Financing Corporation ("CFC"). The proceeds will be used to retire existing debt issued to the Rural Utilities Services ("RUS"). The proceeds are expected to be drawn down by September 30, 2003.

The interest rate on the debt will be determined at the time of the draw but the effective cost of debt will be less than 5.0%, the current rate on the existing RUS debt to be retired. The loan will be structure so that the debt matures in equal installments throughout the next 16 years.

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 \$3,674,943 from the National Rural Utilities Financing Corporation, under the terms and conditions and for the purposes set forth in the application.

2) Within thirty (30) days of the date of each advance of funds from CFC, 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 selected, 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 is hereby dismissed.

**CASE NO. PUE-2003-00283
JULY 14, 2003**

APPLICATION OF
CRAIG-BOTETOURT ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On June 27, 2003, Craig-Botetourt Electric Cooperative ("Applicant" or "Craig-Botetourt"), filed an application under Chapter 3 of Title 56 of the Code of Virginia ("Code") with the State Corporation Commission ("Commission"). In its application, Applicant requests authority to incur long-term indebtedness from the United States of America through a Federal Financing Bank ("FFB") Loan guaranteed by the Rural Utilities Service ("RUS"). Applicant has paid the requisite fee of \$25.

Applicant requests authority to borrow up to \$3,500,000 ("Proposed Debt") from RUS. The proceeds from the loan will be used to finance construction of additional electric distribution facilities consistent with its approved work plan for the period of July 2002 through July 2006. Applicant states that these improvements will provide service to approximately 620 new customers in Virginia and 40 new customers in West Virginia. The improvements will require approximately 48 miles of overhead and underground construction.

The Proposed Debt will be issued in the form of a Mortgage Note secured by all the assets of Craig-Botetourt, pursuant to the terms and conditions of the RUS Loan Contract and Mortgage Note as set out in Exhibits 2 through 5 of the application. The Proposed Debt will have a final maturity term of 35 years; however portions may be advanced within an initial five-year Fund Advance Period. The interest rate on the Proposed Debt will be fixed; however, the interest rate for each advance will reflect market conditions at the time funds are borrowed. The interest rates will be established by the Federal Funds Bank ("FFB") in accordance with the Treasury Rate Loan Program.

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 \$3,500,000 in long-term debt from the RUS 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 RUS, 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 selected, and the interest rate term.
- 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-2003-00283
NOVEMBER 14, 2003**

APPLICATION OF
CRAIG-BOTETOURT ELECTRIC COOPERATIVE

For authority to issue long-term debt

CORRECTING ORDER NUNC PRO TUNC

By Order entered July 14, 2003, the State Corporation Commission ("Commission") approved the application of Craig-Botetourt Electric Cooperative ("Applicant" or "Craig-Botetourt") to incur up to \$3,500,000 in long-term debt, which, according to the application and as noted in the Order would have a final maturity term of 35 years.

By letter dated November 6, 2003, Craig-Botetourt has advised that its lender, the Rural Utilities Service, had placed a final maturity term of 34 years on the loan and that the application was in error. The Applicant has asked for an amending order.

Accordingly, IT IS ORDERED THAT:

- (1) The July 14 Order Granting Authority is amended *nunc pro tunc* to recite that the final maturity term of the financing approved therein is 34 years, not 35 years.
- (2) This matter is dismissed.

**CASE NO. PUE-2003-00285
DECEMBER 12, 2003**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

To revise its fuel factor pursuant to Va. Code § 56-249.6

ORDER ESTABLISHING 2004 FUEL FACTOR

On July 1, 2003, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company") filed with the State Corporation Commission ("Commission") its application, written testimony, and exhibits requesting a fuel factor of \$.02331/kWh, which results in an annual increase of approximately \$441.7 million, to be effective with usage on and after January 1, 2004. Concurrently, and by motion dated July 1, 2003, the Company also requested that the Commission enter a protective order governing the treatment of confidential information in this proceeding.

On July 14, 2003, the Commission entered an Order docketing this case, establishing a procedural schedule, requiring notice of the application, and setting a hearing date for this matter. The Commission also directed its Staff to file testimony and provided an opportunity for interested persons to provide comments and to participate in this matter.

The Virginia Committee for Fair Utility Rates ("Committee"), the Division of Consumer Counsel of the Office of the Attorney General ("Consumer Counsel"), Chaparral (Virginia) Inc. ("Chaparral"), Food Lion LLC ("Food Lion"), Old Dominion Electric Cooperative ("ODEC"), and the Virginia Independent Power Producers, Inc. ("VIPP"), filed notices of participation as respondents in this case.

On August 12, 2003, the Commission issued a Protective Order. The Committee and Consumer Counsel filed direct testimony and exhibits on September 5, 2003.¹ Staff filed a report on fuel recovery matters on September 16, 2003, and filed its direct testimony and exhibits on September 17, 2003. The Company filed rebuttal testimony and exhibits on October 2, 2003.

On August 12, 2003, the Company filed a Motion in Limine ("Motion"). The Company requested that the Commission limit the scope of this proceeding in accordance with § 56-249.6 of the Code of Virginia ("Code") and the regulations governing fuel factor cases, and rule that jurisdictional base rate revenues are not the subject of this proceeding. On August 12, 2003, the Commission entered an Order establishing an expedited schedule for responses to the Motion and for the Company's reply. On August 22, 2003, the Commission issued an Order on Motion in Limine, which granted the Motion for the limited purpose of ruling that over-earnings by the Company in jurisdictional base rate revenues may not be used to offset a proper increase in the fuel factor.

On October 7, 2003, the Commission held a hearing to receive testimony from public witnesses. Rose Williams Boyd testified on behalf of the City Council of the City of Alexandria. Steve Sinclair testified on behalf of the Fairfax County Board of Supervisors. Jeremy Rowan of Richmond, Virginia, also testified.

The Commission held further evidentiary hearings on October 9-10, 2003. At the commencement of the hearing on October 9, 2003, the Company, Staff, Consumer Counsel, the Committee, Chaparral, and Food Lion offered a Stipulation proposing to settle most of the issues presented in this case. The Stipulation, as revised at the hearing: (1) reduces the \$441.7 million proposed increase by approximately \$42 million to reflect updates of the Company's projected fuel cost forecast and the actual deferral fuel balance as of September 1, 2003; (2) effects a \$14 million reduction of the Company's fuel costs for which it seeks recovery in this proceeding; (3) amortizes, without interest, over a three and one-half year period (January 1, 2004, through July 1, 2007), the Company's collection of its actual under-recovery balance as of December 31, 2003; and (4) resolves certain issues raised by Staff regarding profits from Dominion Virginia Power's wholesale energy marketing activities during the years 2001 and 2002.²

The Stipulation results in a fuel factor for 2004 of \$.01891/kWh, consisting of a current fuel factor of \$.01756/kWh and an amortization factor of \$.00135/kWh. Under the Stipulation, the amortization factor shall remain in effect until July 1, 2007, for collection of the actual under-recovery balance as of December 31, 2003, or until such balance is collected, whichever is sooner.

The Stipulation leaves two issues open for resolution by the Commission: (1) the Committee's recommendation that the Commission delay the effective date of any fuel rate increase to allow the General Assembly, if the General Assembly so wishes, an opportunity to consider the issues raised by the Committee in this case; and (2) the Staff's recommendation that the Commission allocate to ratepayers 50% of the profits from Dominion Resources Inc.'s ("DRI") and the Company's wholesale energy marketing activities during the period January 1, 2003, to October 1, 2003, and thereafter.

Post-hearing briefs were filed by the Company, Staff, the Committee, Consumer Counsel, Chaparral, and Food Lion.³ All of these participants request that the Commission approve the Stipulation.

In its post-hearing brief, the Company requests that the Commission reject: (1) the Committee's proposal to delay the order and effective date of the fuel factor; and (2) Staff witness Oliver's proposal to appropriate the unregulated trading profits of DRI for use in reducing the Company's recovery of its legitimate and prudently-incurred fuel costs.

¹ Consumer Counsel filed a correction on September 12, 2003.

² Revised Ex. 27. To properly reflect the Stipulation as revised at the hearing, on November 10 and 12, 2003, the Company filed a clean and a black-lined version, respectively, of Revised Exhibit 27 and Revised Page 2 of Exhibit 26 (Supplemental Schedule 8).

³ ODEC and VIPP did not participate at the hearing or file post-hearing briefs.

In its post-hearing brief, Staff contends the record clearly demonstrates that the Company and its customers support DRI's and Dominion Virginia Power's wholesale energy trading activities, bear the risks associated with these activities, and deserve to be compensated when these activities produce benefits.

The Committee's post-hearing brief asserts that the Commission should delay the effective date of any rate increase to permit the General Assembly to address the unfairness and economic harm that would result if the Company is permitted to increase significantly its capped rates (due to the increase in fuel expense sought in this case) while continuing to accumulate enormous excess earnings. The Committee also states that the Commission should compensate the Company's customers for the cross-subsidies revealed by Staff's analysis of out-of-system trades.

Chaparral's post-hearing brief supports the Committee's recommendation that the Commission delay the effective date of any increase to allow the General Assembly, if it so wishes, an opportunity to consider the issues raised by the Committee.

Consumer Counsel's post-hearing brief does not take a position on either: (1) the Committee's recommendation to delay the effective date of any fuel rate increase; or (2) the Staff's recommendation that profits from wholesale energy marketing activities should be shared with consumers. As a result, Consumer Counsel has not explained whether these proposals are, or are not, in the best interests of consumers.

NOW THE COMMISSION, having considered the record, the pleadings, and the applicable law, is of the opinion and finds as follows.

We accept the Stipulation proposed herein. We find that a strong presentation was made in this record for reducing the Company's fuel rate request as a result of the nuclear plant outages and that such an adjustment may very well have been appropriate absent the Stipulation. Consumer Counsel also asserted that amortizing the prior period fuel costs over the remaining term of the capped rate period without interest is reasonable because the Company's shareholders will be the sole beneficiaries of the added value arising from the nuclear reactor vessel head replacements after the capped rate period expires. We agree that spreading out the prior period fuel cost recovery without interest is a benefit to ratepayers. There is evidence in this case, however, that the present value to ratepayers of amortizing the prior period fuel costs without interest is small when measured against the total fuel cost increase and the increased value received by the Company from extending the life of its four nuclear reactors. Staff's testimony includes estimates for the present value of the nuclear plant life extensions at between \$1.95 and \$4.27 billion. The Company did not file rebuttal testimony on this issue.

We conclude that it is appropriate for there to be a reduction in the requested fuel rate and accept the participants' settlement, which includes a \$14 million write-off and an amortization of prior period fuel costs without interest. Specifically, the Company's fuel factor shall be \$0.01891/kWh effective with usage on and after January 1, 2004, which consists of a current fuel factor of \$0.01756/kWh and an amortization factor of \$0.00135/kWh.

The approved fuel factor reflects an update of the projected fuel costs forecast and the actual deferral fuel balance as of September 1, 2003 (reducing the \$441.7 million proposed increase by approximately \$42 million). The amortization factor reflects a three and one-half year amortization, without interest, of the Company's actual under-recovery balance as of December 31, 2003, less the \$14 million write-off. The amortization factor shall remain in effect until July 1, 2007, for collection of the actual under-recovery balance as of December 31, 2003, or until such balance is collected, whichever is sooner.

Based on the arguments and evidence presented, we are not persuaded to adopt the Committee's request to delay the effective date of the fuel rate increase to allow the General Assembly to consider issues raised by the Committee in this case. However, as reflected in the Order on Motion in Limine issued on August 22, 2003, we share a number of the concerns expressed by the Committee on this matter. For example, consumers' rates are not truly "capped" under § 56-582 of the Code, but rather may be adjusted by this Commission to a very significant extent in connection with a utility's recovery of fuel costs or for other reasons. Also, the "cap" may more correctly be described as a "freeze;" with a few exceptions, the Commission is prohibited by Virginia statute from raising or lowering rates. Even if the Company received approximately \$680 million in over-earnings during 2002, as alleged by the Committee, current statutes prohibit the Commission from reducing the Company's requested rate increase to reflect such over-earnings.⁴ The Committee has suggested that the statute should be changed to remedy this situation. Obviously, the Committee or any interested party may seek such legislation. We must apply the law as we find it, and we will not suspend our implementation of existing law while the Committee or others may seek to have it changed.

We also do not adopt Staff's recommendation that 50% of the profits from calendar year 2003 resulting from DRI's and the Company's wholesale energy marketing activities be credited to the deferred fuel balance. Prior to October 2003, DRI and Dominion Virginia Power did not have separate trading floors. There is evidence in this case that prior to October 2003, the Company provided direct aid to DRI's trading operations in the form of facilities, generation-related assets, personnel, and credit support. The support provided by the Company after October 2003 for out-of-system transactions may not be as direct or significant, but some of the support may be just as real. However, we find that we are unable to act on this evidence as part of this proceeding.

The recovery of fuel costs in this case is governed by § 56-249.6 of the Code. This section states in part:

The Commission may, to the extent deemed appropriate, offset against fuel costs and purchased power costs to be recovered hereunder the revenues attributable to sales of power pursuant to interconnection agreements with neighboring electric utilities.

This provision defines the extent to which we may offset against fuel costs the revenues attributable to the electric utility's power sales in the fuel factor.⁵

The record establishes that as of October 1, 2003, DRI and the Company separated its trading operations. According to Dominion Virginia Power, DRI now conducts all out-of-system trades from its Tredgar campus, and the Company conducts all off-system trades from its Innsbrook office. As a result, based on the testimony in this case, on and after October 1, 2003, any out-of-system trades are not made by Dominion Virginia Power. Accordingly, based on this evidence it appears that these transactions clearly do not fall under § 56-249.6 of the Code.

⁴ As noted in our Order on Motion in Limine, the alleged over-earnings would be used for recovery of stranded costs, which have not been quantified. See Va. Code § 56-584.

⁵ Similar to our discussion above regarding the Committee's request to offset fuel costs by over-earnings, any expansion of our authority to consider sales of power supported by the Company and its ratepayers obviously must be accomplished through legislation.

In addition, for the period January 1, 2003, to October 1, 2003, the record is not clear as to which, if any, out-of-system trades were made by the Company pursuant to interconnection agreements with neighboring electric utilities. Thus, we will not offset fuel costs, as part of this proceeding, for any out-of-system transactions that may have been made by the Company during this period.

Finally, the fuel factor approved herein will be used in establishing wires charges for the Company for calendar year 2004. In the recent proceeding to establish wires charges, we stated that we would designate, in this case, the ten days on which the base forward market information will be collected for the calculation of wires charges.⁶ In this regard, we require that the base forward market information used in establishing wires charges be collected on the following ten dates: October 13, 2003; October 21, 2003; October 29, 2003; November 6, 2003; November 14, 2003; and November 17 through November 21, 2003.

Accordingly, IT IS ORDERED THAT:

- (1) The Stipulation (Revised Ex. 27) is hereby accepted.
- (2) The Company's fuel factor shall be \$0.01891/kWh effective with usage on and after January 1, 2004, which consists of a current fuel factor of \$0.01756/kWh and an amortization factor of \$0.00135/kWh.
- (3) The amortization factor of \$0.00135/kWh shall remain in effect until July 1, 2007, for collection of the actual under-recovery balance as of December 31, 2003, or until such balance is collected, whichever is sooner.
- (4) The Committee's request to delay the effective date of the fuel rate increase to allow the General Assembly to consider issues raised by the Committee in this case is hereby denied.
- (5) The Staff's recommendation that the Commission allocate to ratepayers 50% of the profits from Dominion Resources Inc.'s and the Company's wholesale energy marketing activities during the period January 1, 2003, to October 1, 2003, and thereafter, is hereby denied.
- (6) The base forward market information used in establishing wires charges shall be collected on the following ten dates: October 13, 2003; October 21, 2003; October 29, 2003; November 6, 2003; November 14, 2003; and November 17 through November 21, 2003.
- (7) This matter is continued generally.

⁶ Ex Parte: In the matter of considering requirements relating to wires charges pursuant to the Virginia Electric Utility Restructuring Act, Case No. PUE-2001-00306, Final Order (Sep. 23, 2003).

**CASE NO. PUE-2003-00286
JULY 23, 2003**

APPLICATION OF
APPALACHIAN POWER COMPANY D/B/A AMERICAN ELECTRIC POWER

To revise its fuel factor pursuant to § 56-249.6 of the Code of Virginia

ORDER ESTABLISHING 2003-2004 FUEL FACTOR PROCEEDING

On July 1, 2003, Appalachian Power Company d/b/a American Electric Power ("Appalachian" or the "Company") filed with the State Corporation Commission ("Commission") its application, written testimony, and exhibits requesting a decrease in the current fuel factor from 1.463¢/kWh to 1.300¢/kWh, effective with bills rendered on and after August 1, 2003. This results in an estimated fuel revenue decrease of approximately \$35.7 million over the 17-month forecast period, August 1, 2003 to December 1, 2004. Appalachian states that this revision is necessary to reflect the appropriate level of ongoing fuel expenses, to prevent the buildup of a large over-recovery balance, provide customers with the benefit of the lower projected costs as soon as possible, and provide greater rate stability.

NOW THE COMMISSION, having considered the application, § 56-249.6 of the Code of Virginia, and all other applicable statutes and regulations, finds that this matter should be docketed, that public notice and an opportunity for participation in this proceeding be given, and that a hearing should be scheduled. We will permit the proposed fuel factor of 1.300¢/kWh to be placed into effect, on an interim basis, effective will bills rendered on and after August 1, 2003.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed and assigned Case No. PUE-2003-00286.
- (2) A public hearing shall be convened on November 5, 2003, 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 not participating as a respondent as provided in Ordering Paragraph (8) below, may give oral testimony concerning the application as a public witness at the November 5, 2003, public 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 prior to 10:00 a.m. on the day of the hearing and sign up to speak.
- (3) The Company shall put its proposed fuel factor into effect, on an interim basis, effective will bills rendered on and after August 1, 2003.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(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 a copy of Appalachian'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. Interested person may also access unofficial copies of the application through the Commission's Docket Search portal at <http://www.state.va.us/scc/caseinfo.htm>. A copy of the Company's application may also be obtained by requesting a copy of the same from counsel for Appalachian, Michael J. Quinan, Esquire, Woods, Rogers & Hazlegrove, PLC, 823 East Main Street, Suite 1200, Richmond, Virginia 23219. Appalachian shall make a copy available on an electronic basis upon request.

(5) On or before August 5, 2003, Appalachian 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:

NOTICE TO THE PUBLIC OF
APPALACHIAN POWER COMPANY D/B/A
AMERICAN ELECTRIC POWER'S REQUEST
TO REVISE ITS FUEL FACTOR
CASE NO. PUE-2003-00286

On July 1, 2003, Appalachian Power Company d/b/a American Electric Power ("Appalachian" or the "Company") filed with the State Corporation Commission ("Commission") its application, written testimony, and exhibits requesting a decrease in the current fuel factor from 1.463¢/kWh to 1.300¢/kWh, effective with bills rendered on and after August 1, 2003. This results in an estimated fuel revenue decrease of approximately \$35.7 million over the 17-month forecast period, August 1, 2003 to December 1, 2004. Appalachian states that this revision is necessary to reflect the appropriate level of ongoing fuel expenses, to prevent the buildup of a large over-recovery balance, provide customers with the benefit of the lower projected costs as soon as possible, and provide greater rate stability.

The Commission has scheduled a public hearing to commence at 10:00 a.m. on November 5, 2003, 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 Appalachian'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 Virginia where customer bills may be paid. Interested persons may also access unofficial copies of the application through the Commission's Docket Search portal at <http://www.state.va.us/scc/caseinfo.htm>, or may 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. A copy of the Company's application also may be obtained by requesting a copy of the same from counsel for Appalachian, Michael J. Quinan, Esquire, Woods, Rogers & Hazlegrove, PLC, 823 East Main Street, Suite 1200, Richmond, Virginia 23219. Appalachian will make a copy available on an electronic basis upon request.

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.

On or before August 19, 2003, 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, 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. On or before September 3, 2003, each respondent may file with the Clerk 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 Appalachian and on all other respondents.

All filings with the Clerk of the Commission shall refer to Case No. PUE-2003-00286 and shall simultaneously be served on counsel for the Company at the address set forth above.

APPALACHIAN POWER COMPANY D/B/A AMERICAN ELECTRIC POWER

(6) On or before August 5, 2003, Appalachian Power Company shall serve a copy of this Order on the chair 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, Appalachian shall provide proof of service and notice as required in this Order.

(8) On or before August 19, 2003, 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 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 parties shall refer in all of their filed papers to Case No. PUE-2003-00286.

(9) Within five (5) business days of receipt of a notice of participation as a respondent, Appalachian 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.

(10) On or before September 3, 2003, each respondent may file with the Clerk at the address set forth in Ordering Paragraph (8) above 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 Appalachian and on all other respondents.

(11) The Commission Staff shall investigate the reasonableness of Appalachian's estimated expenses and proposed fuel factor. On or before October 21, 2003, 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.

(12) On or before October 28, 2003, Appalachian 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 copy on Staff and all respondents.

(13) Appalachian and respondents shall respond to written interrogatories within seven (7) calendar days after receipt of the same.

**CASE NO. PUE-2003-00286
NOVEMBER 14, 2003**

APPLICATION OF
APPALACHIAN POWER COMPANY d/b/a AMERICAN ELECTRIC POWER

To revise its fuel factor pursuant to § 56-249.6 of the Code of Virginia

ORDER ESTABLISHING 2003-2004 FUEL FACTOR

On July 1, 2003, Appalachian Power Company d/b/a American Electric Power ("APCo" or the "Company"), filed with the State Corporation Commission ("Commission") an application, exhibits, and a proposed tariff intended to decrease its current fuel factor from 1.463¢/kWh to 1.300¢/kWh, effective for bills rendered on and after August 1, 2003.

By Order dated July 23, 2003, the Commission established a procedural schedule and set a hearing date for November 5, 2003. The Commission also permitted APCo to put the proposed fuel factor in effect, on an interim basis, effective with bills rendered on and after August 1, 2003. The Commission directed its Staff to file testimony and provided an opportunity for interested persons to participate in the proceeding. Notices of Participation were filed by the Division of Consumer Counsel, Office of the Attorney General ("Consumer Counsel"), and the Old Dominion Committee for Fair Utility Rates ("ODCFUR").

On October 23, 2003, the Staff filed its testimony wherein it found that, for the purposes of setting an in-period fuel factor for the new fuel year, the assumptions made by the Company in its application were reasonable and in compliance with the Commission's fuel cost projection standards. The Staff recommended that the Commission approve the continuation of the total fuel factor of 1.300¢/kWh that became effective with bills rendered on and after August 1, 2003.

The hearing was convened on November 5, 2003. Appearances were made by counsel for the Staff, APCo, Consumer Counsel and ODCFUR. At the hearing, the Company submitted its proof of service and notice, and the Company's application, testimony, and exhibits, and the Staff's testimony were entered into the record without cross-examination.

NOW THE COMMISSION, upon consideration of the record in this case, is of the opinion that a decrease in the Company's fuel factor to 1.300¢/kWh is reasonable and appropriate.

Approval of this factor, however, is not construed as approval of APCo's actual fuel expenses. For each calendar year, the Commission's Staff conducts an audit and investigation which addresses, among other things, the appropriateness and reasonableness of APCo's booked fuel expenses. Staff's results are documented in an Annual Report ("Staff's Annual Report"). A copy of Staff's Annual Report is sent to APCo and to each party who participated in APCo's last fuel factor proceeding, all of whom are provided with an opportunity to comment and request a hearing on the report.

Based on Staff's Annual Report, any comments or hearing thereon, the Commission enters an Order entitled "Final Audit for twelve-month period ending December 31, 20__, Fuel Cost Recovery Position" ("Final Audit Order"). Notwithstanding any findings made by the Commission in an earlier order establishing APCo's fuel factor based on estimates of future expenses and unaudited booked expenses, the Final Audit Order will be the final determination of not only what are, in fact, allowable fuel expenses and credits, but also APCo's over- or underrecovery position as of the end of the audit period. Should the Commission find in its Final Audit Order (1) that any component of APCo's actual fuel expenses or credits has been inappropriately included or excluded, or (2) that APCo has failed to make every reasonable effort to minimize fuel costs or has made decisions resulting in unreasonable fuel costs, APCo's recovery position will be adjusted. This adjustment will be reflected in the recovery position at the time of APCo'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 1.300¢/kWh effective for bills rendered on and after August 1, 2003, established by Commission Order dated July 23, 2003, remains in effect.

(2) This case is continued generally.

**CASE NO. PUE-2003-00321
SEPTEMBER 24, 2003**

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, the Virginia 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"), charged with the investigation of probable violations of the Act, has completed investigations of certain incidents between October 23, 2002, and May 16, 2003, 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 of Virginia;
- (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 and D of the Code of Virginia.
 - (b) Failing on certain occasions to mark within the time prescribed in the Act, in violation of § 56-265.19 A and D of the Code of Virginia.
 - (c) Failing on certain occasions to report to the notification center that lines had been marked or they were not in conflict with the proposed excavation, in violation of § 56-265.19 A and 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.

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 1, 2003, 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 \$5,500 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.

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 be, and it hereby is, accepted.
- (2) The sum of \$5,500 tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2003-00322
NOVEMBER 18, 2003**

APPLICATION OF
VIRGINIA GAS PIPELINE COMPANY
and
NUI ENERGY BROKERS, INC.

For approval of application to renew affiliate agreement for successive terms pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On October 10, 2003, Virginia Gas Pipeline Company ("VGPC") and NUI Energy Brokers, Inc. ("NUIEB") (collectively the "Applicants"), filed a complete application with the State Corporation Commission (the "Commission") requesting approval to renew an affiliate agreement for successive terms under Chapter 4 of Title 56 (the "Affiliates Act") of the Code of Virginia (the "Code").

VGPC is a Virginia public service corporation that provides pipeline transmission and underground natural gas storage services to customers in southwestern Virginia and eastern Tennessee. VGPC has certificates of public convenience and necessity ("certificate(s)") to construct, own, operate and maintain an underground natural gas storage facility in Smyth and Washington Counties, and to own, develop, construct and operate an intrastate gas transmission line in the counties of Smyth, Wythe, and Pulaski. VGPC is a wholly owned subsidiary of Virginia Gas Company ("VGC"), which is headquartered in Abingdon, Virginia. VGC is a wholly owned subsidiary of NUI Corporation ("NUI").

NUIEB is a multi-state company engaged in the business of wholesale natural gas trading and marketing and the management of natural gas storage, supplies, and transportation assets. NUIEB buys and sells gas in fifteen states, has about 110 active trading partners, and traded 700 billion cubic feet of gas in the year ended May 31, 2003. NUIEB currently has 33 employees operating out of Bedminster, New Jersey, and Houston, Texas. NUIEB is a wholly owned subsidiary of NUI.

NUI is an exempt public utility holding company domiciled in Bedminster, New Jersey, that owns four natural gas utilities serving more than 365,000 customers in New Jersey, Maryland, Virginia, and Florida. NUI also owns subsidiaries that provide natural gas pipeline and storage service, wholesale energy portfolio management, retail energy sales, telecommunications services, and customer information and field operations systems services.

Since the Applicants share the same senior parent company, NUI, the companies are considered affiliated interests under § 56-76 of the Code. As such, any contract or arrangement between the companies to provide or receive services must be approved by the Commission pursuant to the Affiliates Act.

Original Agreement

The Applicants initially filed on July 11, 2003, for approval to renew an asset optimization agreement (the "Original Agreement") that was approved by the Commission in Case No. PUA-2001-00062. Under the Original Agreement, NUIEB would manage and administer VGPC's short-term assets to maximize their value in a manner VGPC would be unable to do independently. The Original Agreement allowed NUIEB to buy and sell natural gas and perform related energy trading activities on VGPC's behalf. The Original Agreement also gave NUIEB control over all of VGPC's physical and contractual gas storage capacity and gas transportation rights. Finally, the Original Agreement allowed VGPC to share 10% of any net profits realized from the optimization transactions. Due to last year's cold winter, which resulted in large gas storage withdrawals, no transactions under the Original Agreement occurred.

During its review of the current application, the Commission's Staff ("Staff") realized that the Original Agreement exceeded the scope of VGPC's certificate. The Commission does not allow affiliates to perform activities on a regulated company's behalf which the utility itself cannot do.¹ In this case, VGPC's certificate prevents it from buying or selling natural gas except for base gas purposes, and prohibits its involvement in energy trading activities. Also, the Commission requires Virginia public service corporations to retain responsibility and control over their regulated assets.

After Staff notified the Applicants of its concerns, the Applicants filed with the Commission on August 19, 2003, "A Motion for Leave to Amend Application," in which the Applicants requested leave to amend the Application by revising the Original Agreement. On September 3, 2003, the Commission issued an "Order Granting Leave to Amend Application" ("Order Granting Leave"), in which the Applicants were granted leave to amend the Application pursuant to 5 VAC 5-20-130 within 45 days from the date of the Order Granting Leave. Staff's original memorandum of completeness filed July 22, 2003, pursuant to 5 VAC 5-20-160 was vacated, and Staff was directed to refile a new memorandum of completeness upon the filing of the revised agreement. On October 10, 2003, the Applicants filed a "Revised and Restated Agreement" (the "Revised Agreement").

Revised Agreement

Under the Revised Agreement, VGPC grants and NUIEB accepts authority to act as VGPC's non-exclusive agent for the limited purpose of the short-term marketing of VGPC's gas storage assets to third parties. VGPC shall continue to perform its own long-term marketing, and it shall retain the right to contract with unaffiliated third parties for marketing services. VGPC also agrees to provide NUIEB from time-to-time with interruptible gas storage service.

The Revised Agreement states that VGPC shall maintain operational control and retain responsibility for the primary function of its public utility system at all times. VGPC shall not buy, sell, or trade natural gas under the terms of the Revised Agreement except as required for base gas, compressor fuel, and evaporator fuel purposes.

The Revised Agreement also states that NUIEB shall pay VGPC for any gas storage services offered under VGPC's tariff at the filed and approved tariff rates for such service. There shall be no fee paid by VGPC to NUIEB for the marketing services provided by NUIEB under the Revised Agreement.

The Revised Agreement becomes effective on the date of the Commission's Order in this case, and its initial term ends on December 31, 2005, at which time the Revised Agreement automatically renews for successive one-year terms.

NOW THE COMMISSION, upon consideration of the application and representations of Applicants and having been advised by its Staff, is of the opinion and finds that the Revised Agreement described above is in the public interest and should be approved. We find that the Revised Agreement allows VGPC the opportunity to optimize its short-term excess storage capacity while remaining in compliance with the scope of its natural gas storage certificate.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code of Virginia, the Revised and Restated Agreement between Virginia Gas Pipeline Company and NUI Energy Brokers, Inc., is hereby approved under the terms and conditions and for the purposes described herein.
- 2) The approval granted herein shall commence on the date of this Order and shall continue through December 31, 2005.
- 3) Should the Applicants wish to continue the Revised Agreement beyond December 31, 2005, the Applicants must file an application requesting approval to renew the Revised Agreement by no later than September 1, 2005.

¹ "It has been our long-standing opinion that, at least in the utility arena, a public service company is prohibited from doing indirectly that which [it] is forbidden to do directly." *Commonwealth of Virginia At the Relation of the Virginia Association of Life Underwriters, Incorporated, et al. v. Blue Cross of Southwestern Virginia Blue Shield of Southwestern Virginia and Cardinal Agency, Incorporated*, Case No. INS-1985-00053, Order issued January 29, 1985, 1985 S.C.C. Ann Rep. 82, 1985 WL 24483 (Va. Corp. Com.)

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- 4) Commission approval shall be required for any changes in the terms and conditions of the Revised Agreement approved by this Order, including any change in the successors or assigns under the subject Revised Agreement.
- 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 approval granted herein shall not be deemed to include any approvals other than for the transactions contained in the Revised Agreement approved herein.
- 7) The approval granted herein shall have no ratemaking implications for annual informational filings or future rate proceedings.
- 8) The Commission reserves the right to examine the books and records of any affiliate in connection with the approval granted herein whether or not such affiliate is regulated by this Commission.
- 9) The transactions covered by the Revised Agreement approved herein shall be included in VGPC's Annual Report of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting on or before May 1 of each year, which deadline may be extended administratively by the Director of Public Utility Accounting.
- 10) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00323
NOVEMBER 25, 2003**

APPLICATION OF
VIRGINIA GAS STORAGE COMPANY
and
NUI ENERGY BROKERS, INC.

For approval of application to renew affiliate agreement for successive terms pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On October 10, 2003, Virginia Gas Storage Company ("VGSC") and NUI Energy Brokers, Inc. ("NUIEB") (collectively the "Applicants"), filed a complete application with the State Corporation Commission (the "Commission") requesting approval to renew an affiliate agreement for successive terms under Chapter 4 of Title 56 (the "Affiliates Act") of the Code of Virginia (the "Code").

Virginia Gas Storage Company ("VGSC") is a Virginia public service corporation, incorporated in 1992, that provides underground natural gas storage services from depleted natural gas wells to customers located in Southwestern Virginia and eastern Tennessee. VGSC holds a certificate of public convenience and necessity ("certificate") to operate the Early Grove storage field located in Scott and Washington Counties, Virginia. VGSC is a wholly owned subsidiary of Virginia Gas Company ("VGC"), which is headquartered in Abingdon, Virginia. VGC is a wholly owned subsidiary of NUI Corporation ("NUI").

NUIEB is a multi-state company engaged in the business of wholesale natural gas trading and marketing and the management of natural gas storage, supplies, and transportation assets. NUIEB buys and sells gas in fifteen states, has about 110 active trading partners, and traded 700 billion cubic feet of gas in the year ended May 31, 2003. NUIEB currently has 33 employees operating out of Bedminster, New Jersey, and Houston, Texas. NUIEB is a wholly owned subsidiary of NUI.

NUI is an exempt public utility holding company domiciled in Bedminster, New Jersey, that owns four natural gas utilities serving more than 365,000 customers in New Jersey, Maryland, Virginia, and Florida. NUI also owns subsidiaries that provide natural gas pipeline and storage service, wholesale energy portfolio management, retail energy sales, telecommunications services, and customer information and field operations systems services.

Since the Applicants share the same senior parent company, NUI, the companies are considered affiliated interests under § 56-76 of the Code. As such, any contract or arrangement between the companies to provide or receive services must be approved by the Commission pursuant to the Affiliates Act.

Original Agreement

The Applicants initially filed on July 11, 2003, for approval to renew an asset optimization agreement (the "Original Agreement") that was approved by the Commission in Case No. PUA-2001-00063. Under the Original Agreement, NUIEB would manage and administer VGSC's short-term assets to maximize their value in a manner VGSC would be unable to do independently. The Original Agreement allowed NUIEB to buy and sell natural gas and perform related energy trading activities on VGSC's behalf. The Original Agreement also gave NUIEB control over all of VGSC's physical and contractual gas storage capacity and gas transportation rights. Finally, the Original Agreement allowed VGSC to share 10% of any net profits realized from the optimization transactions. Due to last year's cold winter, which resulted in large gas storage withdrawals, no transactions under the Original Agreement occurred.

During its review of the current application, the Commission's Staff ("Staff") realized that the Original Agreement exceeded the scope of VGSC's certificate. The Commission does not allow affiliates to perform activities on a regulated company's behalf which the utility itself cannot do.¹ In this case, VGSC's certificate prevents it from buying or selling natural gas except for base gas purposes, and prohibits its involvement in energy trading activities. Also, the Commission requires Virginia public service corporations to retain responsibility and control over their regulated assets.

After Staff notified the Applicants of its concerns, the Applicants filed with the Commission on August 19, 2003, "A Motion for Leave to Amend Application," in which the Applicants requested leave to amend the Application by revising the Original Agreement. On August 28, 2003, the Commission issued an "Order Granting Leave to Amend Application" ("Order Granting Leave"), in which the Applicants were granted leave to amend the Application pursuant to 5 VAC 5-20-130 within 45 days from the date of the Order Granting Leave. Staff's original memorandum of completeness filed July 22, 2003, pursuant to 5 VAC 5-20-160 was vacated, and Staff was directed to refile a new memorandum of completeness upon the filing of the revised agreement. On October 10, 2003, the Applicants filed a "Revised and Restated Agreement" (the "Revised Agreement").

Revised Agreement

Under the Revised Agreement, VGSC grants and NUIEB accepts authority to act as VGSC's non-exclusive agent for the limited purpose of the short-term marketing of VGSC's gas storage assets to third parties. VGSC shall continue to perform its own long-term marketing, and it shall retain the right to contract with unaffiliated third parties for marketing services. VGSC also agrees to provide NUIEB from time-to-time with interruptible gas storage service.

The Revised Agreement states that VGSC shall maintain operational control and retain responsibility for the primary function of its public utility system at all times. VGSC shall not buy, sell, or trade natural gas under the terms of the Revised Agreement except as required for base gas, compressor fuel, and evaporator fuel purposes.

The Revised Agreement also states that NUIEB shall pay VGSC for any gas storage services offered under VGSC's tariff at the filed and approved tariff rates for such service. There shall be no fee paid by VGSC to NUIEB for the marketing services provided by NUIEB under the Revised Agreement.

The Revised Agreement becomes effective on the date of the Commission's Order in this case, and its initial term ends on December 31, 2005, at which time the Revised Agreement automatically renews for successive one-year terms.

NOW THE COMMISSION, upon consideration of the application and representations of Applicants and having been advised by its Staff, is of the opinion and finds that the Revised Agreement described above is in the public interest and should be approved. We find that the Revised Agreement allows VGSC the opportunity to optimize its short-term excess storage capacity while remaining in compliance with the scope of its natural gas storage certificate.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code of Virginia, the Revised and Restated Agreement between Virginia Gas Storage Company and NUI Energy Brokers, Inc., is hereby approved under the terms and conditions and for the purposes described herein.
- 2) The approval granted herein shall commence on the date of this Order and shall continue through December 31, 2005.
- 3) Should the Applicants wish to continue the Revised Agreement beyond December 31, 2005, the Applicants must file an application requesting approval to renew the Revised Agreement by no later than September 1, 2005.
- 4) Commission approval shall be required for any changes in the terms and conditions of the Revised Agreement approved by this Order, including any change in the successors or assigns under the subject Revised Agreement.
- 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 approval granted herein shall not be deemed to include any approvals other than for the transactions contained in the Revised Agreement approved herein.
- 7) The approval granted herein shall have no ratemaking implications for annual informational filings or future rate proceedings.
- 8) The Commission reserves the right to examine the books and records of any affiliate in connection with the approval granted herein whether or not such affiliate is regulated by this Commission.
- 9) The transactions covered by the Revised Agreement approved herein shall be included in VGSC's Annual Report of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting on or before May 1 of each year, which deadline may be extended administratively by the Director of Public Utility Accounting.
- 10) There appearing nothing further to be done in this matter, it hereby is dismissed.

¹ "It has been our long-standing opinion that, at least in the utility arena, a public service company is prohibited from doing indirectly that which [it] is forbidden to do directly." *Commonwealth of Virginia At the Relation of the Virginia Association of Life Underwriters, Incorporated, et al. v. Blue Cross of Southwestern Virginia Blue Shield of Southwestern Virginia and Cardinal Agency, Incorporated*, Case No. INS-1985-00053, Order issued January 29, 1985, 1985 S.C.C. Ann. Rep. 82, 1985 WL 24483 (Va. Corp. Com.)

**CASE NO. PUE-2003-00324
AUGUST 28, 2003**

APPLICATION OF
SALTVILLE GAS STORAGE COMPANY, L.L.C.

For authority to incur indebtedness from affiliates under Chapters 3 and 4 of Title 56 of the Code of Virginia

ORDER GRANTING AUTHORITY

On July 11, 2003, Saltville Gas Storage Company, L.L.C. ("Saltville" or "Applicant"), Duke Energy Saltville Storage, L.L.C. ("Duke Member"), and NUI Saltville Storage, Inc. ("NUI Member") (collectively, "Applicants") filed an application with the State Corporation Commission ("Commission") requesting authority for Saltville to incur indebtedness from the Duke Member and the NUI Member under Chapters 3 and 4 of Title 56 of the Code of Virginia ("Code").¹ Applicant paid the requisite fee of \$250.

Saltville requests authority to incur indebtedness by entering into a Revolving Credit Note with its Duke Member, not to exceed \$30,000,000, and by entering a Revolving Credit Note with its NUI Member, not to exceed \$30,000,000 (together, the "Notes"). Applicants state that the combined \$60,000,000 of Notes will be drawn down as needed in equal amounts from its Duke Member and its NUI Member through January 1, 2008, to complete the development and construction of Phase I of Applicant's salt cavern storage facility and attendant pipeline.² The Notes will also provide working capital to operate completed portions of the storage facility in the early stages of development. The Notes will bear an interest rate set at a quarterly average London Interbank Offered Rate (LIBOR) plus 300 basis points. During the period of authority, interest payments will be paid quarterly in arrears on the first day of each January, April, July, and September.

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 \$30,000,000 of indebtedness in the form of a Revolving Credit Note with its Duke Member ("Duke Note") and to incur up to \$30,000,000 of indebtedness in the form of a Revolving Credit Note with its NUI Member ("NUI Note") for the purposes as set forth in its application, through the period ending January 1, 2008.
- 2) Within ten (10) days after any of the proposed debt is issued pursuant to Ordering Paragraph 1, Applicant shall file a copy of the actual Revolving Credit Notes executed.
- 3) 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 Report of Action, with a final Report of Action to be filed on or before March 31, 2008. Such reports shall include: the amount of debt issued under each of the respective Notes during the last calendar quarter; the amount of debt outstanding under each of the respective Notes; the LIBOR derived interest rate in effect for the calendar quarter; and a balance sheet for Saltville which reflects its debt to total capital ratio in conformance with the restrictive debt ratio covenant in each note.
- 4) Applicant shall file a Financing Report on or before July 1, 2007, that shall explain Applicants' prospective financing plans for Saltville after the indebtedness authorized herein is scheduled to mature on January 1, 2008.
- 5) Applicant shall file for separate authority to convert any of unpaid debt principal to equity under the Equity Conversion provision of Revolving Credit Notes.
- 6) Approval of the application 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.

¹ By Commission Order dated August 1, 2003, the Commission extended the period of review in this case for an additional 30 days, or through September 4, 2003, to permit sufficient time to consider fully matters associated with Applicant's requested authority.

² Applicant received authority to develop, construct, operate, and maintain the Phase I salt cavern storage facilities by Commission an Order Granting Certificate, dated August 6, 2002, in Case No. PUE-2001-00585.

**CASE NO. PUE-2003-00325
JULY 24, 2003**

APPLICATION OF
NORTHERN NECK ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On July 17, 2003, Northern Neck Electric Cooperative ("Applicant") filed an application with the Virginia State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia requesting authority to incur long-term debt. Applicant has paid the requisite fee of \$250.

Applicant requests authority to borrow up to \$7,992,835 from the National Rural Utilities Cooperative Financing Corporation ("CFC"). The proceeds will be used to retire existing debt issued to the Rural Utilities Services ("RUS"). The interest rate on the debt will be determined at the time of the draw but the effective cost of debt will be less than 5.0%, the current rate on the existing RUS debt to be retired. The loan will be structure so that the debt matures in installments throughout the next 15 years.

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 \$7,992,835 from the National Rural Utilities Cooperative Financing Corporation, under the terms and conditions and for the purposes set forth in the application.
- 2) Within thirty (30) days of the date of each advance of funds from CFC, 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 selected, 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 is hereby dismissed.

**CASE NO. PUE-2003-00326
JULY 29, 2003**

APPLICATION OF
PRINCE GEORGE ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On July 21, 2003, Prince George Electric Cooperative ("Applicant") filed an application with the State Corporation Commission ("Commission") under Chapter 3 of title 56 of the Code of Virginia requesting authority to incur long-term debt. Applicant has paid the requisite fee of \$25.

Applicant requests authority to borrow \$2,000,000 from the Federal Financing Bank ("FFB"). The FFB loan will be guaranteed by the Rural Utilities Services ("RUS"). The loan funds may be drawn down from time to time and will be used to finance renovations and additions to the Applicant's headquarters facilities. The FFB loan will have a thirty-five year maturity.

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 \$2,000,000 from the Federal Financing Bank, under the terms and conditions and for the purposes set forth in the application.
- 2) Within thirty (30) days of the date of 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 selected 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 is hereby dismissed.

**CASE NO. PUE-2003-00327
DECEMBER 19, 2003**

APPLICATION OF
CENTRAL VIRGINIA ELECTRIC COOPERATIVE

For approval of its plan to implement retail access

FINAL ORDER

On July 21, 2003, Central Virginia Electric Cooperative ("CVEC" or the "Cooperative") filed an application for State Corporation Commission ("Commission") approval of the Cooperative's retail access tariffs and terms and conditions of service for retail access, as required by Ordering Paragraph (10) of the Commission's December 18, 2001, Final Order issued in CVEC's application for a general increase in rates and for approval of its functional separation plan, Case No. PUE-2000-00583,¹ and pursuant to the Virginia Electric Utility Restructuring Act (the "Act"), Chapter 23 of Title 56 (§ 56-576 *et seq.*) of the Code of Virginia.

CVEC's retail access tariff filing included: (1) Rate Schedules and Tariffs for Retail Access; (2) Terms and Conditions for Providing Distribution Service with Retail Access General Rules and Regulations; (3) a Competitive Service Provider Agreement, Electronic Data Exchange ("EDI") Trading Partner Agreement, Transmission Customer Designation Form, Dispute Resolution Procedure, and Aggregator Agreement; (4) a plan to provide Price-to-Compare Information and assistance to customers; and (5) minor modification to existing Terms and Conditions for Distribution Service and to Capped Rate Schedule B - General Service.

CVEC advised that it was not imposing a wires charge at this time and, therefore, was not filing market rate and competitive transition charge ("CTC") calculations. The Cooperative also noted that its Terms and Conditions for Retail Access provide that no unmetered service may be supplied by a Competitive Service Provider ("CSP"); there is no CTC; and that its Terms and Conditions for Retail Access provide for consolidated billing services. The Cooperative represented that its application was being submitted for approval in anticipation of the commencement of retail access in its service territory, effective January 1, 2004.

On August 13, 2003, the Commission issued an Order Prescribing Notice and Inviting Comments and Requests for Hearing in the proceeding, wherein it directed the Cooperative to publish notice of its application in the latest issue of CVEC's publication, The Current Communicator, and to serve copies of its Order on local officials and on the electric CSPs and aggregators set out in Attachment A to the Order. The same Order directed the Staff to review the application and file a report, presenting its findings and recommendations, with the Commission.

On October 20, 2003, the Cooperative filed its proof of publication and proof of service upon local officials, CSPs, and aggregators, as required by the August 13, 2003, Order. No notices of participation or comments were filed in response to the Cooperative's application.

On November 12, 2003, the Staff filed its Report in the captioned proceeding, wherein it recommended that the Commission approve CVEC's tariffs and terms and conditions with the adoption of certain modifications recommended by Staff. In its Report, the Staff noted that the proposed retail access schedules, identified with the designation "-RA" are consistent with the currently effective bundled service schedules and reflect the rates in effect as of January 1, 2001, that were unbundled in Case No. PUE-2000-00583.

Staff reported that in Case No. PUE-2000-00583, CVEC proposed that its unmetered lighting service, Schedule SHL, would be available to its customers only as a bundled lighting service from the Cooperative. Staff noted that this schedule was included among the Schedules approved by the Commission's Final Order in Case No. PUE-2000-00583. Staff did not oppose CVEC's proposal that Schedule SHL be offered to customers only as a bundled lighting service from the Cooperative.

With regard to the Cooperative's Terms and Conditions of Service, the Staff noted that CVEC is proposing two changes to its tariff. One change corrects a typographical error in the bundled capped rate sheet for Schedule B. Staff did not object to this correction.

With regard to Section VI. "Extension of Facilities H. Provisions for Providing Service to Lots in a Residential Development", the Staff recommended that the last sentence in Subsection 3 be deleted. As proposed by CVEC, this sentence reads

[I]f within five years after the installation is made, a house is built on a lot in the development and the Cooperative provides service thereto by the installation of no more than 1,400 feet of additional line, the Cooperative will, within two months after permanent service is installed and a refund is requested, refund to the Applicant the difference in 1,400 feet and actual footage of the extension, multiplied by the cost per foot for the line extension referenced in Section VI.H.2, above.

According to Staff, the foregoing language represents a change from CVEC's current Terms and Conditions that state that the Cooperative will "refund to the Applicant the difference in 1,400 feet and actual footage of the extension, multiplied by the average cost per foot." The Staff recommended that CVEC retain the foregoing language. It opposed CVEC's proposed language on the grounds that it had the possibility of increasing costs to customers.

With regard to CVEC's Retail Access General Rules and Regulations found in Appendix B to the application, the Staff commented that the information contained in the Appendix generally summarizes the requirements contained in the Retail Access Rules as they relate to shopping customers.

The Staff reviewed CVEC's Competitive Service Provider, Aggregator and Trading Partner Agreements and recommended accepting these agreements as part of CVEC's Competitive Service Provider Coordination Tariff. Staff also concluded that the dispute resolution procedure proposed by CVEC was appropriate and should be accepted. Staff recommended that the tariffs and terms and conditions proposed by CVEC be approved as modified by the Staff Report.

¹ See Application of Central Virginia Electric Cooperative, For a general increase in rates, Case No. PUE-2000-00583, 2001 S.C.C. Ann. Rep. 464, 466.

On December 8, 2003, CVEC filed a letter indicating that it did not intend to file a response to the Staff's Report.

NOW THE COMMISSION, having considered the Cooperative's application, the Staff Report, and the applicable law, hereby approves CVEC's application, as recommended by Staff and subject to the modifications described therein. We will accept the modifications recommended by Staff in its Report. With respect to CVEC's lighting service schedule, we will accept the Cooperative's bundled Schedule SHL. With regard to the CSP, Trading Partner, and Aggregator Agreements, we will accept the inclusion of the agreements as attachments to the CSP Coordination Tariff.

Accordingly, IT IS ORDERED THAT:

- (1) CVEC's tariffs and terms and conditions, as recommended by and subject to the modifications proposed by the Staff, are hereby approved.
- (2) CVEC shall file revised tariffs and terms and conditions of service reflecting the findings herein, as soon as practicable after the date of this Order.
- (3) CVEC may initiate retail choice in its service territory upon the filing required by Ordering Paragraph (2) above.
- (4) This case is hereby dismissed, and the papers filed therein shall be placed in the Commission's file for ended causes.

**CASE NO. PUE-2003-00328
DECEMBER 24, 2003**

APPLICATION OF
BARC ELECTRIC COOPERATIVE

For review of tariffs and terms and conditions of service for retail access

FINAL ORDER

On July 21, 2003, BARC Electric Cooperative ("BARC" or the "Cooperative"), filed an application for State Corporation Commission ("Commission") approval of the Cooperative's retail access tariffs and terms and conditions of service as required by paragraph (3) of the Commission's Final Order issued on December 18, 2001, in the Cooperative's case for functional separation, Case No. PUE-2001-00002. BARC stated in its application that it anticipates commencing retail access in its service territory on January 1, 2004.

BARC's retail access tariff filing includes: (1) Unbundled Tariffs and Rate Schedules for all customer classes; (2) terms and conditions for providing electric service; (3) a Competitive Service Provider Coordination Tariff, including a Competitive Service Provider Agreement, Electronic Data Interchange (EDI) Trading Partner Agreement, Transmission Customer Designation Form, CSP Dispute Resolution Procedure, and Aggregator Agreement; (4) an Adjusted Market Rate and Competitive Transition Charges Calculation; (5) a letter of agreement between BARC and Old Dominion Electric Cooperative ("ODEC") outlining the terms of the binding commitment with regard to wires charges pursuant to § 56-484 of the Code of Virginia; and (6) BARC's Plan to provide price-to-compare information and assistance to customers.

On August 13, 2003, the Commission issued an Order Prescribing Notice and Inviting Comments and Requests for Hearing ("Order") in this proceeding, whereby it directed the Cooperative to publish notice of its application, and directed the Staff to investigate the application and file a report detailing its findings and recommendations. On October 6, 2003, the Cooperative filed its required proof of publication of notice and proof of notice to local governments, as required by the Order. On October 24, 2003, the Staff filed its Report in this proceeding wherein it recommended that the Commission approve BARC's tariffs and terms and conditions with the adoption of certain modifications recommended by Staff.

Staff stated in its report that BARC's methodology for calculating projected market prices for generation applicable for the rate classes that will participate in retail choice, was the methodology set forth in the electric Cooperatives' Comprehensive Wires Charges Proposal ("Comprehensive Plan"), approved by the Commission in Case No. PUE-2001-00306 ("Wires Charges Case"). The Staff noted its support for BARC's methodology for calculating projected market prices, but Staff commented that the current base market prices are to be updated following the Commission's Final Order on Virginia Electric and Power Company's ("DVPs") fuel factor application, Case No. PUE-2003-00285, in which the Commission was expected to specify ten days from which base forward market information will be collected in order to determine market prices for 2004.¹ Staff recommended that BARC's projected market prices incorporate the up-to-date market information specified in the DVP Order to reflect current market conditions.

Staff reported that its review of Table 11 of Market Price Tables included in BARC's application revealed an error in the calculation of the value of the Capped Generation and Transmission Charge for Schedule B. In discussions with Staff, the Cooperative agreed to correct the error and submitted the correction with a revised Table 11 and Schedule B-U-RA tariff. The revised tables were attached as Appendix A to the Staff Report. Further, Staff noted that the value (\$0.00643/kWh) used for the fuel adjustment to base generation in determining the CTC should be updated to the most recent actual monthly fuel adjustment available prior to initiating retail access on January 1, 2004.

The Staff did not oppose the Cooperative's proposal, as reflected in BARC's filed commitment document, for the allocation of wires charge revenue between BARC and its electric supply cooperative ODEC. Staff commented that if the agreement is renegotiated, the renegotiated agreement must be submitted to the Commission for approval as required by § 56-584 of the Code of Virginia. The Staff observed that by its terms, the commitment document provides that termination of the agreement at any time prior to the end of the capped rate period or July 1, 2007, eliminates any subsequent application of wires charges in retail access rates by the Cooperative.

¹ The Order Establishing 2004 Fuel Factor in Case No. PUE-2003-00285 was issued on December 12, 2003. Consequently, BARC can now update this information.

Staff further found that the proposed retail access schedules were consistent with BARC's currently effective bundled service schedules, and that the rates proposed for each service class properly reflected the pricing approved by the Commission in BARC's functional separation case, Case No. PUE-2000-00232.

Additionally, Staff indicated that BARC did not propose a retail access (unbundled) lighting service schedule in this proceeding. Staff noted that in BARC's functional separation case, the Commission approved the Cooperative's proposal to offer unmetered lighting service to its customers only as a bundled service. Staff did not oppose BARC offering lighting service only as a bundled service.

With regard to the Terms and Conditions of Service that would apply to the Cooperative and any member who by default or by choice does not select an alternative energy supplier, the Staff noted that BARC has added language that formalizes current practices and policies. Staff commented that although these additions are not presently part of BARC's Terms and Conditions, they do not appear to create any additional cost or impediment to obtaining or retaining service, and therefore the Staff does not oppose BARC's proposal to formalize these practices and policies.

BARC set out the retail access general rates and regulations in Appendix B to its application. These rules and regulations supplement the general terms and conditions for customers electing to purchase energy from a CSP. The terms and conditions are included in the proposed Competitive Service Provider Coordination Tariff. Staff noted that the information contained in this Appendix generally summarizes the requirements contained in the Retail Access Rules as they relate to shopping customers. Staff commented on "IV. Customer Information, E.", where the Cooperative proposes that if a customer's historical energy usage information is available in interval meter data form, it will be provided only to the customer prior to enrollment by a CSP. Staff noted that Retail Access Rule 20 VAC 5-312-60 D requires a CSP to obtain customer authorization prior to requesting any customer usage information not included on the mass list available from the local distribution company ("LDC"). Staff noted that under this rule, the CSP is responsible for providing proof that it has the customer's authorization to receive this information upon request by the customer or the Commission. Staff concluded that BARC should release historical information, including that in interval meter data form, to a CSP upon request at pre-enrollment, during enrollment and post-enrollment and, therefore, should modify the language in its terms and conditions accordingly.

Staff also commented on BARC's Technical IT, CSR Fees and Wire Transfer Charges set out in BARC's Competitive Service Provider Coordination Tariff's Schedule of Fees. Staff noted that the cost data provided by the Cooperative support the level of fees proposed, and therefore does not oppose the imposition of these fees for new services rendered.

Staff reported that the Competitive Service Provider, Aggregator and Trading Partner Agreements were identified as attachments to the Cooperative's Competitive Service Provider Coordination Tariff. Staff stated that it had no objection to the inclusion of these agreements in the application.

Finally, Staff noted that the Dispute Resolution Procedure attached to the Competitive Service Provider Coordinator tariff provides the steps for resolution of disputes between the CSP and BARC as required by 20 VAC 5-312-110 A of the Retail Access Rules. Staff found the proposed procedure appropriate and recommended that the Commission accept the same.

No comments from Respondents were filed in the case. BARC filed a Response to the Staff Report ("Response") on November 4, 2003.

In its Response, the Cooperative represented that it intended to include updated market price projections in a compliance filing with the Commission prior to the commencement of retail access in its service territory. It also acknowledged that its CTC calculations are to be updated prior to the commencement of retail access, and intends to incorporate the most current fuel factor adjustment available in the compliance filing to be submitted in response to the Commission's final order in this proceeding. BARC also noted that it corrected certain tables and rate schedule information and provided a copy to Staff. The Cooperative stated that it will provide a full set of amended rate schedules that reflect an updated CTC calculation in its compliance filing.

BARC represented that, subject to such updating as is necessary, BARC's rate schedules are ready for implementation, and BARC will be updating its tariffs and rate schedules in a single compliance filing after the Commission's final order is issued.

With regard to Appendix B, Subsection IV.E, the Cooperative maintained that in the Rappahannock Electric Cooperative and Shenandoah Valley Cooperative retail access cases, such interval data was to be provided directly to the customer. Additionally, the Cooperative asserted that Retail Access Rule 20 VAC 5-312-60 D does not require a local distribution company to release any available historical energy usage information at a CSP's request. According to BARC, this Rule instead requires CSPs to obtain customer authorization before requesting information not on the Mass List, and that CSPs must be able to provide evidence of such authorization. BARC asserts that the language included in IV.E was intended to protect sensitive customer information and to prohibit the release of such information without the customer's knowledge and express authorization. As an alternative, BARC agreed to amend Subsection IV.E as follows:

Due to the sensitive nature of the information, historical energy usage information of Customers that have interval metering will be made available to Customers, or to registered CSPs that have and can prove the appropriate customer authorization, by an appropriate, cost-effective electronic medium.

The Cooperative also stated that another option would be for the Cooperative simply to eliminate subsection IV.E and rely on other parts of its remaining Terms and Conditions and tariffs to protect sensitive customer historical energy usage information.

BARC requested that the Commission: (i) consider the comments offered in its Response; (ii) enter an order accepting and approving its Unbundled Tariffs and Rate Schedules for All Customer Classes, Terms and Conditions for Providing Electric Distribution Service and Competitive Service Provider Coordination Tariff, and the related agreements and procedures, with the changes recommended by Staff, subject to the modifications proposed in its Response; (iii) accept and approve its proposed calculation of adjusted market rates and competitive transition charges, subject to such updating as is appropriate; and (iv) provide for such further relief as the Commission deems appropriate.

NOW THE COMMISSION, having considered the Cooperative's application, the Staff Report, BARC's Response to the Report, and applicable statutes, hereby approves BARC's application as recommended by the Staff and subject to the modifications prescribed below.

We incorporate, by reference, our findings in the Wires Charge Case (Case No. PUE-2001-00306). The methodology for the proposed CTC must reflect the appropriate fuel adjustments and wires calculation. The wires charges calculated are subject to the limitation of § 56-583 of the Code of Virginia, which permits adjustments no more frequently than annually. Thus, the effective date of BARC's wires charges must conform with Ordering Paragraph (5) of the May 24, 2002, Order in the Wires Charge Case. As noted in the foregoing discussion, the value used for the fuel adjustment to base generation should be updated to reflect the most recent actual monthly fuel adjustment available prior to BARC initiating retail access in its service territory. As agreed to by BARC, the Cooperative shall resubmit updated Market Price Tables following the Commission's Final Order on DVP's fuel factor application, Case No. PUE-2003-00285, and should update the value (\$0.00643/kWh) to include the most recent actual monthly fuel adjustment prior to initiating retail access on January 1, 2004.

With respect to BARC's commitment document with ODEC, we note that the plain language of Virginia Code § 56-584 provides that the establishment by the Commission of wires charges is conditional upon such cooperative "entering into binding commitments by which it will pay to any power supply cooperative of which such distribution cooperative is or was a member, as compensation for such power supply cooperative's stranded costs, all or part of the proceeds of such wires charges, as determined by the Commission." This statute therefore assumes that there must be an active, unexpired commitment in place between the Cooperative and ODEC, BARC's power supply cooperative, and that the allocation between the power supply cooperative and a distribution cooperative is established "as determined by the Commission." While the Cooperative may not charge a wires charge without an active binding commitment, nothing prevents BARC from entering into a new agreement. Under those circumstances, the Cooperative must have the binding commitment establishing the wires charge approved by the Commission. It is our expectation that the Cooperative would file any new agreement for approval with the Commission before the existing agreement terminates.

With respect to BARC's proposed unbundled lighting service schedule, we will accept this schedule. We note that this Schedule was previously approved in BARC's functional separation case, PUE-2000-00232.

With regard to Subsection IV. E "Customer Information", we note that Retail Access Rule 20 VAC 5-312-60 D allows customers or the Commission to require the CSP to provide proof of its authorization. LDCs were not mentioned in this Rule to avoid opportunities for anticompetitive actions by the LDCs since LDCs or their affiliates may compete with the CSP to provide service to customers.

The Final Orders entered in Shenandoah's² and Community's³ retail access cases do not plainly address whether the cooperatives are entitled to verify a CSP's entitlement to gain access to customer information. The authority to verify a CSP's entitlement to information not on the mass list has been deliberately lodged with the customer or the Commission. See Retail Access Rule 20 VAC 5-312-60 D and 20 VAC 5-312-80 B. BARC should, therefore, modify its Retail Access General Rules and Regulations to remove IV. E "Customer Information."

With regard to the CSP, Trading Partner, and Aggregator Agreements, we accept the inclusion of these agreements as attachments to the CSP Coordination Tariff.

Accordingly, IT IS ORDERED THAT:

- (1) BARC's tariffs and terms and conditions of service as recommended by Staff and subject to the modifications discussed herein are hereby approved.
- (2) BARC shall file revised tariffs and terms and conditions of service reflecting the findings made herein with the Commission's Division of Energy Regulation as soon as practicable after the date of this Order.
- (3) BARC may initiate retail choice in its service territory upon the filing required by Ordering Paragraph (2) herein.
- (4) This case shall be dismissed, and the papers filed herein shall be made a part of the Commission's files for ended causes.

² See Application of Shenandoah Valley Electric Cooperative, Application for approval of retail access tariffs and terms and conditions of service for retail access, Slip op. (April 2, 2003 Final Order).

³ Application of Community Electric Cooperative, Application for approval of retail access tariffs and terms and conditions of service for retail access, Slip op. (July 30, 2003 Final Order).

**CASE NO. PUE-2003-00329
AUGUST 15, 2003**

APPLICATION OF
COMMUNITY ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On July 23, 2003, Community Electric Cooperative ("Applicant" or the "Cooperative"), filed an application the Virginia State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia for authority to incur long-term debt with the Rural Utilities Service ("RUS"). Applicant paid the requisite fee of \$25.

In its application, Applicant requests authority to borrow \$4,800,000 in the form of a RUS Treasury Rate Loan. The proceeds will be used to fund a portion of Applicant's three-year construction work plan. The plan specifically includes improving systems, purchasing equipment and extending lines.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The loan will have a 35-year maturity. Applicant represents that the interest rate on the loan is established daily by the United States Treasury. Applicant intends to select the interest rate term for each advance of funds. Such interest rate terms can range from one year to 35 years.

THE COMMISSION, upon consideration of the application and the advice of 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 \$4,800,000 from the RUS, under the terms and conditions and for the purposes set forth in the application.
- 2) Within thirty (30) days of the date of each 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 amount of the advance, the interest rate selected, 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 is hereby dismissed.

**CASE NO. PUE-2003-00330
NOVEMBER 25, 2003**

APPLICATION OF
VIRGINIA PILOTS ASSOCIATION

To revise rates of pilotage and other charges

FINAL ORDER PRESCRIBING INCREASED RATES OF PILOTAGE

On July 24, 2003, J. William Cofer, on behalf of himself and all other licensed branch pilots in the Commonwealth who are members of the Virginia Pilots Association ("Association"), filed with the State Corporation Commission ("Commission") an application for a revision of rates of pilotage ("Application"). In its Application, the Association proposes to revise the rates and charges prescribed by the Commission by final order entered on September 13, 2000,¹ to increase annual revenues by 8.9 percent. By Order for Notice and Hearing dated August 25, 2003, the Commission docketed this application and established procedures for a hearing on November 24, 2003.

As provided by § 54.1-918 of the Code of Virginia, the Commission may fix or prescribe pilotage rates and charges after notice has been published in newspapers of general circulation in the cities of Norfolk, Portsmouth, and in Newport News. The Association filed with the Clerk of the Commission proof of the required publication on October 24, 2003. The Commission finds that required notice of the application was given.

The hearing was held on the application on November 24, 2003, in Richmond, Virginia. The Association presented the prefiled testimony and exhibits of its president, Captain J. William Cofer. The prefiled testimony of Mark R. DeBruhl, Principal Public Utility Accountant with the Commission's Division of Public Utility Accounting, was also presented. No interveners or protestants appeared.

Upon consideration of the record developed at the hearing, the Commission will grant the application.

The prefiled testimony and exhibits of Captain Cofer and Mr. DeBruhl demonstrate that the Association has experienced increases in operating expenses and salary and benefit costs since its rates and charges were last reviewed in 2000. The Association intends to make several purchases within the current fiscal year that it believes are necessary to maintain the ability of the pilots to provide safe and efficient pilotage in the waters of the Commonwealth. These include purchasing a new launch, equipping members and apprentice pilots with new portable differential global positioning satellite system units that are equipped to receive signals from Automated Information System transponders. The Association also plans to renovate and refurbish portions of its Lynnhaven Inlet and Cape Henry facilities.

As required by § 54.1-918 of the Code of Virginia, the Commission must consider, in addition to operating expenses, maintenance, and depreciation, the rates and charges of pilotage at comparable and competing ports. The testimony of Captain Cofer reviews the rates at the ports of New York, Philadelphia, Baltimore, Charleston, and Savannah, and provides comparisons with the rates proposed in this application.² According to the Association, the proposed rates produce charges that are significantly lower than the current rates in New York, Philadelphia, and Baltimore, and that generally are only slightly higher than the current charges in Charleston and Savannah. Based on this evidence, the Commission concludes that the proposed rate increase would leave Virginia ports in a favorable competitive position.

The Association proposes to continue employing a formula based on a vessel's dimensions to calculate "ship units." The additional revenue would be generated by increasing the rates associated with ship units. The Commission will approve the proposed schedules of rates of pilotage attached to the Application as Appendix C.

¹ Application of Virginia Pilot Association, Case No. PUA-2000-00053, 2000 Ann. Rep. 216.

² Application at 5.

Accordingly, IT IS ORDERED THAT:

(1) As provided by § 54.1-918 of the Code of Virginia, this application is granted and revised rates and charges are prescribed.

(2) The revised rates and charges prescribed herein shall become effective at 12:01 a.m. on November 27, 2003.

(3) The Association shall promptly file with the Clerk of the Commission a schedule of rates of pilotage and other charges as approved and prescribed by this Order. The schedule shall bear at the foot of each page the following caption:

Prescribed by the State Corporation Commission in Case PUE-2003-00330 and effective on and after 12:01 a.m., November 27, 2003.

(4) This case be dismissed from the Commission's docket.

**CASE NO. PUE-2003-00332
SEPTEMBER 10, 2003**

APPLICATION OF
VIRGINIA GAS DISTRIBUTION COMPANY
and
SALTVILLE GAS STORAGE COMPANY L.L.C.

For approval of agreements for firm and interruptible gas storage service between affiliated entities pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On July 25, 2003, Virginia Gas Distribution Company ("VGDC") and Saltville Gas Storage Company L.L.C. ("Saltville") (collectively the "Applicants"), filed an application for approval of agreements for firm and interruptible gas storage service between affiliated entities with the State Corporation Commission (the "Commission") pursuant to Chapter 4 of Title 56 (the "Affiliates Act") of the Code of Virginia (the "Code").

VGDC, a Virginia public service corporation incorporated in 1992, provides natural gas distribution service to approximately 300 customers located in Southwest Virginia. VGDC has certificates of public convenience and necessity ("CPCN(s)") to offer natural gas service to the counties of Russell, Buchanan, and Dickenson, a portion of Tazewell County, and the Town of Saltville. VGDC is a subsidiary of Virginia Gas Company, which is a wholly owned subsidiary of NUI Corporation ("NUI").

Saltville, a Virginia limited liability company located in Abingdon, Virginia, has a CPCN to construct, develop, own, operate and maintain an underground natural gas storage facility and attendant pipeline facilities in Saltville, Virginia. Saltville is jointly owned by Duke Energy Saltville Gas Storage, L.L.C., and by NUI Saltville Storage, Inc., which is a wholly owned subsidiary of NUI.

NUI is an exempt public utility holding company domiciled in Bedminster, New Jersey, that owns four natural gas utilities serving more than 365,000 customers in New Jersey, Maryland, Virginia, and Florida. NUI also owns subsidiaries that provide natural gas pipeline and storage service, wholesale energy portfolio management, retail energy sales, telecommunications services, and customer information and field operations systems services.

Since VGDC and Saltville share the same senior parent company, NUI, the Applicants are considered affiliated interests under § 56-76 of the Code. As such, any contract or arrangement between the companies to provide or receive services must be approved by the Commission pursuant to the Affiliates Act.

The Applicants are seeking approval for VGDC to enter into a firm gas storage service agreement (the "Firm Agreement") and an interruptible gas storage service agreement (the "Interruptible Agreement") with Saltville.

Firm Agreement

Under the proposed Firm Agreement, VGDC will be able to inject up to 444 million British Thermal Units ("MMBtu") per day, withdraw up to 1,000 MMBtu per day, and store a maximum of 20,000 MMBtu. This is also known as 40-day injection / 20-day withdrawal service. Saltville will charge VGDC a storage injection charge of \$0.05 per MMBtu, a storage withdrawal charge of \$0.05 per MMBtu, and a monthly storage charge of \$2.00 per MMBtu times the 20,000 MMBtu Maximum Storage Quantity divided by 12. Any gas injected into or withdrawn from Saltville will be required to meet the minimum qualifications of East Tennessee Natural Gas Company's federal gas tariff. The Firm Agreement was executed August 1, 2003, but does not take effect until the Applicants obtain regulatory approval. The initial term of the Firm Agreement extends through March 31, 2005, at which time VGDC has the option to extend the Firm Agreement for another two years. The Firm Agreement also contains a clause which allows a company that succeeds by purchase, merger, or consolidation of title to the properties of either VGDC or Saltville to be entitled to the rights or subject to the obligations of its predecessor.

Interruptible Agreement

Under the proposed Interruptible Agreement, VGDC will be able to inject up to 444 MMBtu per day, withdraw up to 1,000 MMBtu per day, and store a maximum of 20,000 MMBtu. This is also known as 40-day injection / 20-day withdrawal service. Saltville will charge VGDC a storage injection charge of \$0.05 per MMBtu, a storage withdrawal charge of \$0.05 per MMBtu, and a monthly storage charge of \$1.50 per MMBtu times the 20,000 MMBtu Maximum Storage Quantity divided by 12. In the event of a service interruption, Saltville shall notify VGDC no less than 72 hours in advance so that VGDC can withdraw parked or stored gas or return loaned gas. The Interruptible Agreement was executed July 2, 2003, but does not take effect until the

Applicants obtain regulatory approval. The Interruptible Agreement has a one-year initial term. Thereafter, it continues from month-to-month unless terminated by either party with not less than 30 days written notice. The Interruptible Agreement also contains a clause allowing VGDC and Saltville to assign the contract to their successors.

NOW THE COMMISSION, upon consideration of the application and representations of Applicants and having been advised by its Staff, is of the opinion and finds that the agreements described above are in the public interest and should be approved subject to certain conditions we find necessary in this instance to protect the public interest.

The proposed Firm and Interruptible Agreements have merit for several reasons. Employing natural gas storage to hedge against heating season price volatility is a time-tested industry practice. VGDC's decision to contract with Saltville makes sense given Saltville's favorable economics versus unaffiliated providers, and Saltville's available storage capacity versus the capacity constraints of VGDC's affiliates, Virginia Gas Pipeline Company and Virginia Gas Storage Company. Both the proposed firm and interruptible rates are tariff rates and appear competitive with market prices. Therefore, we find that the Firm and Interruptible Agreements are in the public interest and meet the test of the Affiliates Act.

However, we have concerns with Saltville's proposed pricing of \$2.00 per MMBtu for firm storage service, which is above the bottom of its tariff range of \$1.64 to \$2.22 per MMBtu. Saltville's tariff is based on company projections provided in its certificate application, Case No. PUE-2001-00585, which we approved August 6, 2002. Saltville represents that the tariff range is designed to offer flexibility in marketing to customers with differing storage duration and volume requirements. Large, long-term customers are charged lower rates; small, short-term customers such as VGDC are charged higher rates. Since Saltville commenced operations August 1, 2003, it has not had the opportunity to collect sufficient data to determine its actual fully distributed cost of providing storage service.

To ensure that the Firm and Interruptible Agreements continue to be in the public interest, we grant approval of the agreements through March 31, 2005, the initial expiration date for the Firm Agreement. Should the Applicants opt to extend the Firm and Interruptible Agreements beyond that date, we find that VGDC and Saltville should be required to file a new application for approval pursuant to the Affiliates Act. This limited approval period will provide Staff an opportunity to reassess the reasonableness of the Firm and Interruptible Agreements' rates after a full year of operation by Saltville.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code of Virginia, the Firm and Interruptible Gas Storage Agreements between Virginia Gas Distribution Company and Saltville Gas Storage Company L.L.C. are hereby approved, commencing with the date of this Order and extending through March 31, 2005, under the terms and conditions and for the purposes described herein.
- 2) Commission approval shall be required for any changes in the terms and conditions to the affiliate agreements submitted as part of this application, including any successors or assigns under the subject agreements.
- 3) 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.
- 4) Should VGDC and Saltville desire to continue the Firm and Interruptible Gas Storage Agreements past March 31, 2005, an application shall be filed requesting approval to continue the agreements.
- 5) The approvals granted herein shall have no ratemaking implications for annual informational filings or future rate proceedings.
- 6) 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 this Commission.
- 7) VGDC and Saltville shall include the agreements approved herein in their Annual Reports of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting on or before May 1 of each year, which deadline may be extended administratively by the Director of Public Utility Accounting.
- 8) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00333
AUGUST 15, 2003**

APPLICATION OF
RAPPAHANNOCK ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On July 28, 2003, Rappahannock Electric Cooperative ("Applicant") filed an application with the Virginia State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia requesting authority to incur long-term debt. Applicant has paid the requisite fee of \$250.

Applicant requests authority to borrow up to \$20,680,000 from the National Rural Utilities Cooperative Financing Corporation ("CFC"). The proceeds will be used to retire existing debt issued to the Rural Utilities Services ("RUS"). The loan will be structured so that the debt matures in installments throughout the next 15 years. The interest rate on the debt will be determined at the time and will be fixed for the first 7 and 1/2 years of the

loan. At the end of the initial 7 and 1/2 years, the interest rate on the remaining balance of the loan will be re-priced at the then prevailing interest rate. The effective interest rate for the initial five year periods will be less than 5.0%, the current rate on the existing RUS debt to be retired.

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 \$20,680,000 from the National Rural Utilities Cooperative Financing Corporation, under the terms and conditions and for the purposes set forth in the application.
- 2) Within thirty (30) days of the date of each advance of funds from CFC, 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 selected, 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 is hereby dismissed.

**CASE NO. PUE-2003-00336
OCTOBER 16, 2003**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For approval of a communications facilities co-location agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On July 22, 2003, Columbia Gas of Virginia, Inc. ("CGV" or the "Applicant"), filed an application with the State Corporation Commission (the "Commission") under Chapter 4, Title 56 of the Code of Virginia (the "Affiliates Act"), requesting approval of a communications facilities co-location agreement (the "Agreement") with Columbia Gas Transmission Corporation ("TCO"). By Commission Order dated September 16, 2003, the Commission extended the period for review of the application through October 20, 2003.

CGV is a natural gas distribution company serving over 200,000 customers in central Virginia, southside Virginia, Piedmont Virginia, and most of the Shenandoah Valley as well as portions of Northern and Southwest Virginia. CGV is a wholly owned subsidiary of the Columbia Energy Group, which is a wholly owned subsidiary of NiSource, Inc. ("NiSource").

TCO is an interstate natural gas company with natural gas pipelines stretching from the Gulf Coast through the Midwest to New England. TCO's services and operations, including its rates and charges, are regulated by the Federal Energy Regulatory Commission. TCO also is a wholly owned subsidiary of the Columbia Energy Group.

NiSource is an energy holding company whose subsidiaries provide natural gas, electricity, and other products and services to approximately 3.7 million customers located within a corridor that runs from the Gulf Coast through the Midwest to New England. Effective November 1, 2001, NiSource became a registered holding company under the Public Utility Holding Company Act of 1935. For the fiscal year ending 2002, NiSource reported gross revenues of \$6.5 billion, total assets of \$16.9 billion, and 9,307 employees.

Since CGV and TCO share the same senior parent company, NiSource, the companies are considered affiliated interests under § 56-76 of the Code of Virginia. As such, any contract or arrangement between the companies to provide or receive services must be approved by the Commission pursuant to the Affiliates Act.

The Applicant seeks approval under the Affiliates Act to enter into an Agreement with TCO to install Supervisory Control and Data Acquisition ("SCADA") communications equipment consisting of a radio, a modem, and a router at TCO's compressor station in Boswell's Tavern, Virginia. The radio equipment, consisting of a radio transceiver, antennae, and associated cables and power supply, will retrieve data from pipeline remote terminal units ("RTU(s)") at two point of delivery ("POD") stations and a measuring and regulating facility serving the Gordonsville Electric Limited Partnership ("GELP") Power Plant, the Gordonsville Power Plant, and the Old Dominion Electric Cooperative ("ODEC") Power Plant. The ODEC plant already serves as the hub for two other RTUs. The radio will be linked to a network router that will connect to NiSource's wide area computer network. The router, which functions as the gateway between the RTU and NiSource's network, will be owned by CGV or TCO but will be operated and managed by NiSource Corporate Services Company ("Corporate Services") employees.

CGV's purchase and installation of the SCADA communications equipment will cost approximately \$5,000. CGV will have rights of access to TCO's premises and buildings, rack space in the telecommunications room, a power supply, mounting structures, and the sharing of space for related facilities. CGV will also pay TCO an annual charge of \$8 per square foot of occupied space, or \$12 per year, which reflects an allocated share of the depreciation and operating and maintenance expenses, including pertinent overheads, incurred to operate TCO's facility. The Agreement will have no prescribed term. Each party will be free to terminate the agreement upon reasonable notice.

SCADA Communication Options

In the current application, the three power plant customers for which CGV will be collecting RTU data represent a large and highly variable load that requires near real-time monitoring with updates needed every 60 seconds. Using the above performance specifications, CGV evaluated three methods of SCADA communication.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Under dial-up service, the SCADA system uses public phone service to periodically contact the RTU to retrieve information. The process takes 30 to 60 seconds per poll and is normally used at stations of lesser importance where frequent, near real-time updates are not required. Dial-up service also presents inherent security issues when control functionality is involved. Moreover, the cost of dial-up service over an extended period is the highest of the three alternatives. Therefore, CGV quickly rejected this option.

Leased lines are the traditional method for communicating with RTUs. Under this approach, CGV leases a full period data circuit from its contractual long distance carrier. The circuit is available at all times and allows data transfers to take place at a rate determined by the SCADA system, thereby meeting the requirement for near real-time performance. The dedicated circuit provides better security than dial-up, but its relatively high operating cost of \$4,200 annually per RTU is a significant drawback.

When available, radio provides RTU communication performance that is equal to or better than leased lines. Modem radio technology also allows for data encryption to improve security. The initial cost of approximately \$5,000 to purchase and install the radio equipment is significant, but radio's operating cost is negligible, which CGV represents makes it the most cost effective long-term option.

CGV proposes to establish a radio link at TCO's Boswell's Tavern site for several reasons. Since the TCO Station is on higher ground than the surrounding area, it is a near ideal location for a radio link. SCADA communications will be much more reliable. The TCO Station is also uniquely situated near the Gordonsville area power plants, which is vital given the distance-sensitive nature of RTU communications. Finally, the economics of radio communications should provide significant long term cost savings versus alternative SCADA communication methods such as dial-up or leased lines. By using the TCO site, CGV should be able to avoid the cost of separate leased lines to the GELP and the Gordonsville plants.

The Applicant proposes that operating costs be shared between CGV and TCO using the same compensation mechanism adopted by the Commission for an office sharing arrangement between CGV and TCO in Case No. PUA-2002-00013.

- (a) [A]11 expenses will be charged to the corresponding affiliate based on cost, including pertinent overheads;
- and (b) where office space between CGV and TCO is owned by one party, the entity using the assets will pay the owner of the assets an allocated share of the depreciation and operating and maintenance expenses, including overheads.

CGV estimates the operating costs under the Agreement to total approximately \$12 per year.

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 proposed Agreement is in the public interest and should be approved. By using TCO's Boswell's Tavern site as a SCADA communications hub, CGV should be able to minimize operating costs while preserving the reliability of its natural gas distribution system.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code of Virginia, Columbia Gas of Virginia, Inc., is hereby granted approval to enter into the above-referenced communications facilities co-location agreement with Columbia Gas Transmission Corporation at the Boswell's Tavern site.
- 2) Commission approval shall be required for any changes in the terms and conditions of the Agreement from those contained herein.
- 3) 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.
- 4) The approval granted herein shall not be deemed to include any approvals other than for the transactions contained in the Agreement approved herein.
- 5) The approval granted herein shall have no ratemaking implications for annual informational filings or future rate proceedings.
- 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) CGV shall include the Agreement approved herein in its Annual Report of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting on or before May 1 of each year, which deadline may be extended administratively by the Director of Public Utility Accounting.
- 8) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then CGV shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.
- 9) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00337
AUGUST 13, 2003**

APPLICATION OF
COMMUNITY ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On August 1, 2003, Community Electric Cooperative ("Applicant") filed an application with the Virginia State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia requesting authority to incur long-term debt. Applicant has paid the requisite fee of \$250.

Applicant requests authority to borrow up to \$1,068,495 from the National Rural Utilities Cooperative Financing Corporation ("CFC"). The proceeds will be used to retire existing debt issued to the Rural Utilities Services ("RUS"). The loan will be structure so that the debt matures in installments throughout the next 12 years. The interest rate on the debt will be determined at the time and will be fixed for the first five years of the loan. At the end of the initial five years, the interest rate on the remaining balance of the loan will be re-priced at the then prevailing interest rate. The effective interest rate for the initial five year periods will be less than 5.0%, the current rate on the existing RUS debt to be retired.

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 \$1,068,495 from the National Rural Utilities Cooperative Financing Corporation, under the terms and conditions and for the purposes set forth in the application.
- 2) Within thirty (30) days of the date of each advance of funds from CFC, 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 selected, 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 is hereby dismissed.

**CASE NO. PUE-2003-00339
SEPTEMBER 10, 2003**

APPLICATION OF
WASHINGTON GAS LIGHT COMPANY

For authority to receive cash capital contributions from an affiliate

ORDER GRANTING AUTHORITY

On August 4, 2003, Washington Gas Light Company ("WGL" or "Applicant") filed an application with the State Corporation Commission ("Commission") under Chapter 4 of Title 56 of the Code of Virginia requesting authority to receive cash capital contributions from its parent, WGL Holdings, Inc. ("Holdings").

WGL proposes to receive cash capital contributions up to an aggregate principal amount of \$100,000,000 from Holdings from time to time during the period between October 1, 2003, and September 30, 2005. The proceeds from the proposed capital contributions will be applied by WGL to fund its construction program, to repay short-term debt, and for other corporate purposes. Applicant further states that the authority requested is consistent with WGL's goals of maintaining financial integrity and keeping its equity ratio in the mid-50% range, excluding short-term debt.

THE COMMISSION, upon consideration of the application and having been advised by its Staff, is of the opinion and finds that approval of the application is in the public interest.

Accordingly, IT IS ORDERED THAT:

- 1) Applicant is hereby authorized to receive up to \$100,000,000 in cash capital contributions from Holdings from time to time, during the period October 1, 2003 through September 30, 2005, 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 receipt of any cash capital contributions. Such report shall include the date (s) and amount (s) of any capital contributions made pursuant to this Order and the use of the proceeds.
- 3) Applicant shall file a Final Report of Action on or before November 28, 2005, to include a summary of the dates and amounts of all capital contributions made pursuant to this Order, the use of the proceeds, and a final capital structure for the quarter ended September 30, 2005.

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) 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-2003-00340
SEPTEMBER 23, 2003**

APPLICATION OF
WASHINGTON GAS LIGHT COMPANY

For authority to borrow up to \$300 million in short-term indebtedness

DISMISSAL ORDER

On August 4, 2003, Washington Gas Light Company ("WGL" or "Applicant") filed an application with the State Corporation Commission ("Commission") under Chapters 3 and 4 of Title 56 of the Code of Virginia requesting authority to incur short-term indebtedness from the capital markets or through a money pool agreement with its parent, WGL Holdings, Inc.

On September 12, 2003, the Applicant filed its Motion for Leave to Withdraw Application. In support of its motion, WGL stated that it had determined that specific authorization of the planned indebtedness was not required.

Upon consideration of the relief requested, the Commission will grant the motion.

Accordingly, IT IS ORDERED that

- (1) WGL's motion is granted and the application is deemed withdrawn.
- (2) Case No. PUE-2003-00340 is dismissed from the Commission's docket and closed in the records maintained by the Clerk of the Commission.

**CASE NO. PUE-2003-00341
DECEMBER 29, 2003**

APPLICATION OF
PRINCE GEORGE ELECTRIC COOPERATIVE

For review of tariffs and terms and conditions of service

FINAL ORDER

On August 4, 2003, Prince George Electric Cooperative ("Prince George" or the "Cooperative") filed an application with the State Corporation Commission ("Commission") for approval of the Cooperative's retail access tariffs and terms and conditions of service for retail access as required by Ordering Paragraph (3) of the Commission's December 18, 2001, Final Order issued in Prince George's case for functional separation,¹ Case No. PUE-2001-00001, and pursuant to the Virginia Electric Utility Restructuring Act (the "Act"), Chapter 23 of Title 56 (§ 56-576 *et seq.*) of the Code of Virginia.

Prince George's retail access tariff filing includes: (1) Terms and Conditions of Service (including Terms and Conditions of Service for Retail Access); (2) Tariffs and Rate Schedules (including Unbundled Tariffs and Rate Schedules and Retail Access Tariffs and Rate Schedules); (3) a Competitive Service Provider ("CSP") Coordination Tariff (including the Competitive Service Provider Agreement, Electronic Data Interchange (EDI) Trading Partner Agreement, Transmission Customer Designation Form, CSP Dispute Resolution Procedure, and Aggregator Agreement); (4) Adjusted Market Rate and Competitive Transition Charges ("CTCs") Calculations; (5) Plan to Provide Price to Compare Information and assistance to customers; and (6) Letter of Agreement between Prince George and Old Dominion Electric Cooperative ("ODEC") regarding the terms of the binding commitment with regard to wires charges (competitive transition charges) required by § 56-584 of the Code of Virginia. Prince George represented that its application was submitted for Commission approval in anticipation of the Cooperative commencing retail access in its service territory, effective January 1, 2004.

On September 23, 2003, the Commission issued its Order Prescribing Notice and Inviting Comments and Requests for Hearing. On October 24, 2003, the Commission entered an Order Granting Extension of Procedural Schedule, granting the Cooperative's Motion for Change in Procedural Dates. Pursuant to the Commission's Orders of September 23, 2003, and October 24, 2003, the Commission directed the Cooperative to publish notice of its application in newspapers of general circulation throughout the Cooperative's service territory; directed that a copy of the Commission's Order of September 23, 2003, be served on local government officials; invited comments and requests for hearing; directed the Staff to investigate the application and file a report detailing its findings and recommendations; and permitted the Cooperative to file a response to the Staff Report and to any comments filed in the captioned docket.

¹ See Application of Prince George Electric Cooperative, For approval of a functional separation plan pursuant to Virginia Code § 56-590, Case No. PUE-2001-00001, 2001 S.C.C. Ann. Rep. 514, 515.

On October 30, 2003, Prince George filed proof of service on local government officials and on November 14, 2003, filed proof of publication of notice as required by the Commission's Orders of September 23, 2003, and October 24, 2003. No comments or requests for hearing were filed by the public.

On November 21, 2003, the Staff filed its Report in the proceeding, wherein it recommended that the Commission approve Prince George's tariffs and Rules and Regulations, subject to the adoption of certain modifications recommended by the Staff.

Staff stated in its Report that the methodology employed by Prince George in calculating projected market prices for generation applicable for the rate classes that will participate in retail choice, was the methodology set forth in the electric Cooperatives' Comprehensive Wires Charges Proposal ("Comprehensive Plan"), approved by the Commission in Case No. PUE-2001-00306 ("Wires Charges Case"). The Staff noted its support for Prince George's methodology for calculating projected market prices, and Staff noted the Cooperative's representation that the current base market prices will be updated following the Commission's Final Order on Virginia Electric and Power Company's ("DVP's") fuel factor application, Case No. PUE-2003-00285, in which the Commission is expected to specify ten days from which base forward market information will be collected in order to determine market prices for 2004.² Staff recommended that Prince George's projected market prices incorporate the up-to-date market information specified in the DVP Order to reflect current market conditions.

Staff reported that Table 11 of the Market Price Tables included in the Cooperative's application presents the calculations of the competitive transition charges ("CTC") for each of the retail service rate schedules. The value (\$0.01106/kWh) is used for the fuel adjustment to base generation in determining the CTC. Staff recommends that this value should be updated to the most recent actual monthly fuel adjustment available prior to initiating retail access on January 1, 2004. With this update, Staff reports that the methodology for calculation of CTCs shown in Table 11 is appropriate.

The Staff did not oppose the Cooperative's proposal, as reflected in Prince George's filed commitment document, for the allocation of wires charges revenue between Prince George and its electric supply cooperative ODEC. Staff commented that if the agreement is renegotiated, the renegotiated agreement should be submitted to the Commission for approval as required by § 56-584 of the Code of Virginia. The Staff observed that by its terms, the commitment document provides that termination of the agreement at any time prior to the end of the capped rate period or July 1, 2007, eliminates any subsequent application of wires charges in retail access rates by the Cooperative.

Staff further found that the proposed retail access schedules were consistent with Prince George's currently effective bundled service schedules, and that the rates proposed for each service class properly reflected the pricing approved by the Commission in Prince George's functional separation case, Case No. PUE-2001-00001.

The Staff commented that the retail service tariffs, under Monthly Rate II. "Generation and Transmission Charges" should be changed to Monthly Rate II. "Electricity Supply Service Charges" to conform to the billing headings required by 20 VAC 5-312-90 13.

The Staff noted that the proposed retail access schedules, identified with the designation "-RA", are consistent with the currently effective bundled service schedules. The rates that are proposed for each service class reflect the pricing unbundled in Case No. PUE-2001-00001. The CTCs included in the proposed rates are supported by the Cooperative's Market Price Analysis and Staff recommended that these schedules should be accepted for service on and after January 1, 2004.

The Staff noted that there is no retail access (unbundled) lighting service schedule (Schedule OL-6) provided by the Cooperative. In Case No. PUE-2001-00001, Prince George proposed that its unmetered lighting service would be available to its customers only as a bundled lighting service from the Cooperative. This service would provide both the equipment and unmetered energy supply to the lighting fixtures owned and operated by the Cooperative and attached to Cooperative poles. Staff does not object to the omission of Schedule OL-6 as this schedule limitation was included in the schedules approved by the Commission's Final Order dated December 18, 2001, for Case No. PUE-2001-00001.

With regard to the proposed rules and regulations for service, Staff noted that the Cooperative redrafted its terms and conditions for regulated service to conform to the standardized format proposed by the Virginia members of the Virginia-Maryland-Delaware Association of Electric Cooperatives. This standardized format was put forward in an effort to provide Staff and the general public with documents that permit ready comparison among the cooperatives. The proposed format also addresses terminology changes necessary to conform the Terms and Conditions to the requirements of the Commission's Permanent Rules for Retail Access and the Electric Utility Restructuring Act.

In reformatting its Rules and Regulations, the Cooperative reorganized the terms and conditions and rewrote some of the sections. In some sections, language was deleted and in others, language was added. Many of the terminology changes were made to appropriately differentiate between electric distribution service and the provision of electric energy supply. Some of the additions formalized existing cooperative internal policies with regard to the provision of electric distribution service. Generally, Staff does not oppose the changes proposed by the Cooperative. However, some of the changes remove, modify or eliminate incentives or options relating to new services, or add prerequisites for obtaining or restoring distribution service.

Staff objects to Section IV-B-5 Deposits, which does not include the existing option for the customer to request refund of his deposit by check. Staff recommends that this option should be retained.

Staff notes the imposition of a late payment fee on the 20th day following the bill's presentation date, pursuant to the tariff's Section VIII-C Terms of Payment/Collection. The imposition of the late payment fee on bills unpaid by the 20th day following the bill presentation date is not included in the present terms and conditions which states that a late payment charge will be applied at the time of the next billing of the account, if the outstanding balance has not been paid. The Staff does not oppose this change in determination of late payment date provided the Cooperative complies with 20 VAC 5-10-10 C Late Payment Charge by including the appropriate late payment date on its bills.

The Staff further notes in the rules and regulations for service that Section IX-B.2 Settlement of Charges and Fees has changed the deadline for disconnected accounts to be reconnected the same day, from 4:00 p.m. to 3:30 p.m. This reduces by one-half an hour, the time permitted for a customer

² The Order Establishing 2004 Fuel Factor in Case No. PUE-2003-00285 was issued on December 12, 2003. Consequently, Prince George can now update this information.

disconnected during the day, to settle his account in order to have service restored the same day without imposition of an after-hours reconnection charge. The Staff recommends that the Cooperative should restore the 4:00 p.m. deadline in its terms and conditions.

The Staff reports that Appendix B, Retail Access General Rules and Regulations, supplements Prince George's general terms and conditions for customers electing to purchase energy from a CSP. The CSP terms and conditions are included in the proposed Competitive Service Provider Coordination Tariff. The Staff notes that the information contained in this Appendix generally summarizes the requirements contained in the Retail Access Rules as they relate to shopping customers.

Staff commented on "IV. Customer Information, E.", where the Cooperative proposes that if a customer's historical energy usage information is available in interval meter data form, it will be provided only to the customer prior to enrollment by a CSP. Staff noted that Retail Access Rule 20 VAC 5-312-60 D requires a CSP to obtain customer authorization prior to requesting any customer usage information not included on the mass list available from the local distribution company ("LDC"). Staff noted that under this Rule, the CSP is responsible for providing proof that it has the customer's authorization to receive this information upon request by the customer or the Commission. Staff concluded that Prince George should release historical information, including that in interval meter data form to a CSP upon request at pre-enrollment, during enrollment and post-enrollment and, therefore, should modify the language in its Retail Access General Rules and Regulations to reflect this change.

Staff also commented on Prince George's IT Technical Support Fee, CSR Technical Support Fee, and Wire Transfer Fee, as set out in Prince George's Competitive Service Provider Coordination Tariff's Schedule of Fees. Staff agreed that the cost data provided by Prince George supported the proposed IT Technical and CSR fees. The Cooperative had proposed a wire transfer fee of \$24.16 including a \$15.00 bank imposed wire fee and \$9.16 in administrative charges. Staff opposes the inclusion of the administrative costs in the fee. The Staff does not oppose a Wire Transfer fee of \$15.00.

Staff reported that the Competitive Service Provider, Aggregator and Trading Partner Agreements were identified as attachments to the Cooperative's Competitive Service Provider Coordination Tariff. Staff stated that it had no objection to the inclusion of these agreements in the Competitive Service Provider Coordination Tariff.

Finally, Staff noted that the Dispute Resolution Procedure attached to the Competitive Service Provider Coordinator tariff provides the steps for resolution of disputes between the CSP and Prince George as required by 20 VAC 5-312-110 A of the Retail Access Rules. Staff found the proposed procedure appropriate and recommended that the Commission accept the same.

No comments from Respondents were filed in the case. Prince George filed a Response to the Staff Report ("Response") on December 15, 2003.

In its Response, the Cooperative noted its agreement to update its market price projections in a compliance filing to be made prior to making retail access available in its service territory. The Cooperative further agrees to update the fuel adjustment to its base generation for its CTC, to reflect the most current fuel factor adjustment made prior to the initiation of retail access service on January 1, 2004. The Cooperative states that it will submit amended rate schedules with its compliance filing, reflecting its updated CTC calculations, and including any other changes to information previously provided or adjustments required by this Final Order.

The Cooperative further agrees in its Response to amend its unbundled tariffs to change references to "generation and transmission charges" to "electricity supply service", in accordance with the Commission's Retail Access Rules at 20 VAC 5-312-90 I 3. Prince George notes that it will be updating its tariffs and rate schedules in a single compliance filing following this Final Order.

Prince George opposes Staff's recommendation to revise the proposed terms and conditions regarding subsection IV.B.5 "Deposits", regarding the direct payment of deposit refunds. Prince George contends that it has no obligation pursuant to 20 VAC 5-10-20 to offer direct payment of deposit refunds, and prefers to credit a customer's deposit against the existing account.

Prince George reports its agreement with Staff's recommendation regarding Terms of Payment/Collection, in subsection VIII.C, and will identify the late payment date on the face of its bills, which date will be in excess of 20 days after the billing date, pursuant to 20 VAC 5-10-10 C.

The Cooperative opposes the Staff's recommendation that in subsection IX.B.2, Settlement of Charges and Fees, the restoration deadline should be restored to 4:00 p.m. from 3:30 p.m. The Cooperative asserts that setting of this deadline should be left to its discretion and sound business judgment.

With regard to Appendix B, Subsection IV.E., the Cooperative maintained that in the Rappahannock Electric Cooperative and Shenandoah Valley Cooperative retail access cases, such interval data was to be provided directly to the customer. Additionally, the Cooperative asserted that Retail Access Rule 20 VAC 5-312-60 D does not require a local distribution company to release any available historical energy usage information at CSP's request. According to Prince George, this Rule instead requires CSPs to obtain customer authorization before requesting information not on the Mass List, and that CSPs must be able to provide evidence of such authorization. Prince George asserts that the language included in IV.E was intended to protect sensitive customer information and to prohibit the release of such information without the customer's knowledge and express authorization. As an alternative, Prince George agreed to amend Subsection IV.E as follows:

Due to the sensitive nature of the information, historical energy usage information of Customers that have interval metering data will be made available to the Customers or authorized CSPs (that have and can present the required customer authorization) by an appropriate, cost-effective electronic medium.

With regard to its Competitive Service Provider, Aggregator and Trading Partner Agreements, the Cooperative requested that the Commission accept the form of agreements submitted by Prince George as part of its filed CSP Coordination Tariff. Prince George requested the Commission to: (i) consider the comments offered in its Response; (ii) enter an Order accepting and approving its Unbundled Tariffs and Rate Schedules for All Customer Classes, Terms and Conditions for Providing Electric Service and Competitive Service Provider Coordination Tariff, and the related agreements and procedures, with the changes recommended by Staff, subject to the modifications proposed in Prince George's Response; (iii) accept and approve its proposed calculations of adjusted market rates and CTCs, subject to such updating as is appropriate; and (iv) provide for such further relief as the Commission deems appropriate.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOW THE COMMISSION, having considered the Cooperative's application, the Staff Report, Prince George's Response, and applicable statutes, hereby approves Prince George's application as recommended by Staff and subject to the modifications prescribed below.

We incorporate, by reference, our findings in the Wires Charge Case (Case No. PUE-2001-00306). The methodology for the proposed CTC must reflect the appropriate fuel adjustments and wires calculation. The wires charges calculated are subject to the limitation of § 56-583 of the Code of Virginia, which permits adjustments no more frequently than annually. Thus, the effective date of Prince George's wires charges must conform with Ordering Paragraph (5) of the May 24, 2002, Order in the Wires Charges Case. As noted in the foregoing discussion, the value used for the fuel adjustment to base generation should be updated to reflect the most recent actual monthly fuel adjustment available prior to Prince George initiating retail access in its service territory. As agreed to by Prince George, the Cooperative shall resubmit updated Market Price Tables following the Commission's Final Order on DVP's fuel factor application, Case No. PUE-2003-00285, and should update the value (\$0.01106/kWh) to include the most recent actual monthly fuel adjustment prior to initiating retail access on January 1, 2004.

With respect to Prince George's commitment document with ODEC, we note that the plain language of Virginia Code § 56-584 provides that the establishment by the Commission of wires charges is conditional upon such cooperative "entering into binding commitments by which it will pay to any power supply cooperative of which such distribution cooperative is or was a member, as compensation for such power supply cooperative's stranded costs, all or part of the proceeds of such wires charges, as determined by the Commission." This statute therefore assumes that there must be an active, unexpired commitment in place between the Cooperative and ODEC, Prince George's power supply cooperative, and that the allocation between the power supply cooperative and a distribution cooperative is established "as determined by the Commission." While the Cooperative may not charge a wires charge without an active binding commitment, nothing prevents Prince George from entering into a new agreement. Under those circumstances, the Cooperative must have the binding commitment establishing the wires charge approved by the Commission. It is our expectation that the Cooperative would file any new agreement for approval with the Commission before the existing agreement terminates.

With respect to Prince George's proposed unbundled lighting service schedule, we will accept this schedule. We note that this Schedule was previously approved in Prince George's functional separation case, Case No. PUE-2001-00001.

With regard to Subsection IV. "Customer Information E.," we note that Retail Access Rule 20 VAC 5-312-60 D allows customers or the Commission to require the CSP to provide proof of its authorization. LDCs were not mentioned in this Rule to avoid opportunities for anticompetitive actions by the LDCs since LDCs or their affiliates may compete with the CSP to provide service to customers.

The Final Orders entered in Shenandoah's³ and Community's⁴ retail access cases do not plainly address whether the cooperatives are entitled to verify a CSP's entitlement to gain access to customer information. The authority to verify a CSP's entitlement to information not on the mass list has been deliberately lodged with the customer or the Commission. See Retail Access Rule 20 VAC 5-312-60 D and 20 VAC 5-312-80 B. Prince George should, therefore, modify its Retail Access General Rules and Regulations to remove IV. "Customer Information E."

With respect to the wire transfer charge fee, the Cooperative proposes a \$24.16 wire transfer fee consisting of \$15.00 associated with charges made to Prince George by its bank and \$9.16 attributable to costs associated with the Cooperative's administrative support. The Cooperative has not, in our view, demonstrated support for the \$9.16 administrative component of this charge vis-à-vis other means of payment media. For example, there are costs associated with writing, processing and mailing a check. The Cooperative has not demonstrated that the administrative costs associated with a wire transfer exceed the costs for payment by check. Prince George is directed to reduce its wire transfer fee to \$15.00 to recover the costs charged to Prince George by its bank for wire transfers. The remaining fees proposed by Prince George are approved.

With regard to the CSP, Trading Partner, and Aggregator Agreements, we accept the inclusion of these arguments as attachments to the CSP Coordination Tariff.

With respect to the Cooperative's proposal to change the deadline by which disconnected accounts can be reconnected in the same day, from 4:00 p.m. to 3:30 p.m., we note Staff's concern that the change shortens the time for a customer to settle his account in order to have service restored the same day without paying an after-hours reconnection charge. In this instance, we find that the proposed change from 4:00 p.m. to 3:30 p.m. is reasonable. The Commission does not adopt Staff's recommendation on this issue.

The Commission finds that the Cooperative's customers should retain the option of requesting their refund of deposit by check, and accepts Staff's recommendation that Section IV-B-5 Deposits be changed accordingly.

Accordingly, IT IS ORDERED THAT:

(1) Prince George's tariffs and terms and conditions of service as recommended by Staff and subject to the modifications discussed herein are hereby approved.

(2) Prince George shall file revised tariffs and terms and conditions of service reflecting the findings made herein with the Commission's Division of Energy Regulation as soon as practicable after the date of this Order.

(3) Prince George may initiate retail choice in its service territory upon the filing required by Ordering Paragraph (2) herein.

(4) This case shall be dismissed, and the papers filed herein shall be made a part of the Commission's files for ended causes.

³ See Application of Shenandoah Valley Electric Cooperative, Application for approval of retail access tariffs and terms and conditions of service for retail access, Case No. PUE-2002-00975, Slip op. (April 2, 2003 Final Order).

⁴ Application of Community Electric Cooperative, Application for approval of retail access tariffs and terms and conditions of service for retail access, Slip op. (July 30, 2003 Final Order).

**CASE NO. PUE-2003-00343
SEPTEMBER 10, 2003**

APPLICATION OF
THE POTOMAC EDISON COMPANY

For approval to enter into tax allocation agreement under Chapter 4, Title 56 of the Code of Virginia

ORDER GRANTING AUTHORITY

The Potomac Edison Company, d/b/a Allegheny Power ("Allegheny" or "Applicant" or "Company"), a wholly owned subsidiary of Allegheny Energy, Inc. ("Allegheny Energy"), is a public service corporation organized and existing under the laws of the Commonwealth of Virginia and the State of Maryland. Allegheny provides retail electric service to customers in Maryland, West Virginia, and in all or part of thirteen counties in northwestern Virginia. Allegheny is incorporated in the State of Maryland with its headquarters located in Hagerstown, Maryland.

Allegheny Energy and its affiliated companies,¹ including Allegheny, are affiliated interests as defined under §56-76 of the Code of Virginia ("Code").

The Applicant requests that the Commission approve a Tax Allocation Agreement ("Tax Agreement"), dated July 31, 2003, with its parent Allegheny Energy and its affiliated companies that would replace the existing tax allocation agreement approved by the Commission on July 29, 1994, in Case No. PUE-1994-00013 (PUE940013), which replaced a tax allocation agreement dated June 13, 1963.

The Applicant represents that the Tax Agreement is filed consistent with and conforms to Section 12(b) of the Public Utility Holding Act of 1935 and the regulations promulgated therein. Further, that the Tax Agreement conforms to the requirements of Securities and Exchange ("SEC") Rule 45(c) and that it adopts SEC approved allocation procedures.

The proposed Tax Agreement specifies the mechanics of determining and paying the tax liabilities of Allegheny Energy and its affiliated companies, including Allegheny. Further, the Tax Agreement changes the method previously used to allocate losses within Allegheny Energy to one that more closely allocates tax losses to those entities within the system that are actually producing the losses. Pursuant to the Tax Agreement, Allegheny Energy's consolidated income taxes, including state and local income taxes, will be allocated among the affiliated companies in proportion to the separate return tax of each affiliate, provided that the amount of tax allocated to each affiliate will not exceed the tax it would be obligated to pay on a separate return basis.

The Tax Agreement does not provide for or contemplate the exchange of any goods or services among affiliates. The Tax Agreement does not contemplate that any administrative, general, labor, or other costs will arise that would result in any charges among affiliated companies.

The Company states that the Tax Agreement will produce a fair and reasonable allocation of income tax liability among the affiliated companies, will not provide undue advantage to any of the parties to the Tax Agreement, and will not adversely affect the public in Virginia. The Company further states that no other electric utility subject to the jurisdiction of the Commission will be affected by the Tax Agreement and that approval of the Tax Agreement is in the public interest.

THE COMMISSION, upon consideration of the application, representations of the Applicant, and having been advised by its Staff, is of the opinion and finds the above described Tax Agreement is in the public interest and should be approved. Approval of the Tax Agreement should have no ratemaking implications. That is, in any future rate proceeding, the Staff may propose and the Commission may consider alternative ratemaking treatment of the income tax consequences.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to §56-77 of the Code, Allegheny is hereby granted approval to enter into the Tax Agreement, as described herein.
- 2) Any changes in the terms and conditions or any other amendment to the Tax Agreement shall require further Commission approval.
- 3) The approval granted herein shall have no ratemaking implications. The Commission reserves the right to reflect ratemaking adjustments to Allegheny's income taxes in the course of the Commission's review and analysis of Allegheny's cost of service in the future.
- 4) The approval granted herein shall not be deemed to include any approvals other than the specific Tax Agreement approved in ordering paragraph (1).

¹ Acadia Bay Energy Company, LLC; AFN Finance Company No. 2, LLC; Allegheny (The Potomac Edison Company); Allegheny Communications Connect, Inc.; Allegheny Communications Connect of Ohio, LLC; Allegheny Communications Connect of Pennsylvania, LLC; Allegheny Communications Connect of Virginia, Inc.; Allegheny Communications Connect of West Virginia, LLC; Allegheny Energy Service Corporation; Allegheny Energy Solutions, Inc.; Allegheny Energy Supply Capital Midwest, LLC; Allegheny Energy Supply Capital, LLC; Allegheny Energy Supply Company, LLC; Allegheny Energy Supply Conemaugh Fuels, LLC; Allegheny Energy Supply Conemaugh, LLC; Allegheny Energy Supply Development Services, LLC; Allegheny Energy Supply Gleason Generating Facility, LLC; Allegheny Energy Supply Hunlock Creek, LLC; Allegheny Energy Supply Lincoln Generating Facility, LLC; Allegheny Energy Supply Units 3, 4 & 5, LLC; Allegheny Energy Supply Wheatland Generating Facility, LLC; Allegheny Generating Company; Allegheny Pittsburgh Coal Company; Allegheny Trading Finance Company; Allegheny Ventures, Inc.; AYP Energy, Inc.; Buchanan Energy Company of Virginia, LLC; Energy Financing Company, LLC; Green Valley Hydro, LLC; Lake Acquisition Company, LLC; Monongahela Power Company; Mountaineer Gas Company; Mountaineer Gas Services, Inc.; PE Transferring Agent, LLC; West Penn Funding Corporation; West Penn Funding, LLC; West Penn Funding, LLC - West; West Penn West Virginia Water and Power Company; West Penn Power Company; West Penn Transferring Agent, LLC; and West Virginia Power and Transmission Company.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- 5) The approval granted herein shall not preclude the Commission from exercising the provisions of §§56-78 and 56-80 of the Code.
- 6) The Commission reserves the authority to examine the books and records of any affiliate in connection with the approval granted herein, whether or not such affiliate is regulated by this Commission.
- 7) Allegheny shall include the Tax Agreement approved herein in its Annual Report of Affiliate Transactions submitted to the Director of Public Utility Accounting of the Commission.
- 8) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then Allegheny shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.
- 9) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUE-2003-00394
NOVEMBER 4, 2003**

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, the Virginia 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"), charged with the investigation of probable violations of the Act, has completed investigations of certain incidents between July 16, 2002, and July 3, 2003, 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 of Virginia;
- (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 and D of the Code of Virginia.
 - (b) Failing on certain occasions to mark within the time prescribed in the Act, in violation of § 56-265.19 A and D of the Code of Virginia.
 - (c) Failing on certain occasions to report to the notification center that lines had been marked or they were not in conflict with the proposed excavation, in violation of § 56-265.19 A and 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.

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, 2003, 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 \$10,350 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.

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 be, and it hereby is, accepted.
- (2) The sum of \$10,350 tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2003-00395
OCTOBER 31, 2003**

PETITION AND APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For a certificate to operate generating facilities pursuant to Virginia Code § 56-580 D, and such other approvals as may be necessary for the purchase of qualifying facility generating assets and for expedited consideration

FINAL ORDER

On August 8, 2003, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company") filed with the State Corporation Commission ("Commission") a petition and application ("Application") seeking the issuance of a certificate pursuant to § 56-580 D of the Code of Virginia ("Code") to operate an existing electrical power generation facility located in Gordonsville, Virginia ("Facility"), upon the Company's purchase of the Facility. The Application also requests such other approvals as may be necessary for the Company's purchase and operation of the Facility. The Application includes a request that the relief requested in the Application be granted on an expedited basis.

The Facility is currently owned by Gordonsville Energy L.P. ("GELP"), a Delaware partnership. The constituent partners of GELP are Rapidan Energy Company, a California corporation; Madison Energy Company, a California corporation; and Calpine Gordonsville, Inc., a Delaware corporation. Pursuant to a Purchase and Sale Agreement dated as of July 24, 2003, between the Company, GELP and its constituent partners, and Calpine Corporation and Edison Mission Energy as guarantors ("Purchase Agreement"), GELP has agreed to sell the Facility and all related assets to the Company. A copy of the Purchase Agreement was filed under seal with the Clerk of the Commission pursuant to Rule 170 of the Commission's Rules of Practice and Procedure, 20 VAC 5-20-170.

Closing under the Purchase Agreement is expected to occur as soon as all necessary regulatory approvals, including those sought herein, have been obtained. Effective as of the closing date, GELP will transfer all Facility permits, licenses, and approvals, to the extent transferable, to the Company.

The Facility is a qualifying cogeneration facility ("QF") under the Public Utility Regulatory Policies Act of 1978. It is comprised of two identical, dual-fuel combined-cycle units, and has a combined nominal capacity of approximately 240 MW. Each unit of the Facility consists of a General Electric 7EA combustion turbine generator, a supplementary fired heat recovery steam generator, an extraction/condensing steam turbine generator, a circuit breaker and a step-up transformer. The Facility includes a five-million gallon fuel-oil storage tank. The Facility is capable of operation on natural gas or No. 2 fuel oil.

Currently all of the Facility's electric generating capacity and energy is sold to the Company pursuant to the Second Amendment and Restatement of the Power Purchase and Operating Agreement, dated October 22, 1992 (Facility No. 1), and the Second Amendment and Restatement of the Power Purchase and Operating Agreement, dated October 23, 1992 (Facility No. 2) between GELP and the Company (the "PPOAs"). Unless terminated by the Company's purchase of the Facility, the PPOAs will remain in effect until May 2024. The Company states in the Application that the PPOAs will be terminated upon closing under the Purchase Agreement.

In its Application, the Company requests a waiver of any requirement to provide information related to the construction of the Facility. The Application also includes the Company's assertion that its purchase of the Facility is not subject to the rules establishing minimum criteria for any bidding program designed by an electric utility to purchase capacity or energy from other providers ("Bidding Rules"), which were adopted by the Commission by Order dated November 28, 1990, in Case No. PUE-1990-00029. The Company further contends in the Application that approval of its acquisition of the Facility is not required under the Utility Transfers Act ("Transfers Act"), Code § 56-88 *et seq.* However, the Company recognizes that the Commission has previously held that a transaction similar to that proposed herein is subject to the Transfers Act.¹ The Company asserts that if the Commission determines that Transfers Act approval is required, the Application, which includes a completed Transaction Summary, satisfies the requirements of the Transfers Act.

On August 8, 2003, the Company also filed a Motion for Protective Order. In its motion, the Company requested that a protective order be issued in order to assure confidential treatment of confidential and competitively sensitive information contained in the Purchase Agreement and information responsive to data requests submitted in this proceeding.

On September 9, 2003, the Commission entered an Order for Notice and Comment in which this matter was docketed; interested parties were invited to submit written comments or request that the Commission convene a hearing; Commission Staff ("Staff") was directed to file a report on its review of the Application; and the Company was directed to give customers and public officials within the Facility's service area notice of the Application.

On September 10, 2003, the Commission entered a Protective Order that sets forth the procedures by which confidential and competitively sensitive information is to be handled generally in this proceeding.

On September 30, 2003, the Department of Environmental Quality ("DEQ") submitted to Staff a statement summarizing the results of its review of the environmental effects of the proposed operation of the Facility by the Company. DEQ states that the Virginia Pollution Discharge Elimination System Permit currently held by GELP must be transferred to the Company, and the Company must work with the DEQ-Northern Regional Office regarding compliance with all air permitting requirements. DEQ states that it does not anticipate any adverse environmental impacts from the transfer of the Facility.

On October 6, 2003, the Company provided the Clerk of the Commission with proof of the newspaper publication and proof of service required by the September 9, 2003, Order for Notice and Comment.

No timely written comments or requests for a hearing have been filed in this matter.

¹ Application at p. 10, citing Application of Virginia Electric and Power Company, For a certificate of public convenience and necessity pursuant to the Utility Facilities Act, and authority pursuant to the Utility Transfers Act, to acquire cogeneration facilities in Altavista, Hopewell, and Southampton, Virginia, Case No. PUE-2000-00745, Order at page 4 (January 11, 2001).

On October 15, 2003, Staff filed a motion requesting leave to file its report out of time and no later than October 17, 2003. On October 16, 2003, the Commission entered an order granting the Staff's motion.

On October 17, 2003, Staff filed its report ("Report"). The Report addresses the Company's request for a certificate pursuant to § 56-580 D; the Company's request for a waiver of any requirement to provide information related to the construction of the Facility; the assertion that the Company's purchase of the Facility is not subject to the Bidding Rules; and the requirements under the Transfers Act regarding the Company's acquisition of the Facility.

In the Report, Staff concludes that the Company's ownership and operation of the Facility will have no material adverse effect upon reliability of electric service provided by any regulated public utility and is not otherwise contrary to the public interest, and recommends that the Commission grant the Company's request for a certificate to operate the Facility conditioned on meeting requirements specified by the DEQ.

Staff does not object to the Company's request for a waiver of any requirement to provide information under the Commission's Filing Requirements in Support of Applications for Authority to Construct and Operate an Electric Generating Facility ("Rules").

Staff concludes that the Bidding Rules should not apply in this case. The Bidding Rules were intended to provide electric utilities with an option to acquire needed capacity in a reasonable manner. The benefits to be derived from this transaction are specific to the purchase of the Facility and cannot be accommodated through the competitive bidding process.

With respect to the Transfers Act, Staff concludes that the proposed acquisition of the Facility will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates. Therefore, the proposed transfer meets the test of the Transfers Act and should be approved.

On October 20, 2003, the Company submitted a letter stating that it has no comment on the Report and requested the Commission to issue an order, on an expedited basis, granting the requested certificate and approvals.

On October 28, 2003, Rapidan Service Authority ("RSA"), by counsel, served on counsel of record a motion for leave to file comments out of time ("RSA Motion"). The RSA Motion was later received by the Clerk and filed October 30, 2003. RSA asserts that GELP has operated the Facility based upon certain agreements and permits with RSA, and that RSA has not reached an agreement with GELP or the Company in regard to such agreements and permits.

NOW THE COMMISSION, having considered the Application, the Staff's Report, and the applicable law, is of the opinion and finds as follows.

As we have stated in previous orders,² the Code establishes six general areas of analysis that apply to the Commission's review of applications under § 56-580 D of the Code. These criteria are: (1) reliability;³ (2) competition;⁴ (3) rates;⁵ (4) environment;⁶ (5) economic development;⁷ and (6) public interest.⁸ We have evaluated the Application with regard to these six areas of analysis.

We find that the transfer of the Facility will have no material adverse effect upon reliability of electric service provided by any regulated public utility. Because the Facility is already interconnected to the Company system at the Company-owned South Anna NUG Substation, the Company's operation of the Facility will have no impact on the Company's transmission or distribution system.

We find that the transfer of the Facility will have no material adverse effect upon retail competition in Virginia. The Company's purchase of the facility will maintain the status quo in that the entire output of the Facility will remain available for use by the Company to serve its customers. Under Company ownership, the Facility will be available at lower cost to the Company and its customers than under the PPOAs.

We find that the transfer of the Facility will have no material adverse effect upon the Company's retail rates. Termination of the PPOAs eliminates above-market payments to GELP and provides the opportunity to lower the Facility's costs.

We have considered the effect of the proposed transfer of the Facility on the environment. Pursuant to §§ 56-580 D and 56-46.1 A of the Code, permits regulating environmental impact and the mitigation of adverse environmental impact shall be deemed to satisfy the requirements of such sections with respect to all matters that are governed by the permits. GELP has previously obtained and currently maintains all local, state and federal governmental

² See, e.g., 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, Final Order at 6 and n. 3 (Jan. 9, 2003); Application of Old Dominion Electric Cooperative, For a certificate of public convenience and necessity for electric generation facilities in Louisa County, Case No. PUE-2001-00303, Final Order at 6 and n. 1 (July 17, 2002).

³ Va. Code §§ 56-46.1 A and 56-580 D(i).

⁴ Va. Code § 56-596 A.

⁵ Va. Code § 56-580 D(ii). See also 20 VAC 5-302-20 14; Commonwealth of Virginia, At the relation of the State Corporation Commission, Ex Parte: In the matter of amending filing requirements for application to construct and operate electric generating facilities, Case Nos. PUE-2001-00313 and PUE-2001-00665, Order Adopting Rules and Prescribing Additional Notice, 2001 S.C.C. Ann. Rep. 585, 586 (Dec. 14, 2001).

⁶ Va. Code §§ 56-46.1 A and 56-580 D.

⁷ Va. Code §§ 56-46.1 and 56-596 A.

⁸ Va. Code § 56-580 D(ii).

licenses, permits, approvals, and authorizations necessary for the construction and operation of the Facility. The Application provides that the Company will continue to operate and maintain the Facility in accordance with such permits and all other applicable environmental requirements and restrictions. The Application further provides that the Company will obtain, at or before closing, an Acid Rain Permit for the Facility under Title IV of the Clean Air Act and 40 CFR Part 72 from the DEQ. DEQ has written that it does not anticipate any adverse environmental impacts from the proposed transfer. DEQ's September 30, 2003, letter, which is included as an attachment to the Report, states that the Virginia Pollution Discharge Elimination System Permit currently held by GELP must be transferred to the Company, and the Company must continue to work with the DEQ-Northern Regional Office regarding compliance with all air permitting requirements. We adopt the Staff's recommendation that the granting of the certificate be conditioned upon the Company's compliance with the requirements specified by DEQ.

We find that the transfer of the Facility will have no material adverse effect upon economic development.

We find that the issuance of a certificate to the Company to operate the Facility is not otherwise contrary to the public interest.

We find that it is appropriate to waive any requirement under the Rules that the Company provide information related to the construction of the Facility.

We find, for the reasons stated in the Report, that the Bidding Rules are not applicable to this proceeding.

As we previously held in Case PUE-2000-00745,⁹ we find that the Company needs this Commission's approval under the Transfers Act in order to acquire the generating assets of a QF. A "public utility" is defined in § 56-88 of the Transfers Act as including:

any company which owns or operates facilities within the Commonwealth for the generation, transmission or distribution of electric energy for sale; for the production, transmission or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas for sale for heat, light or power, but excluding any company described in subdivision (b)(8) of § 56-265.1; or for the furnishing of sewerage facilities or water.

While Transfers Act approval of the transfer of the Facility to the Company is required, we find that such transfer will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates, and, therefore, meets the requirements under the Transfers Act, and such approval should be granted.

Finally, we find that RSA's motion for leave to file comments out of time should not be granted. The motion does not allege that the Company failed to provide notice of this proceeding in a manner that was required by order of this Commission or by other applicable law. RSA's motion lists a number of agreements and permits that it has with GELP and states that it has not reached an agreement with GELP or the Company with regard to these agreements and permits. RSA does not allege that the public interest will be detrimentally affected by this Commission's granting of the certificate to the Company in this proceeding.¹⁰

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-580 D of the Code of Virginia, in accordance with the record developed herein, the Company is hereby granted authority and a certificate to acquire and operate the Facility as described in this proceeding and this Order.

(2) The certificate granted herein shall be conditioned upon the Company: (a) operating and maintaining the Facility in accordance with all local, state and federal governmental licenses, permits, approvals, and authorizations necessary for the operation of the Facility; (b) obtaining, at or before closing, an Acid Rain Permit for the Facility under Title IV of the Clean Air Act and 40 CFR Part 72 from the DEQ; (c) competing the transfer to the Company of the Virginia Pollution Discharge Elimination System Permit currently held by GELP; and (d) continuing to work with the DEQ-Northern Regional Office regarding compliance with all air permitting requirements.

(3) Pursuant to the Transfers Act, the Company is hereby granted authority to acquire the Facility as described in this proceeding and this Order.

(4) The authority granted herein shall not be deemed to include any authorizations other than the granting of a certificate to acquire and operate the Facility and the authority to acquire the Facility under the Transfers Act.

(5) The Company shall file with the Commission, within thirty days of the closing of the transfer of the Facility from GELP to the Company, a report of the action taken pursuant to the authority granted herein. Such report shall include the date the closing occurred, the amount the Company paid for the Facility, and the accounting entries to reflect the transaction.

(6) The Motion for Leave to File Comments Out of Time, filed by RSA, is denied.

(7) 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.

⁹ See Application of Virginia Electric and Power Company, For a certificate of public convenience and necessity pursuant to the Utility Facilities Act, and authority pursuant to the Utility Transfers Act, to acquire cogeneration facilities in Altavista, Hopewell, and Southampton, Virginia, Case No. PUE-2000-00745, Final Order, at page 2 (March 2, 2001).

¹⁰ On October 29, 2003, the Company filed its response in opposition to RSA's Motion for Leave to File Comments Out of Time. We do not rely on the Company's response.

**CASE NO. PUE-2003-00400
NOVEMBER 21, 2003**

PETITION OF
PLANTATION PIPE LINE COMPANY

For relief from excessive charges by Rappahannock Electric Cooperative

FINAL ORDER

On August 8, 2003, Plantation Pipe Line Company ("Plantation" or "Company") filed with the State Corporation Commission ("Commission") its Petition for Relief from Excessive Charges by Rappahannock Electric Cooperative ("Petition").

In its Petition, the Company states that it is a Virginia public service corporation; it owns and operates a refined petroleum products pipeline network that extends through Virginia and seven other states; it operates eight pumping stations in Virginia, one of which is located near Bowling Green in Caroline County and is within the service territory assigned by the Commission to Rappahannock Electric Cooperative ("REC"); and the electricity required to operate the Bowling Green pumping station is purchased by the Company from REC at rates and subject to terms and conditions of service approved by the Commission. REC bills the Company for electric service to the Bowling Green pumping station on Large Power Service Rate Schedule LP-1.

The Company further states that its Bowling Green pumping station adjoins the electric substation at which Virginia Electric and Power Company ("Virginia Power") delivers electricity to REC for redelivery to the Company's pumping station. All of the electric energy delivered by Virginia Power to REC at the substation is immediately redelivered by REC to the Company. During 2002, the Company paid \$392,694 to REC for electric service at the Bowling Green pumping station, at an average cost of 7.74 cents/kWh. The average price paid by the Company to other electricity providers for comparable service at its seven other pumping stations in Virginia is 4.79 cents/kWh. REC has refused to provide service to the Company at its Bowling Green pumping station on the same terms and conditions that it serves Bear Island Paper Company, LLC ("Bear Island"). Bear Island receives service from REC on a schedule that recognizes that REC provides only minimal facilities to redeliver to Bear Island the electricity received from Virginia Power at a substation serving Bear Island. These circumstances are claimed to be very similar to the circumstances at the Bowling Green pumping station. REC's charge for electric service to Bear Island is described as a "pass-through" of Virginia Power's charges to REC, plus an amount calculated to recover only the capital cost and related expenses of the specific facilities used by REC to redeliver to its customer the electricity it receives at that substation from Virginia Power.

The Company argues in its Petition that REC's charges for electric service at the Bowling Green pumping station are improper in three ways. First, the Company claims that REC's charges for electric service at the Bowling Green pumping station are unreasonable and unjust in violation of § 56-234¹ of the Code of Virginia ("Code"). The Company cites the fact that REC's per kilowatt hour charges in 2002 were approximately 60 percent higher than the average charge per kilowatt hour by the electrical suppliers for the Company's seven other pumping stations. Such a large discrepancy, according to the Company, cannot be explained or justified on the basis of recognized ratemaking principles.

Second, the Company claims that REC has discriminated against it by refusing to charge the Company for electric service in the same manner that it charges Bear Island for electric service under similar conditions, again in contravention of § 56-234.

Third, the Company claims that REC's rates are not based on "reasonable classifications of customers" as required by clause (2) of § 56-235.2 of the Code.² REC's Rate Schedule LP-1 states that it is applicable to all consumers along the lines of the Cooperative contracting for a load of 100 kW or more. The Company asserts that the rate schedule is designed to recover the costs incurred by REC in providing service to customers "along the lines of the Cooperative," but the Bowling Green pumping station is not located "along the lines of the Cooperative." This conclusion is based on several factors: the pumping station is located adjacent to a Virginia Power transmission line; the pumping station receives service from a substation isolated from REC's distribution system; and the point at which the pumping station receives electricity from REC is less than 100 feet from the point at which Virginia Power provides electricity to REC. Because there are no distribution lines in or near the substation, except for the facilities located between the Virginia Power facilities and the Company's facilities, none of the costs of REC's facilities should be allocated or assigned to, or recovered from, the Company. The Company alleges that in 2002 it paid to REC approximately \$140,000 for receiving service through less than 100 feet of REC's facilities and its meter. A rate schedule that is similar to the schedule under which Bear Island receives service, which does not charge for facilities and services that the customer does not use, would eliminate excessive and discriminatory charges. The Company states that it wants REC to be required to make electric service available for the Bowling Green pumping station at a rate that is fair, reasonable, nondiscriminatory, and based on a reasonable customer classification.

¹ Virginia Code § 56-234 provides in part:

It shall be the duty of every public utility to furnish reasonably adequate services and facilities at reasonable and just rates to any person, firm or corporation along its lines desiring same. It shall be their duty to charge uniformly therefor all persons, corporations, or municipal corporations using such service under like conditions.

² Virginia Code § 56-235.2 A provides:

Any rate, toll, charge or schedule of any public utility operating in this Commonwealth shall be considered to be just and reasonable only if: (1) the public utility has demonstrated that such rates, tolls, charges or schedules in the aggregate provide revenues not in excess of the aggregate actual costs incurred by the public utility in serving customers within the jurisdiction of the Commission, subject to such normalization for nonrecurring costs and adjustments for known future increases in costs as the Commission may deem reasonable, and a fair return on the public utility's rate base used to serve those jurisdictional customers; (1a) the investor-owned public electric utility has demonstrated that no part of such rates, tolls, charges or schedules includes costs for advertisement, except for advertisements either required by law or rule or regulation, or for advertisements which solely promote the public interest, conservation or more efficient use of energy; and (2) the public utility has demonstrated that such rates, tolls, charges or schedules contain reasonable classifications of customers.

On September 3, 2003, REC, by counsel, filed its Motion to Dismiss or, in the Alternative, Answer to Petition ("Motion"). In its Motion, REC states that the Petition fails to state any claim on which relief may be granted as a matter of law. In its Motion, REC argues that the claim that its rates are higher than those charged by other utilities providing electric service to the Company elsewhere in Virginia is improper. By this argument, the Company seeks to have the Commission engage in "comparative ratemaking" whereby the rates paid to REC would be based on a comparison with rates paid for allegedly similar services from other utilities. REC counters the claim of discrimination by noting that the schedule LP-2-U under which Bear Island receives service has been closed to new customers since 1981. Moreover, it was open only to industrial customers contracting for a load of 10,000 kilowatts or more, and the Company does not allege that it fits such criterion. REC also disputes the Company's argument that its rates are not based on a reasonable classification of customers because the Bowling Green pumping station is not "along the lines of the Cooperative." REC asserts that the length of distribution services necessary for service does not affect the fact that the Bowling Green pumping station is connected to REC's facilities. The Company receives services through those facilities, and thus, REC asserts, its pumping station is located "along the lines" of REC.

In support of its Motion, REC further argues that the Company in essence is seeking a reduction in its rates, and that such a reduction would contravene the provisions of the Virginia Electric Utility Restructuring Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code (the "Restructuring Act").

On September 17, 2003, the Company filed its Response to REC's Motion ("Response"), in which it asks that REC's Motion be denied and the Commission proceed with a full investigation to determine whether REC's rates violate §§ 56-234 and 56-235 of the Code.³ The Company contends that it is not seeking a change in an existing rate schedule, a discount, or comparative ratemaking, and is not seeking to receive service on the same schedule under which the Bear Island facility receives service. Rather, the Response characterizes the Company's Petition as seeking relief from charges that are unreasonable, unjust, discriminatory, preferential, and based on an unlawful customer classification. If REC has no schedule on which the Company can be served in accordance with §§ 56-234 and 56-235 of the Code, the Company contends that REC must make a new rate schedule available to the Company that is neither unreasonable, unjust, discriminatory, preferential, nor based on an unlawful customer classification.

By order dated September 29, 2003, the Commission extended the time for REC to file its reply to the Company's Response. On October 8, 2003, REC filed its Reply to the Company's Response ("Reply"), in which it again argued that the Petition be dismissed because it fails to state any ground upon which relief may be granted under Virginia law.

NOW THE COMMISSION, having considered the pleadings and applicable law, is of the opinion and finds as follows.

REC's Motion raises the question of whether this Commission may grant the relief that appears to be the Company's objective: the institution of a new rate for Plantation that is calculated to recover only the cost of those isolated facilities that serve only the Bowling Green pumping station. The Company asserts that REC serves it and Bear Island "under like conditions" because both are served through facilities isolated from the REC distribution system and that serve only a single customer; that REC refuses to charge the Company on a rate specifically calculated to recover only the cost of those isolated facilities that serve only Plantation; and that by refusing to base its charges to the Company on the cost of facilities that serve the Company, REC is requiring the Company to subsidize other REC customers served on the Large Power Service Rate Schedule LP-1.⁴

The Company's pleadings make several points in support of its contention that this Commission should investigate whether the rates and charges paid by the Company are just, reasonable or unjustly discriminatory. The Company points to the Supreme Court's statement that:

[A]ny aggrieved ratepayer may at any time go before the Commission and make complaint that the schedule or rates of the Company are unjust and unreasonable. If it appears that the complaint is well founded, it will be the duty of the Commission to change, fix and order substituted for the filed schedule or rates such schedule or rates as shall be just and reasonable.⁵

The Company also observes that granting REC's Motion would prevent the Company from obtaining facts known only to REC by eliminating the ability to conduct discovery. Examples of the type of information that may be relevant to the Company's case but unavailable if this proceeding is dismissed include whether there are other customers served by REC through isolated facilities that serve only a single customer; whether such customers are charged only for the facilities that serve only them; to what extent revenue REC receives from the Company is used to subsidize other REC customers; and why REC's charges are so much higher than those for similar service by other utilities.

REC's Reply asks whether this Commission should conduct the requested investigation of REC's rates and charges if the relief sought by the Company is not available. The Cooperative observes that there is no purpose served in having the Commission entertain a petition in relation to which it cannot grant relief.⁶

³ Virginia Code § 56-235 provides in part:

If upon investigation the rates, tolls, charges, schedules, or joint rates of any public utility operating in this Commonwealth shall be found to be unjust, unreasonable, insufficient or unjustly discriminatory or to be preferential or otherwise in violation of any of the provisions of law, the State Corporation Commission shall have power to fix and order substituted therefor such rate or rates, tolls, charges or schedules as shall be just and reasonable.

⁴ Response at 2.

⁵ Norfolk v. Virginia Electric and Power Co., 197 Va. 505, 518, 90 S.E. 2d 140, 149 (1955), citing Clifton Forge v. Va.-West. Power Co., 129 Va. 377, 106 S.E. 400 (1921).

⁶ Reply at 9.

The relief that the Company is seeking is characterized by REC as "a whole new rate schedule that will provide it with lower rates"⁷ and by the Company as "a rate specifically calculated to recover only the costs of those isolated facilities that serve only Plantation."⁸ However such relief is characterized, we will address whether this Commission may grant the relief requested.

The Company's assertion that it is entitled to relief under §§ 56-234 of the Code is based on the premise that REC does not uniformly charge the Company and Bear Island for service "under like conditions."⁹ Under this argument, while both customers are served through facilities that are isolated from the REC distribution system and serve only a single customer, Bear Island's charges are calculated to recover only the cost of those isolated facilities that serve only Bear Island while REC refuses to charge the Company on a rate that is specifically calculated to recover only the cost of those isolated facilities that serve only Plantation.

REC asserts that the Company and Bear Island are not served "under like conditions." While both Plantation and Bear Island share one like condition – receiving electric service through dedicated facilities – there are numerous other aspects of service, including load size, that distinguish the service provided to these two REC customers. This Commission has approved REC's rate schedule in order to permit it fairly and equitably to recover its costs of providing service to its customers. REC contends that no customer has a right to demand a custom rate schedule charging that customer only the costs of equipment directly used to connect with and serve that customer.¹⁰

REC's argument is supported by this Commission's decision regarding a proposal by Reynolds Metals Corporation ("Reynolds") for a rate class applicable only to it, which was premised on a theory that Reynolds should have a rate reflective of only those costs attributable to it.¹¹ Reynolds sought to support its position with testimony describing, among other things, the location and description of physical facilities used for services delivered to Reynolds and a purported demonstration that Reynolds is not part of the integrated local distribution system of the gas company. In that case, this Commission rejected Reynolds' proposal, noting that:

As a matter of policy, rates should not be designed predicated upon geographical location of a customer on a utility's system or the costs incurred for maintenance or construction of facilities connected to a particular customer. Such a policy, taken to its logical conclusion, would result in destruction of the concept of distribution of common costs to customers on that system. Indeed each customer, regardless of class, would be entitled to a separate rate class under Reynolds' approach.¹²

In rejecting Reynolds' request for a separate rate class, we stated our belief that "the proper approach to reconciling the public service obligation of the utilities and the competitive pressures on the utility and its industrial customers is to design rates for service which are cost based, reflect relative parity of return among classes and allow appropriate flexibility for utility and customer response to the realities of the marketplace and competition."¹³

REC describes the Company's proposal as "[a] scheme of ratemaking where each customer has a personal rate schedule charging only the costs that customer thinks it should pay," and contends that such approach "would be inefficient, impossible to manage and, quite frankly, unheard of." We agree. We find that the Company has not stated a claim of a violation of § 56-234 or § 56-235.2 of the Code.¹⁴

With respect to the claimed violation of § 56-234, we find that the Company has not validly claimed that REC is not uniformly charging customers that are using its service "under like conditions." The Company's assertion that both it and Bear Island are served through facilities that are isolated from the REC distribution system and serve a single customer does not constitute a claim that the Company and Bear Island are served under like conditions. As noted previously, several other factors distinguish the service that REC provides to the Company and Bear Island. For example, Bear Island receives service under a schedule that was available to industrial customers contracting for a load of 10,000 kilowatts or more,¹⁵ while the Company's demand in 2002 was 1,450 kW.¹⁶ The Company's assertion is similar to Reynolds' request for a separate rate class that reflected only those costs attributable to it. As we held in our denial of Reynolds' claim, the extent to which a customer is integrated into a utility's distribution system does not, by itself, entitle the customer to receive service under its own custom schedule.

We also find that the facts asserted in the Company's Petition do not describe an unreasonable classification of customers in violation of § 56-235.2. The Company's claim is based on its assertion that its pumping station is not located "along the lines of REC." The Company acknowledges that the REC facilities that have been inserted between the Virginia Power facilities and the Company's facilities are REC distribution lines.¹⁷ Though

⁷ *Id.* at 3.

⁸ Response at 2.

⁹ Response at 2, *quoting* § 56-234 of the Code.

¹⁰ Reply at 4-5.

¹¹ *Application of Commonwealth Gas Services, Inc., to Revise its Tariffs*, Case No. PUE-1986-00031, 1987 S.C.C. Ann. Rpt. 250, 254 (Aug. 6, 1987).

¹² *Id.*

¹³ *Id.*

¹⁴ Though the Company's Reply argues that REC's charges discriminate against the Company in violation of § 56-235, the Company's Petition does not assert a violation of § 56-235.

¹⁵ Motion to Dismiss at 2.

¹⁶ Petition, Exhibit 5.

¹⁷ Petition at 4-5.

REC's distribution facilities that connect the Company's facility to Virginia Power's transmission line are not lengthy, we find that the Company's pumping station is located "along the lines" of REC.

The Company's failure to state valid claims of violations of §§ 56-234 and 56-235.2 does not necessarily mean that a new rate schedule could not be adopted. The Company's Petition could prompt this Commission to conduct a review of the justness and reasonableness of REC's schedules and rates. The Commission addressed a similar request in Petition of Luck Stone Corporation for an Investigation of the rates and charges of Northern Virginia Electric Cooperative, Case No. PUE-1988-00065. In its petition, Luck Stone asked the Commission to hold a hearing on the reasonableness of the cooperative's rates and charges, and alleged that it is unreasonable for the cooperative's retail rates and charges to Luck Stone to substantially exceed the retail rates and charges for similar electric service provided by Virginia Power. In that case, this Commission denied Luck Stone's request for a temporary reduction in rates and observed that "it has not been this Commission's practice to establish just and reasonable rates through comparisons of one utility to another."¹⁸ The electric cooperative in that case was required to prepare and file a cost-of-service study and all schedules required by the Commission's rules for electric cooperative rate increases.

However, it appears that under the Restructuring Act the Commission does not have the authority to conduct a general review of the cooperative's rates and charges in this proceeding. Subsection D of § 56-582 provides that "[u]ntil the expiration or termination of capped rates as provided in this section, the incumbent electric utility . . . shall make electric service available at capped rates established under this section to any customer in the incumbent electric utility's service territory . . ." This section of the Restructuring Act provides that rates charged by Virginia's electric utilities are capped at the rates in effect for each incumbent utility as of the July 1, 1999, subject to certain specific exceptions not at issue in this proceeding.

We find that these provisions of the Restructuring Act appear to prevent this Commission from granting the Company the relief that it seeks. REC argues that the Company's charges are subject to the capped rate provisions of the Restructuring Act, and cannot be changed for any of the reasons stated in the Company's Petition. The capped rate provision of the Act further appears to prevent REC's other rates from being raised in compensation for the erosion in revenue that would be caused by the adjustment sought by the Company.

The Company's reliance on subdivision A 3 of § 56-582, which provides that capped rates shall include rates for new services, is misplaced. This provision applies only "where, subsequent to January 1, 2001, rate applications for any such rates are filed by incumbent electric utilities with the Commission and are thereafter approved by the Commission." In this case, the incumbent electric utility is REC, and REC has not filed a rate application for the service, whether new or not.

In reaching this conclusion, we observe that we have authorized special rates for customers of another electric cooperative subsequent to the passage of the Restructuring Act. Pursuant to § 56-582 A 3 of the Restructuring Act, Southside Electric Cooperative, Inc., filed an application for a general rate increase and for approval of a special rate and contract. This Commission's final order in that proceeding provided for a special rate for a customer.¹⁹ However, this proceeding involved a general rate case and was filed in conjunction with the cooperative's application for approval of a functional separation plan. In this general rate case contemplated by the provisions of the Restructuring Act, the effects of changes in Southside Electric Cooperative's rates and charges on all classes of consumers, as well as on the cooperative's revenues and TIER, could be addressed comprehensively. This Commission does not appear to have the same latitude in this proceeding. We do not know what effect a reduction in REC's revenue, resulting from a lower rate being paid by the Company, would have on REC's operations and on the allocation of costs among all classes of customers. While such an analysis could be conducted in the context of a rate case, the Restructuring Act appears to foreclose that option at the present time.

For the reasons discussed above, we find that the Company has failed to state a claim upon which relief can be granted as a matter of law by this Commission. We further find that the remedy sought by the Company would require the implementation of a new rate that is specifically tailored to the unique circumstances under which the Company receives electric service at the Bowling Green pumping station while leaving all other provisions of REC's tariff unchanged. Such relief appears to contravene the general principles of ratemaking mentioned in our preceding discussion of Reynolds' request for special treatment in the Commonwealth Gas Services case.²⁰ If the conditions under which the Company received service, including load factor and total demand, were identical with other customers that received service under a different rate schedule, then the Company may be entitled to a remedy that addresses the discrimination without contravening the restrictions of the Restructuring Act. However, given that we do not have a situation that validly states a violation of § 56-234 or § 56-235.2, and further given that the rate cap provisions of the Restructuring Act appear to prevent this Commission from undertaking an examination of REC's rates for electric service to its customers generally, the Company has not stated any ground upon which relief may be granted. Consequently, we will grant REC's motion to dismiss the Company's Petition.

Accordingly, IT IS ORDERED THAT:

- (1) The Motion of Rappahannock Electric Cooperative to dismiss Plantation Pipe Line Company's Petition is granted.
- (2) The Petition of Plantation Pipe Line Company for Relief from Excessive Charges by Rappahannock Electric Cooperative is dismissed.
- (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.

¹⁸ Petition of Luck Stone Corporation for an Investigation of the rates and charges of Northern Virginia Electric Cooperative, Case No. PUE-1988-00065, Order Denying Motion, Directing Notice and Scheduling Hearing (Nov. 4, 1988).

¹⁹ Application of Southside Electric Cooperative, Inc. For a general rate increase and for approval of a special rate and contract, Case No. PUE-2000-00750, Final Order, 2001 S.C.C. Ann. Rpt. 511, 512 (Dec. 19, 2001). Colonial Pipeline Company filed a notice of protest and was a party to a stipulation submitted in the proceeding.

²⁰ See note 11, *infra*, and accompanying discussion.

**CASE NO. PUE-2003-00401
SEPTEMBER 2, 2003**

APPLICATION OF
MECKLENBURG ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On August 25, 2003, Mecklenburg Electric Cooperative ("Applicant") filed an application with the Virginia State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia requesting authority to incur long-term debt. Applicant has paid the requisite fee of \$250.

Applicant requests authority to borrow up to \$2,428,351 from the National Rural Utilities Cooperative Financing Corporation ("CFC"). The proceeds will be used to retire existing debt issued to the Rural Utilities Services ("RUS"). The loan will be structured so that the debt matures in installments throughout the next 11 years. The interest rate on the debt will be determined at the time and will be fixed through June 1, 2006. Subsequent to June 1, 2006, the interest rate on the remaining balance of the loan will be re-priced at the then prevailing interest rate. The effective interest rate for the initial period will be less than 5.0%, the current rate on the existing RUS debt to be retired.

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 \$2,428,351 from the National Rural Utilities Cooperative Financing Corporation, under the terms and conditions and for the purposes set forth in the application.
- 2) Within thirty (30) days of the date of each advance of funds from CFC, 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 selected, 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 is hereby dismissed.

**CASE NO. PUE-2003-00401
SEPTEMBER 10, 003**

APPLICATION OF
MECKLENBURG ELECTRIC COOPERATIVE

For authority to issue long-term debt

AMENDING ORDER

On August 25, 2003, Mecklenburg Electric Cooperative ("Mecklenburg" or "Applicant") filed an application with the Virginia State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia requesting authority to incur long-term debt. Mecklenburg requested authority to borrow up to \$2,428,351 to retire existing debt issued to the Rural Utilities Services. According to Mecklenburg, the interest rate on the debt was to be determined at the time of drawdown and was to be fixed through June 1, 2006, with the remaining balance of debt re-priced subsequent to June 1, 2006.

By Order Granting Authority dated September 2, 2003, the Commission authorized Mecklenburg to borrow up to \$2,428,351 from the National Rural Utilities Cooperative Financing Corporation, under the terms and conditions and for the purposes set forth in the application.

By letter dated September 4, 2003, to Joel H. Peck, Clerk of the Commission, Mecklenburg represents that the June 1, 2006, date was incorrectly provided to our Staff as the date that interest rates are determined at the time of re-pricing of the debt and that interest rates are fixed through June 1, 2006. According to Mecklenburg, the correct date in both of these instances should be January 1, 2006. As such, Mecklenburg requests that the second paragraph of our September 2, 2003, Order be amended to reflect the correct date.

NOW THE COMMISSION, upon consideration of Mecklenburg's request, is of the opinion and finds that the second paragraph of our September 2, 2003, Order should be corrected to reflect the January 1, 2006, date.

Accordingly IT IS ORDERED THAT:

- (1) The second paragraph of our September 2, 2003, Order is amended to state the correct date of January 1, 2006, as the date that interest rates are determined at the time of repricing of the debt and that interest rates are fixed through that date.
- (2) All other provisions of our September 2, 2003, Order Granting Authority shall remain in full force and effect.

**CASE NO. PUE-2003-00402
SEPTEMBER 10, 2003**

APPLICATION OF
PRINCE GEORGE ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On August 26, 2003, Prince George Electric Cooperative ("Applicant") filed an application with the Virginia State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia requesting authority to incur long-term debt. Applicant has paid the requisite fee of \$250.

Applicant requests authority to borrow up to \$1,203,634 from the National Rural Utilities Cooperative Financing Corporation ("CFC"). The proceeds will be used to retire existing debt issued to the Rural Utilities Services ("RUS"). The loan will be structured so that the debt matures in installments throughout the next 12 years. The interest rate on the debt will be determined at the time and will be fixed for the period ended January 1, 2010. After January 1, 2010, the interest rate on the remaining balance of approximately \$459,122 will be re-priced at the then prevailing interest rate. The effective interest rate for the initial period will be less than 5.0%, the current rate on the existing RUS debt to be retired.

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 \$1,204,634 from the National Rural Utilities Cooperative Financing Corporation, under the terms and conditions and for the purposes set forth in the application.
- 2) Within thirty (30) days of the date of each advance of funds from CFC, 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 selected, 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 is hereby dismissed.

**CASE NO. PUE-2003-00403
OCTOBER 8, 2003**

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 August 27, 2003, 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 completed its application with information filed on September 15, 2003. Applicant paid the requisite fee of \$250.

Applicant requests authority to issue up to \$100,000,000 of fixed-rate long-term debt ("Proposed Debt") in a limited number of tranches through the 2004 calendar year. The Proposed Debt will be used to refund long-term debt, help finance portions of the Company's Pollution Control Program, and provide capital to replace the gap in funds that will occur upon expiration of the Company's program to sell its accounts receivable ("Accounts Receivable Program").

The Company intends to issue the Proposed Debt with a fixed rate of interest on maturities ranging between two to twelve years. Applicant states that the interest rate on the proposed debt will be based on market conditions at the time of issuance. However, the interest rate on all borrowings will be at the lowest of: i) E.ON's effective cost of capital; ii) Fidelity's effective cost of capital; and 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 "Best Rate Method"). Applicant further requests authority to enter into one or more interest rate hedging agreements ("Hedging Facility") designed to lock in the underlying interest rate on Proposed Debt in advance of closing on the loan.

Similar to authority requested and authorized in Case No. PUE-2003-00065, Applicant requests authority to issue the Proposed Debt in the form of secured loans to its affiliate, Fidelity Corporation ("Fidelity"). The Company and Fidelity are both wholly owned subsidiaries of E.ON AG ("E.ON"). Applicant affirms that it has received approval from the Securities and Exchange Commission ("SEC") to issue the Proposed Debt on a secured basis to Fidelity. The Proposed Debt will be subordinated to all existing and future debt issued under the Company's first mortgage bond indenture. The Company further states that the Proposed Debt will be supported by a subordinated lien on Applicant's equipment, excluding collateral subject to a lien under the Company's Trust Indenture.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

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 issue up to \$100,000,000 of fixed-rate long-term debt securities for the purposes as set forth in its application, through the period ending December 31, 2004.
- 2) 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, a brief explanation of reasons for the choice of maturity and issuance date.
- 3) 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;
 - (c) The cumulative principal amount of Proposed Debt issued under the authority granted herein and the amount remaining to be issued; and
 - (d) A balance sheet that reflects the capital structure following the issuance of the Proposed Debt.
- 4) Applicant shall file a final Report of Action on or before March 31, 2005, to include all information required in Ordering Paragraph (3) and 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.
- 5) Approval of the application shall have no implications for ratemaking purposes.
- 6) This matter shall be continued, subject to the continuing review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2003-00405
NOVEMBER 5, 2003**

JOINT APPLICATION OF
BIG CANEY WATER CORPORATION
and
DICKENSON COUNTY PUBLIC SERVICE AUTHORITY

For authority to transfer assets

ORDER GRANTING AUTHORITY

On September 3, 2003, Big Caney Water Corporation ("Big Caney") and the Dickenson County Public Service Authority (the "PSA") (collectively, the "Applicants") filed a joint application with the State Corporation Commission (the "Commission") requesting authority pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Code") to consummate a series of transactions through which the PSA would purchase all of Big Caney's operating assets and absorb Big Caney's employees into the operations of the PSA. More specifically, the entire private water system currently operated by Big Caney, including 18 tracts of real property and items of equipment and personal property, will be acquired by the PSA, and will be integrated immediately into the PSA's public water system.

Big Caney is a private, non-profit corporation which provides public water to a significant portion of Dickenson County, Virginia. Big Caney was incorporated on May 1, 1967, and provides water service to approximately 1,920 customers in McClure, Clinchco, Big Ridge, and Caney Ridge areas of Dickenson County, Virginia.

The Applicants represent that the terms of the asset sale were negotiated, through counsel, at arms' length. The proposed sales price of the assets is \$94,000.00, as well as the assumption of certain liabilities associated with these assets totaling approximately \$81,864.00. As of December 31, 2002, Big Caney's books reflected a net plant value of approximately \$1,959,000.00, and a contribution in aid of construction balance of approximately \$2,280,000.00, resulting in a negative net book value of the water system.

The Applicants provided copies of the press release that was issued in Dickenson County's local newspaper, the Dickenson Star/Cumberland Times, which provided notice of the proposed sale of Big Caney's assets to the PSA, as well as other notices to customers. The proposed transaction was approved by a vote of at least two-thirds of the shares of the common voting stock of Big Caney entitled to vote on June 28, 2003. No customers opposed the transfer.

The purpose of the proposed transactions is to ensure an adequate water service is available to Big Caney's current customers. The Applicants represent that Big Caney's financial problems are a direct result of operating and maintaining an ailing water distribution system and the inability as a private

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

corporation to obtain grant funds. Big Caney's financial condition is such that, without significant funding, it will become insolvent and unable to continue. The Applicants further represent that the PSA is the only viable entity to continue to provide water to the current customers of Big Caney. The Applicants state that they do not anticipate any change in rates charged to current customers of Big Caney as a result of the transfer of assets.

THE COMMISSION, upon consideration of the joint application and representations of the Applicants and having been advised by its Staff, is of the opinion and finds that the above-described transfer of assets 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 §§ 56-89 and 56-90 of the Code, the Applicants are hereby granted authority to consummate the transaction as described herein to allow the PSA to purchase Big Caney's assets.
- (2) Certificate No. W-4a authorizing Big Caney Water Corporation to provide water service to a certain area of Dickenson County, Virginia, is hereby cancelled upon transfer of the assets.
- (3) The authority granted herein shall have no ratemaking implications.
- (4) Big Caney Water Corporation shall file a report with the Commission within 30 days of the sale taking place, subject to administrative extension by the Commission's Director of Public Utility Accounting, providing the date of the sale and the actual sales price.
- (5) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00406
DECEMBER 16, 2003**

NOTIFICATION OF
AMVEST OIL & GAS, INC.

To furnish natural gas service pursuant to § 56-265.4:5 of the Code of Virginia

ORDER DISMISSING PROCEEDING

On August 27, 2003, AMVEST Oil & Gas, Inc. ("AOG" or "Company") notified the State Corporation Commission ("Commission"), pursuant to § 56-265.4:5 of the Code of Virginia of its plans to furnish natural gas services to Lowe's Home Centers, Inc. ("Lowe's") a North Carolina corporation that is building and intends to engage in the operation of its Lowe's Home Improvement Center located on Woodland Drive Road in Wise, Virginia.

On October 6, 2003, the Commission entered an Order docketing the proceeding and notifying all public utilities providing natural gas service in the Commonwealth of AOG's plans to furnish gas service to the car wash. The utilities were advised they could file an application with the Commission to provide natural gas service within the area identified in the Company's notification documents within sixty (60) days of the entry of the October 6, 2003, Order. The Commission found the Lowe's not to be located within a territory for which a certificate of public convenience and necessity had been granted; in addition, the facility was found not to be located within any area, territory, or jurisdiction served by a municipal corporation that provided gas distribution service as of January 1, 1992.

Sixty days now have elapsed since the entry of the October 6, 2003, Order, and no jurisdictional public utility has filed an application to provide natural gas service within the area identified in the captioned notification.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that the Company has satisfied the requirements of §§ 56-265.1(b)(4) and 56-265.4:5 of the Code of Virginia, and that there being nothing further to be done herein, the matter should be dismissed.

Accordingly, IT IS THEREFORE ORDERED THAT this matter shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein made a part of the Commission's file for ended causes.

**CASE NO. PUE-2003-00407
SEPTEMBER 29, 2003**

APPLICATION OF
APPALACHIAN POWER COMPANY

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On September 4, 2003, Appalachian Power Company ("the Company" or "Appalachian"), 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. The Company paid the requisite fee of \$250.

In its application¹, the Company requests authority to issue: 1) secured or unsecured promissory notes ("Notes") in the aggregate principal amount equal to, on the date or dates of issuance, up to \$1.2 billion, through December 31, 2005; 2) up to \$17,500,000 in Russell County, Virginia Pollution Control Revenue Bonds, Series I, on or before January 1, 2006; 3) up to \$30,000,000 in Putnam County, West Virginia Pollution Control Bonds, Series E, and up to \$40,000,000 Putnam County, West Virginia Pollution Control Bonds, Series F, on or before January 1, 2006.

The \$1.2 billion in Notes may be issued in the form of either First Mortgage Bonds, Senior or Subordinated Debentures (including Junior Subordinated Debentures), Trust Preferred Securities (via one or more subsidiary financing entities) or other unsecured promissory notes. The Notes will mature in not less than nine months and not more than 50 years. The interest rate of the Notes may be fixed or variable. The initial interest rate on any variable rate note will not exceed 10% per annum. The Notes will be sold through either competitive bidding, through negotiation with underwriters or agents, or by direct placement with a commercial bank or other institutional investor.

The Company also requests authority to enter into Treasury Hedge Agreements ("Hedge Agreements") through December 31, 2005, to protect against future interest rate movements in conjunction with the issuance of the debt proposed in this application. Such Hedge Agreements may include, but are not limited to, treasury lock agreements, treasury put options or interest rate collar agreements. Each Hedge Agreement will correspond to one or more notes. The aggregate corresponding principal amounts of all Hedge Agreements will not exceed \$1.2 billion. The term of any hedging agreement will not exceed 90 days.

The proceeds from the sale of the Notes, together with any other funds which may become available to Appalachian, will be used to redeem directly or indirectly long-term debt, to refund directly or indirectly preferred stock, to repay short-term debt at or prior to maturity, to reimburse the Company's treasury for expenditures incurred in connection with its construction program and for other corporate purposes.

The three series of pollution control bonds will be publicly issued. The proposed \$17,500,000 in Russell County, Virginia Pollution Control Revenue Bonds, Series I, will be used to refund Appalachian's outstanding Russell County, Virginia Pollution Control Revenue Bonds, Series G. The proposed \$30,000,000 in Putnam County, West Virginia, Series E, will be used to refund Appalachian's outstanding Putnam County, West Virginia Pollution Control Revenue Bonds, Series C. The proposed \$40,000,000 in Putnam County, West Virginia Pollution Control Revenue Bonds, Series F, will be used to refund Appalachian's outstanding Putnam County, West Virginia Pollution Control Revenue Bonds Series D. The interest rate on the new pollution control bonds may be fixed or variable and will be established by competitive bidding or through negotiation with underwriters or agents. The initial interest rate on any variable rate pollution control bonds shall not exceed 8%. The maturity of the pollution control bonds may be up to 40 years, depending on market conditions at the time of issuance.

THE COMMISSION, upon consideration of the application and the advice of its Staff is of the opinion and finds that approval of the application will not be detrimental to the public interest as conditioned below. Based on the amount of Notes proposed to be issued and the significant impact the issuance of the entire \$1.2 billion in Notes in a short period of time may have on the Company's capital structure, we find that it is appropriate to place conditions on the Company's authority to issue the Notes.

As referenced in Staff's Action Brief filed in this case, the Company has regularly stated that its goal is to maintain a common equity ratio of 40%. Moreover, the Company committed to maintain a minimum 40% common equity ratio in a June, 20, 1997, letter to the Commission. It appears, however, that the Company has not consistently maintained the 40% common equity ratio during the last few years. The common equity ratio is an important measure used by the financial community to gauge the financial health of entities. Entities that become over-leveraged are considered more risky and therefore have more problems raising capital. Therefore, we direct the Company to seek further approval from the Commission to issue any of the proposed Notes if its equity ratio at that time is below 40%, or if issuing any Notes would cause its equity ratio to fall below 40%, except in circumstances where the Company is issuing Notes to retire outstanding debt.

Accordingly, IT IS ORDERED THAT:

1) The Company is hereby authorized to issue debt securities in the following aggregate principal amounts: (a) up to \$1.2 billion, through December 31, 2005; (b) up to \$17,500,000 in Russell County, Virginia Pollution Control Revenue Bonds, Series I, on or before January 1, 2006; (c) up to \$30,000,000 in Putnam County, West Virginia Pollution Control Bonds, Series E; and, (d) up to \$40,000,000 Putnam County, West Virginia Pollution Control Bonds, Series F, on or before January 1, 2006, all under the terms and conditions and for the purposes set forth in the application, provided that the issuance of any notes for the purposes of refunding outstanding securities prior to maturity results in cost savings to the Company.

2) If issuing any of the Notes authorized in Ordering Paragraph (1), above, would cause the Company's equity ratio to fall below 40%, or if the Company's equity ratio at that time is below 40% prior to any issuance of Notes, the Company shall seek further authorization from the Commission to issue the Notes prior to such issuance, except in circumstances where the Company is issuing Notes to retire outstanding debt.

3) The Company is hereby authorized to enter into interest hedging agreements under the terms and conditions and for the purposes set forth in the application.

4) At the request of the Company, the proposed Interest Rate Management Agreements are deemed to be withdrawn and are no longer before the Commission.

5) Within thirty (30) days of the date of each issuance of notes or pollution control revenue bonds, the Company shall file with the Commission's Division of Economics and Finance a Report of Action which shall include the types of securities issued, the date(s) issued, the amount of the issuance, the applicable interest rate, the maturity date, net proceeds to the Company, an itemized list of actual expenses to date associated with the securities issuances, and a balance sheet reflecting the actions taken. Such report shall also include a cost-benefit analysis for any securities issued for the purpose of refunding outstanding securities prior to maturity.

¹ The Company also proposed to enter into Interest Rate Management Agreements by using interest rate swaps, caps, collars, floors, options, etc. By letter filed September 26, 2003, the Company has withdrawn its request to enter into Interest Rate Management Agreements.

- 6) The authority granted herein shall have no implications for ratemaking purposes.
- 7) This matter shall remain open for the continued review, audit, and any further appropriate directive of the Commission.

**CASE NO. PUE-2003-00407
OCTOBER 16, 2003**

APPLICATION OF
APPALACHIAN POWER COMPANY

For authority to issue long-term debt

ORDER GRANTING RECONSIDERATION

On September 4, 2003, Appalachian Power Company ("the Company" or "Appalachian"), 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.

On September 29, 2003, the Commission issued an Order Granting Authority that, among other things, authorizes the Company to issue debt securities in the following aggregate principal amounts: (1) up to \$1.2 billion in promissory notes, through December 31, 2005; (2) up to \$17,500,000 in Russell County, Virginia Pollution Control Revenue Bonds, Series I, on or before January 1, 2006; (3) up to \$30,000,000 in Putnam County, West Virginia Pollution Control Bonds, Series E; and (4) up to \$40,000,000 Putnam County, West Virginia Pollution Control Bonds, Series F, on or before January 1, 2006, all under the terms and conditions and for the purposes set forth in the application, provided that the issuance of any notes for the purposes of refunding outstanding securities prior to maturity results in cost savings to the Company.

In Ordering Paragraph (2) of the Order Granting Authority, we also required that if issuing any of the notes authorized above would cause the Company's equity ratio to fall below 40%, or if the Company's equity ratio at that time is below 40% prior to any such issuance, the Company shall seek further authorization from the Commission to issue the notes prior to such issuance, except in circumstances where the Company is issuing the notes to retire outstanding debt.

On October 14, 2003, Appalachian filed a Petition for Reconsideration ("Petition"). Appalachian requests that the Commission vacate Ordering Paragraph (2) of the Order Granting Authority. In the alternative, Appalachian requests that the Commission modify Ordering Paragraph (2) to read as follows:

If the Company determines to issue, prior to December 31, 2004, Notes authorized herein having a total principal amount of more than \$500,000,000, the Company shall seek further prior authorization from the Commission to issue Notes above said principal amount.

NOW THE COMMISSION, having considered the Petition, is of the opinion and finds as follows. We grant the Petition for the purpose of continuing our jurisdiction over this matter and considering such Petition.

Accordingly, IT IS ORDERED THAT:

- (1) The Petition is hereby granted for the purpose of continuing our jurisdiction over this proceeding and considering such Petition.
- (2) This matter is continued pending further order of the Commission.

**CASE NO. PUE-2003-00407
DECEMBER 4, 2003**

APPLICATION OF
APPALACHIAN POWER COMPANY

For authority to issue long-term debt

ORDER ON RECONSIDERATION

On September 4, 2003, Appalachian Power Company ("the Company" or "Appalachian"), 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.

On September 29, 2003, the Commission issued an Order Granting Authority that, among other things, authorizes the Company to issue debt securities in the following aggregate principal amounts: (1) up to \$1.2 billion in promissory notes, through December 31, 2005; (2) up to \$17,500,000 in Russell County, Virginia Pollution Control Revenue Bonds, Series I, on or before January 1, 2006; (3) up to \$30,000,000 in Putnam County, West Virginia Pollution Control Bonds, Series E; and (4) up to \$40,000,000 Putnam County, West Virginia Pollution Control Bonds, Series F, on or before January 1, 2006, all under the terms and conditions and for the purposes set forth in the application, provided that the issuance of any notes for the purposes of refunding outstanding securities prior to maturity results in cost savings to the Company.

In Ordering Paragraph (2) of the Order Granting Authority, we also required that if issuing any of the notes authorized above would cause the Company's equity ratio to fall below 40%, or if the Company's equity ratio at that time is below 40% prior to any such issuance, the Company shall seek

further authorization from the Commission to issue the notes prior to such issuance, except in circumstances where the Company is issuing the notes to retire outstanding debt.

On October 14, 2003, Appalachian filed a Petition for Reconsideration ("Petition"). Appalachian requests that the Commission vacate Ordering Paragraph (2) of the Order Granting Authority. In the alternative, Appalachian requests that the Commission modify Ordering Paragraph (2) to read as follows:

If the Company determines to issue, prior to December 31, 2004, Notes authorized herein having a total principal amount of more than \$500,000,000, the Company shall seek further prior authorization from the Commission to issue Notes above said principal amount.

On October 16, 2003, we issued an order granting the Petition for the purpose of continuing our jurisdiction over this matter and considering such Petition.

NOW THE COMMISSION, upon consideration of the application, the Petition, and the advice of its Staff, is of the opinion and finds that the issuance of \$500,000,000 in promissory notes ("Notes") through December 31, 2004, by the Company will not be detrimental to the public interest provided that only \$200,000,000 of the Notes represents new debt to the Company.

Based on the amount of Notes proposed to be issued and the significant impact the issuance of the entire \$1.2 billion in Notes in a short period of time may have on the Company's capital structure, we find that it is appropriate to place conditions on the Company's authority to issue the Notes. Therefore, we will reduce the amount of debt authorized to be issued in this case from \$1,287,500,000 to \$587,500,000, of which, no more than a total principal value of \$200,000,000 will be new issuances and not part of a refinancing of existing debt. Moreover, we will shorten the period of time in which the Notes may be issued from December 31, 2005, to December 31, 2004.

Accordingly, IT IS ORDERED THAT:

- 1) The text of Ordering Paragraph (1) of the September 29, 2003 Order Granting Authority is hereby stricken and replaced with the following:

The Company is hereby authorized to issue debt securities in the following aggregate principal amounts: (a) up to \$500,000,000 in promissory Notes, through December 31, 2004; (b) up to \$17,500,000 in Russell County, Virginia Pollution Control Revenue Bonds, Series I, on or before January 1, 2006; (c) up to \$30,000,000 in Putnam County, West Virginia Pollution Control Bonds, Series E; and, (d) up to \$40,000,000 Putnam County, West Virginia Pollution Control Bonds, Series F, on or before January 1, 2006, all under the terms and conditions and for the purposes set forth in the application, provided that the issuance of any Notes for the purposes of refunding outstanding securities prior to maturity results in cost savings to the Company.

- 2) The text of Ordering Paragraph (2) of the September 29, 2003 Order Granting Authority is hereby stricken and replaced with the following:

If the Company determines to issue, prior to December 31, 2004, Notes authorized herein having a total principal amount of more than \$500,000,000, of which, no more than a total principal value of \$200,000,000 will be new issuances and not part of a refinancing of existing debt, the Company shall seek further authorization from the Commission to issue Notes above said principal amounts.

- 3) The text of Ordering Paragraph (3) of the September 29, 2003 Order Granting Authority is hereby stricken and replaced with the following:

The Company is hereby authorized to enter into interest hedging agreements in a notional principal amount not to exceed \$500,000,000 and under the terms and conditions and for the purposes set forth in the original application.

- 4) This matter shall remain open for the continued review, audit, and any further appropriate directive of the Commission.

**CASE NO. PUE-2003-00409
NOVEMBER 4, 2003**

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, the Virginia 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"), charged with the investigation of probable violations of the Act, has completed investigations of certain incidents between November 5, 2001, and August 6, 2003, 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 of Virginia;
- (2) During the aforementioned period the Company has violated the Act by the following conduct:

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- (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 and D of the Code of Virginia.
- (b) Failing on certain occasions to mark within the time prescribed in the Act, in violation of § 56-265.19 A and D of the Code of Virginia.
- (c) Failing on certain occasions to report to the notification center that lines had been marked or they were not in conflict with the proposed excavation, in violation of § 56-265.19 A and 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.

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 7, 2003, 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 \$6,550 to be paid contemporaneously with the entry of this Order. This payment will be made by cashier's check or money order, payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

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 be, and it hereby is, accepted.
- (2) The sum of \$6,550 tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2003-00423
SEPTEMBER 26, 2003**

APPLICATION OF
BARC ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On September 5, 2003, BARC Electric Cooperative ("Applicant") filed an application with the State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia requesting authority to incur long-term indebtedness. Applicant has paid the requisite fee of \$250.

Applicant requests authority to borrow up to \$2,932,980 from the National Rural Utilities Cooperative Financing Corporation ("CFC"). The proceeds will be used to prepay thirteen existing notes issued to the Rural Utilities Services ("RUS"). The new CFC loan will have a twelve (12) year maturity. The effective interest rate will be determined at the time of the draw but will be less than 5.0%, the current rate on the existing RUS notes being prepaid.

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 \$2,932,980 from the National Rural Utilities Cooperative Financing Corporation, under the terms and conditions and for the purposes set forth in the application.
- 2) Within thirty (30) days of the date of the loan from CFC, Applicant shall file with the Commission's Division of Economics and Finance a Report of Action which shall include the amount of the advance and the effective interest rate.
- 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-2003-00424
SEPTEMBER 16, 2003**

APPLICATION OF
SOUTHSIDE ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On September 5, 2003, Southside Electric Cooperative ("Applicant") filed an application with the Virginia State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia requesting authority to incur long-term debt. Applicant has paid the requisite fee of \$250.

Applicant requests authority to borrow up to \$6,500,000 from the National Rural Utilities Cooperative Financing Corporation ("CFC"). The proceeds will be used to retire existing debt issued to the Rural Utilities Services ("RUS"). The loan will be structured so that the debt matures in installments throughout the next 10 years. The interest rate on the debt will be determined at the time of advance and will be fixed for the life of the loans. The effective interest rate for the initial period will be less than 5.0%, the current rate on the existing RUS debt to be retired.

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 \$6,500,000 from the National Rural Utilities Cooperative Financing Corporation, under the terms and conditions and for the purposes set forth in the application.
- 2) Within thirty (30) days of the date of each advance of funds from CFC, 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 selected, 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 is hereby dismissed.

**CASE NO. PUE-2003-00425
OCTOBER 20, 2003**

APPLICATION OF
ROANOKE GAS COMPANY

For an expedited increase in rates

ORDER FOR NOTICE AND HEARING

On September 16, 2003, Roanoke Gas Company ("Roanoke" or the "Company") filed a rate application, supporting testimony and exhibits with the State Corporation Commission ("Commission") for an expedited increase in rates. Roanoke seeks to increase its annual revenues by \$1,821,190, an increase of approximately 2.28%. The Company also proposes that it be allowed an incentive to continue and further develop its interstate pipeline capacity release program through its use of "asset management services". The Company receives credits for the assignment rights of the Company's interstate pipeline and storage capacity. Presently, the Company accounts for these credits as a reduction to gas expense resulting in the return of 100% of the capacity release credits to the Company's natural gas customers. The Company proposes that it be allowed to keep ten percent of the credits as a below-the-line revenue item.¹

Section B of the Commission's Rules Governing Utility Rate Increase Applications and Annual Informational Filings, 20 VAC 5-200-30, permits the rates of a public utility to take effect within 30 days after the application is filed, subject to refund, pending investigation, so long as the rate application complies with the rules and the utility has not experienced a substantial change in circumstances since its last rate case. In its application, the Company is not proposing any new accounting adjustments and is utilizing the same rate of return on equity as approved in the Company's last rate order, issued in Case No. PUE-2002-00373. On October 9, 2003, the Commission's Staff filed an interim report, in which it concluded that there is a reasonable probability that the proposed increase will be justified following a full investigation and hearing.

NOW UPON CONSIDERATION of the Company's application, the Commission is of the opinion and finds that this matter should be docketed, that a Hearing Examiner should be assigned to conduct all further proceedings on this matter on behalf of the Commission, and that a procedural schedule should be established as prescribed herein. Interested parties will also have the opportunity to comment on the Company's incentive rate proposal for its "asset management services".

¹ The Company received \$1,647,886 in credits under the current Asset Management Agreement. Therefore, the incentive to the Company under its proposal would be \$164,788 annually.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Accordingly, IT IS ORDERED THAT:

- (1) Roanoke's application for approval of an expedited increase in rates is docketed and assigned Case No. PUE-2003-000425.
- (2) Roanoke may put its rates into effect on an interim basis subject to refund on October 16, 2003.
- (3) A public hearing shall be convened on February 25, 2004, 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 captioned application. Any person not participating as a respondent as provided in ordering paragraph (10) below, may give oral testimony concerning the application as a public witness at the February 25, 2004, public 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 prior to 9:45 a.m. on the day of the hearing and register a request to speak with the Commission's bailiff.
- (4) As provided by § 12.1-31 of the Code of Virginia and Rule 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 and to issue a final report herein.
- (5) Upon written request received by its counsel, the Company shall provide a copy of the application to the requesting party at no cost. If acceptable to the requesting individual, the Company may provide the application, with or without attachments, by electronic means. Written requests shall be made to Richard D. Gary, Esquire, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074. Interested persons may also 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, Monday through Friday.
- (6) On or before November 21, 2003, Roanoke shall complete publication of the following notice as display advertising (not classified) on one occasion in newspapers of general circulation throughout the Company's service territories within the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF AN APPLICATION
BY ROANOKE GAS COMPANY, FOR
APPROVAL OF AN EXPEDITED INCREASE IN RATES
CASE NO. PUE-2003-00425

On September 16, 2003, Roanoke Gas Company ("Roanoke" or the "Company") filed a rate application, supporting testimony and exhibits with the State Corporation Commission ("Commission ") for an expedited increase in rates. Roanoke seeks to increase its annual revenues by \$1,821,190, an increase of approximately 2.28%. The Company also proposes that it be allowed to keep ten percent of the credits under its Asset Management Agreement, which are presently credited against the Company's gas expense. The Company's proposal to keep ten percent of the credits would result in an annual payment to the Company of \$164,788.

The rates are proposed to go into effect for service rendered on and after October 16, 2003. Roanoke may put its rates into effect on an interim basis subject to refund on October 16, 2003.

On or before December 5, 2003, any interested person may file comments on the Company's request with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118.

Copies of the application are available through written request to counsel for the Company, Richard D. Gary, Esquire, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074. Interested persons may also 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 Commission's Order may also be obtained on the Commission's website: www.state.va.us/scc/caseinfo/orders.htm.

A public hearing on the application will be held on February 25, 2004, at 10:00 a.m., in the Commission's Courtroom, Second Street, Richmond, Virginia.

Any interested person may participate as a respondent in the proceeding by filing, on or before December 5, 2003, 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.

Interested persons not participating as a respondent may give oral testimony concerning the application as a public witness at the February 25, 2004, public 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 prior to 9:45 a.m. on the day of the hearing and register a request to speak with the Commission's bailiff.

Any interested person may file comments on the application with the Clerk of the Commission at the address set forth above on or before December 5, 2003.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

All filings with the Clerk of the Commission shall refer to Case No. PUE-2003-00425 and shall simultaneously be served on counsel to the Company at the address set forth above.

ROANOKE GAS COMPANY

(7) On or before November 21, 2003, the Company shall mail a copy of its application and 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 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 December 7, 2003, Roanoke shall file with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, proof of the publication and service required in ordering paragraphs (6) and (7).

(9) On or before November 14, 2003, Roanoke shall file with the Clerk at the address set forth in ordering paragraph (8) above an original and fifteen (15) copies of any additional direct testimony, exhibits and other materials supporting its application.

(10) Any interested person may participate as a respondent in this proceeding by filing, on or before December 5, 2003, an original and fifteen (15) copies of a notice of participation with the Clerk at the address set forth in ordering paragraph (8) above, and shall simultaneously serve a copy of the notice of participation on counsel to the Company, Richard D. Gary, 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. Interested parties shall refer in all of their filed papers to Case No. PUE-2003-000425.

(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, 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 January 8, 2004, each respondent may file with the Clerk 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 serve copies of the testimony and exhibits on counsel to the Company and on all other respondents. The respondent shall comply with Rules 5 VAC 5-20-140, 5 VAC 5-20-150, and 5 VAC 5-20-240 of the Commission's Rules of Practice and Procedure.

(13) On or before December 5, 2003, any interested person may file any comments on the captioned application with the Clerk at the address in paragraph (8) above and shall mail a copy to counsel for the Company, Richard D. Gary, at the address set forth in paragraph (5) above.

(14) The Commission Staff shall investigate the Company's application for an expedited increase in rates. On or before January 29, 2004, 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.

(15) On or before February 12, 2004, the Company 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.

(16) Roanoke and 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 the Commission's Rules of Practice and Procedure.

**CASE NO. PUE-2003-00426
OCTOBER 27, 2003**

APPLICATION OF
SOUTHWESTERN VIRGINIA GAS COMPANY

For approval of an increase in rates and to initiate a weather normalization adjustment

ORDER FOR NOTICE AND HEARING

On September 17, 2003, Southwestern Virginia Gas Company ("SWVG" or the "Company") filed a rate application, supporting testimony and exhibits with the State Corporation Commission ("Commission") for an increase in rates. The Company requested an expedited increase in rates. SWVG seeks to increase its annual revenues by \$260,152, an increase of approximately 2.5%. The primary reason that the Company is seeking the increase at this time is the loss of major industrial gas users that were responsible for approximately 26 percent of the Company's total throughput for the fiscal year ending June 30, 2003.¹ In addition, the Company also requests to include in its rates for the first time a Weather Normalization Adjustment ("WNA"). The Company requests that the increase in rates be allowed to go into effect for bills rendered on and after October 28, 2003.

On September 30, 2003, the Commission's Staff filed an Interim Report, in which it concluded that there is a reasonable probability that the proposed increase will be justified following a full investigation and hearing. In its Interim Report, the Staff also stated it had no objection to the Commission's consideration of SWVG's request to initiate a WNA in this proceeding.

¹ Prefiled testimony of Lance G. Heater at 2-3.

In its application, SWVG also requests a waiver pursuant to 20 VAC 5-200-30 A 11 for reporting information for Southwestern Virginia Energy Industries, Ltd. (the "Parent"), and consolidated information of the Parent and the Company as required in Schedules 1, 2, 6, and 7. In support of its request, SWVG states that: (1) the Parent has historically never contributed to the raising of capital for the Company; (2) 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; (3) the Parent is a closely held corporation and not traded publicly; and (4) the Parent does not have financial statements prepared for public distribution.

The Company further requests a waiver of the requirement to prepare a jurisdictional cost of service study - Schedule 30. SWVG states that it serves very few governmental non-jurisdictional customers; in fact, the Company states that the only non-jurisdictional customers - governmental offices and schools - represent less than 1.1% of the Company's customers and 2.8% of its gas throughput. According to SWVG, these non-jurisdictional customers pay for service on the basis of Commission-approved rates; thus, the Company asserts that there is virtually no impact on the per customer cost of service and no economic justification to expend the money, time and effort to create a non-jurisdictional cost study.

NOW UPON CONSIDERATION of the Company's application, the Commission is of the opinion and finds that this matter should be docketed, that notice of the application should be given to the public, that a Hearing Examiner should be assigned to conduct all further proceedings on this matter on behalf of the Commission, and that a procedural schedule should be established as prescribed herein. Interested parties will also have the opportunity to comment on the Company's waiver requests.

We further find that the size and the circumstances surrounding the request represent significant changes to the Company. This fact, coupled with the Company's request to initiate a WNA leads us to conclude that the Company's request should be treated as a general rate application. We will, however, permit the rates to go into effect on October 28, 2003, on an interim basis and subject to refund.

Accordingly, IT IS ORDERED THAT:

(1) SWVG's application for approval of an increase in rates is accepted and will be considered as a general rate application and docketed and assigned Case No. PUE-2003-000426.

(2) SWVG may put its proposed rates into effect on an interim basis subject to refund on October 28, 2003.

(3) A public hearing shall be convened on February 24, 2004, 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 captioned application. Any person not participating as a respondent as provided in ordering paragraph (11) below, may give oral testimony concerning the application as a public witness at the February 24, 2004, public 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 prior to 9:45 a.m. on the day of the hearing and register a request to speak with the Commission's bailiff.

(4) As provided by § 12.1-31 of the Code of Virginia and Rule 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 and to issue a final report herein.

(5) Upon written request received by its counsel, the Company shall provide a copy of the application to the requesting party at no cost. If acceptable to the requesting individual, the Company may provide the application, with or without attachments, by electronic means. Written requests shall be made to Richard D. Gary, Esquire, Hunton & Williams, River Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074. Interested persons may also 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, Monday through Friday.

(6) On or before November 25, 2003, SWVG shall complete publication of the following notice as display advertising (not classified) on one occasion in newspapers of general circulation throughout the Company's service territories within the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF AN APPLICATION
BY SOUTHWESTERN VIRGINIA GAS COMPANY
FOR APPROVAL OF AN INCREASE IN RATES
AND TO INITIATE A WEATHER
NORMALIZATION ADJUSTMENT
CASE NO. PUE-2003-000426

On September 17, 2003, Southwestern Virginia Gas Company ("SWVG" or the "Company") filed a rate application, supporting testimony and exhibits with the State Corporation Commission ("Commission") for an increase in rates. SWVG seeks to increase its annual revenues by \$260,152, an increase of approximately 2.5%. The Company also proposes to initiate for the first time a Weather Normalization Adjustment ("WNA"). The Company requested an expedited increase in rates. In its Order for Notice and Hearing issued October 27, 2003 ("Order"), the Commission found that the Application would be treated as a general rate increase application.

The rates are proposed to go into effect for service rendered on and after October 28, 2003. Pursuant to the Commission's Order, SWVG put its rates into effect on an interim basis subject to refund on October 8, 2003.

The Company also requests a waiver pursuant to 20 VAC 5-200-30 A 11 for reporting information for Southwestern Virginia Energy Industries, Ltd. (the "Parent"), and consolidated information of the Parent and the Company as required in Schedules 1, 2, 6, and 7. SWVG further requests a waiver of the requirement to prepare a jurisdictional cost of service study - Schedule 30, since the Company serves very few governmental non-jurisdictional customers.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

On or before December 5, 2003, any interested person may file comments on the Company's waiver requests with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118.

Copies of the application are available through written request to counsel for the Company, Richard D. Gary, Esquire, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074. Interested persons may also 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 Commission's Order may also be obtained on the Commission's website: www.state.va.us/scc/caseinfo/orders.htm.

A public hearing on the application will be held on February 24, 2004, at 10:00 a.m., in the Commission's Courtroom, Second Street, Richmond, Virginia.

Any interested person may participate as a respondent in the proceeding by filing, on or before December 19, 2003, 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.

Interested persons not participating as a respondent may give oral testimony concerning the application as a public witness at the February 24, 2004, public 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 prior to 9:45 a.m. on the day of the hearing and register a request to speak with the Commission's bailiff.

Any interested person may file comments on the application with the Clerk of the Commission at the address set forth above on or before January 21, 2004.

All filings with the Clerk of the Commission shall refer to Case No. PUE-2003-00426 and shall simultaneously be served on counsel to the Company at the address set forth above.

SOUTHWESTERN VIRGINIA GAS COMPANY

(7) On or before November 26, 2003, the Company shall mail a copy of its application and 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 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 December 5, 2003, any interested person may file comments on the Company's waiver requests in the application.

(9) On or before December 12, 2003, SWVG shall file with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, proof of the publication and service required in ordering paragraphs (6) and (7).

(10) On or before December 12, 2003, SWVG shall file with the Clerk at the address set forth in ordering paragraph (8) above an original and fifteen (15) copies of any additional direct testimony, exhibits and other materials supporting its application.

(11) Any interested person may participate as a respondent in this proceeding by filing, on or before December 19, 2003, an original and fifteen (15) copies of a notice of participation with the Clerk at the address set forth in ordering paragraph (8) above, and shall simultaneously serve a copy of the notice of participation on counsel to the Company, Richard D. Gary, 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. Interested parties shall refer in all of their filed papers to Case No. PUE-2003-00426.

(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, 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 January 21, 2004, each respondent may file with the Clerk 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 serve copies of the testimony and exhibits on counsel to the Company and on all other respondents. The respondent shall comply with Rules 5 VAC 5-20-140, 5 VAC 5-20-150, and 5 VAC 5-20-240 of the Commission's Rules of Practice and Procedure.

(14) On or before January 21, 2004, any interested person may file any comments on the captioned application with the Clerk at the address in paragraph (8) above and shall mail a copy to counsel for the Company, Richard D. Gary, at the address set forth in paragraph (5) above.

(15) The Commission Staff shall investigate the Company's application for an increase in rates. On or before February 10, 2004, 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.

(16) On or before February 17, 2004, the Company 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.

(17) SWVG and 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 the Commission's Rules of Practice and Procedure.

**CASE NO. PUE-2003-00427
OCTOBER 28, 2003**

APPLICATION OF
SALTVILLE GAS STORAGE COMPANY L.L.C.
and
NUI ENERGY BROKERS, INC.

For approval of an agreement for firm gas storage service between affiliated entities pursuant to Chapter 4 of Title 56 of the Code of Virginia"

ORDER GRANTING APPROVAL

On September 24, 2003, Saltville Gas Storage Company L.L.C. ("Saltville") and NUI Energy Brokers, Inc. ("NUIEB") (collectively the "Applicants"), filed an application with the State Corporation Commission (the "Commission") for approval of an agreement for firm gas storage service (the "Agreement") between affiliated entities pursuant to Chapter 4 of Title 56 (the "Affiliates Act") of the Code of Virginia (the "Code").

Saltville, a Virginia limited liability company located in Abingdon, Virginia, has a certificate of public convenience and necessity ("CPCN") to construct, develop, own, operate and maintain an underground natural gas storage facility and attendant pipeline facilities in Saltville, Virginia. Saltville is jointly owned by Duke Energy Saltville Gas Storage, L.L.C., and by NUI Saltville Storage, Inc., which is a wholly owned subsidiary of NUI Corporation ("NUI"). On September 11, 2003, the Federal Energy Regulatory Commission ("FERC") issued an order revoking Saltville's Hinshaw exemption (104 FERC ¶ 61,273, Docket Nos. CPO2-430-001 and CPO2-430-002 (2003)), which will result in the transfer of jurisdiction over Saltville from the Commission to the FERC by the earlier of the FERC's acceptance of Saltville's blanket certificate application or March 1, 2004.

NUIEB is a multi-state company engaged in the business of wholesale natural gas trading and marketing and the management of natural gas storage, supplies, and transportation assets. NUIEB buys and sells gas in fifteen states, has about 110 active trading partners, and traded 700 billion cubic feet of gas in the year ended May 31, 2003. NUIEB currently has 33 employees operating out of Bedminster, New Jersey, and Houston, Texas. NUIEB is a wholly owned subsidiary of NUI.

NUI is an exempt public utility holding company domiciled in Bedminster, New Jersey, that owns four natural gas utilities serving more than 365,000 customers in New Jersey, Maryland, Virginia, and Florida. NUI also owns subsidiaries that provide natural gas pipeline and storage service, wholesale energy portfolio management, retail energy sales, telecommunications services, and customer information and field operations systems services.

Since Saltville and NUIEB share the same senior parent company, NUI, the Applicants are considered affiliated interests under § 56-76 of the Code. As such, any contract or arrangement between the companies to provide or receive services must be approved by the Commission pursuant to the Affiliates Act.

Firm Agreement

The Applicants are seeking approval of an Agreement whereby Saltville provides firm natural gas storage service to NUIEB. Under the proposed Agreement, NUIEB will be able to inject up to 8,000 million British Thermal Units ("MMBtu") of natural gas per day, withdraw up to 20,000 MMBtu per day, and store a maximum of 200,000 MMBtu with Saltville. This is also known as 20-day injection/10-day withdrawal service ("20/10-day service"). Saltville will charge NUIEB a storage injection charge of \$0.05 per MMBtu, a storage withdrawal charge of \$0.05 per MMBtu, and a monthly storage charge of \$3.45 per MMBtu times the 200,000 MMBtu Maximum Storage Quantity divided by 12. Any gas injected into or withdrawn from Saltville will be required to meet the minimum qualifications of East Tennessee Natural Gas Company's ("ETNG's") federal gas pipeline tariff.

The proposed firm storage rate of \$3.45 is within Saltville's tariff range of \$3.27 to \$4.42 per MMBtu. The Applicants represent that the proposed rate is the result of arms' length bargaining between Saltville and NUIEB over a several month period. The Applicants further represent that the proposed rate is consistent with Saltville's pricing policy wherein customers like NUIEB that seek long-term, large volume storage service are more likely to receive lower quotes than short-term, small volume customers because Saltville incurs relatively lower administrative and operating costs from serving such customers. The Applicants represent that NUIEB chose Saltville over Virginia Gas Pipeline Company ("VGPC") and Virginia Gas Storage Company ("VGSC") because VGPC's and VGSC's storage facilities are fully contracted.

The Agreement was executed August 11, 2003, but does not take effect until the Applicant obtains regulatory approval. The initial term of the Agreement extends through September 30, 2023, at which time it automatically renews for successive one year terms unless cancelled by either party giving 180 days written notice prior to the end of a term. The Applicants represent that NUIEB seeks a 20-year term for the Agreement to match the term of the storage contract with the 20-year transportation contract that NUIEB has signed with ETNG.

The Agreement contains a clause that allows companies which succeed by purchase, merger, or consolidation of title to the properties of either NUIEB or Saltville to be entitled to the rights or subject to the obligations of its predecessor. The Applicants represent that the assignment clause in the Agreement is standard boilerplate language included in all of Saltville's storage service agreements and simply places NUIEB on an equal footing with other non-affiliated customers.

The Agreement also contains a "Conflicting Provisions" clause which states that should there be any conflicts between the provisions of the Agreement and Saltville's gas tariff, the provisions of the Agreement will govern.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOW THE COMMISSION, upon consideration of the application and representations of Applicants and having been advised by its Staff, is of the opinion and finds that the Agreement described above is in the public interest and should be approved subject to certain modifications we find necessary in this instance to protect the public interest.

We have several concerns with the proposed Agreement as presented. First, we do not believe a 20-year approval period is appropriate. It appears Saltville will be subject to the FERC's jurisdiction as a result of the revocation of Saltville's Hinshaw exemption. Also, Saltville has not been operating long enough for its cost of service to be determined. Finally, the proposed firm rate falls within a tariff range that is based on projections. Therefore, we find that the approval period for the Agreement should be two years from the date of the Order Granting Approval, which should allow Saltville sufficient time to generate cost of service data that can be used to confirm or revise the existing tariff rates.

Second, any changes in the ownership or control of utility operations that could trigger the Agreement's assignment clause will require further approval by the Commission pursuant to Chapter 5 of Title 56 of the Code (the "Utility Transfers Act"). Such ownership and control changes resulting in assignment of rights and obligations under the Agreement also represent changes in the terms and conditions of the Agreement, which require Affiliates Act approval.

Third, we find that the "Conflicting Provisions" clause in the Agreement to be illegal. In Commonwealth of Virginia, ex. rel. State Corporation Commission v. Roanoke Gas Company, Case No. PUE-1982-00015, 1982 S.C.C. Ann. Rep. 568, 571, we determined that approved tariffs are in the nature of, and have the effect of, law until changes occur via new tariffs approved by the Commission in the manner prescribed by statute. Further, in C&P Tel. Co. v. Bles, 218 Va. 1010, 1012 (1978), the Supreme Court of Virginia found that:

[a] public utility is prohibited by Code § 56-234 (Repl. Vol. 1974) from permitting any customer to receive preferential treatment as to cost of services.

Id., (Footnote omitted). In other words, a public service corporation has no authority by express contract or otherwise to change or vary the schedule of rates and charges approved by the State Corporation Commission. Id., 218 Va. at 1013.

Despite these concerns, the Commission does not wish to hinder Saltville from engaging in non-discriminatory, market-based transactions. NUIEB is a viable gas storage customer. The proposed firm rate is within a Commission-approved tariff range. Finally, Saltville can provide NUIEB with large volume firm service that its capacity-constrained sister affiliates, Virginia Gas Pipeline Company and Virginia Gas Storage Company, cannot.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code of Virginia, the firm gas storage agreement between Saltville Gas Storage Company L.L.C. and NUI Energy Brokers, Inc., is hereby approved under the terms and conditions and for the purposes described herein.
- 2) The approval granted herein shall commence on the date of this Order and shall continue for a period of two years, at which time, should Saltville remain under the Commission's jurisdiction and the Applicants wish to continue the Agreement, additional regulatory approval shall be required.
- 3) Commission approval shall be required for any changes in the terms and conditions of the Agreement approved by this Order, including any change in the successors or assigns under the subject Agreement.
- 4) Applicants shall file with the Commission, within thirty days from the date of this Order, which date may be extended administratively by the Director of Public Utility Accounting, a final executed copy of the Agreement which shall exclude the "Conflicting Provisions" clause.
- 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 approval 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 approval granted herein whether or not such affiliate is regulated by this Commission.
- 8) Saltville shall include the Agreement approved herein in its Annual Report of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting on or before May 1 of each year, which deadline may be extended administratively by the Director of Public Utility Accounting.
- 9) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00464
DECEMBER 23, 2003**

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

v.
ATMOS ENERGY CORPORATION,
Defendant

ORDER OF SETTLEMENT

The Natural Gas Pipeline Safety Act of 1968, as amended by the Accountable Pipeline Safety and Partnership Act of 1996, and as modified by the Pipeline Safety Improvement Act of 2002, 49 U.S.C. § 60101 *et seq.* ("Act"), requires 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 Virginia 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 under § 56-5.1 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"), 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 Atmos Energy Corporation ("Atmos" or "Company"), the Defendant, and alleges that:

- (1) Atmos is a public service corporation as that term is defined in § 56-1 of the Code of Virginia and, specifically, a natural gas company within the meaning of § 56-5.1 of the Code of Virginia; and
- (2) The Company violated the Commission's Safety Standards by the following conduct:
 - a) 49 C.F.R. § 192.225 (a) - Failing to follow five (5) specific requirements of the Company's procedures when performing a weld;
 - b) 49 C.F.R. § 192.605 (a) - Failing to follow the Company's Construction Manual, Section 6.2.5 A 3 by not marking the squeeze-off location on the pipe;
 - c) 49 C.F.R. § 192.605 (b)(9) - Failing to have written procedures to take adequate precautions such as grounding of metallic tools, to minimize the danger of accidental ignition of gas;
 - d) 49 C.F.R. § 192.605 (b)(8) - Failing to have written procedures to periodically review the work done by Company personnel to determine the effectiveness and adequacy of the procedures used in normal operation and maintenance and modifying the procedures when deficiencies are found;
 - e) 49 C.F.R. § 192.751 - Failing to take steps to minimize the danger of accidental ignition; and,
 - f) 49 C.F.R. § 192.751 (a) - Failing to provide a fire extinguisher when a hazardous amount of gas could be introduced into open air.

The Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

Subsequent to the discovery of the probable violations listed above, Atmos took prompt actions to correct those probable violations that could be corrected. In addition to these prompt actions, and as an offer to settle all matters arising from the allegations made against it, Atmos represents and undertakes that:

- (1) The Company shall pay a fine to the Commonwealth of Virginia in the amount of \$18,250, of which \$6,750 shall be paid contemporaneously with the entry of this Order. The remaining \$11,500 is due as outlined in paragraph (4), below, and may be suspended in whole, or in part, by the Commission, provided the Company tenders the requisite certification set out in Paragraph (3) that it has completed the remedial action set forth below in paragraph (2) on or before the scheduled date for completion of said remedial action. At the completion of the remedial action described below, and upon receipt of the requisite affidavit, the Commission may vacate any outstanding amounts. The initial payment, and any subsequent payments, will be made by check, payable to the Treasurer of Virginia, and directed to the attention of the Director of the Division of Utility and Railroad Safety, Post Office Box 1197, Richmond, VA 23218-1197.
- (2) The Company shall revise its operating and maintenance procedures, before January 15, 2004, to require that a fire extinguisher be readily available during tie-ins, squeeze-offs, tapping or purging operations, or if a hazardous amount of gas may be introduced into the area.
- (3) On or before February 2, 2004, Atmos shall tender to the Clerk of the Commission, with a copy to the Division of Utility and Railroad Safety, an affidavit certifying that the Company has completed the remedial actions set forth in Paragraph (2) above.
- (4) Upon timely receipt of said affidavit, the Commission may suspend up to \$1 1,500 of the fine amount specified in paragraph (1) above. Should Atmos fail to tender said affidavit or take the action required by paragraph (2) by February 2, 2004, a payment of \$11,500 shall become due. The Company shall immediately notify the Division of the reasons for its failure to accomplish the action required by paragraphs (2) and (3) on page 4, and upon investigation, if the Division determines that the reason for said failure justifies a payment lower than \$11,500, it may recommend to the Commission a

reduction in the amount due. The Commission shall determine the amount due. Upon the Commission's determination of the amount due, the Company shall immediately tender to the Commission that amount.

(5) Any fines paid in accordance with this Order shall not be recovered in the Company's rates as part of its 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.

The Commission being fully advised in the premises and 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 Atmos has made a good faith effort to cooperate with the Staff during the investigation of this matter; and that the offer of compromise and settlement should be accepted.

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 compromise and settlement made by Atmos be, and it hereby is, accepted.

(2) Pursuant to § 56-5.1 of the Code of Virginia, Atmos he, and it hereby is, fined in the amount of \$18,250.

(3) The sum of \$6,750 tendered contemporaneously with the entry of this Order is accepted. The remaining \$11,500 is due as outlined herein and may be suspended and subsequently vacated, in whole or in part, provided the Company timely undertakes the action required in Paragraph (2) found on page 4 of this Order, and files the timely certification of the remedial action as outlined herein.

(4) 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. PUE-2003-00470
DECEMBER 23, 2003**

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

v.

ROANOKE GAS COMPANY,
Defendant

ORDER OF SETTLEMENT

The Natural Gas Pipeline Safety Act of 1968, as amended by the Accountable Pipeline Safety and Partnership Act of 1996, and as modified by the Pipeline Safety Improvement Act of 2002, 49 U.S.C. § 60101 *et seq.* ("Act"), requires 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 Virginia 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 under § 56-5.1 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"), 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 the Roanoke Gas Company ("RGC" or "Company"), the Defendant, and alleges that:

(1) RGC is a public service corporation as that term is defined in § 56-1 of the Code of Virginia and, specifically a natural gas company within the meaning of § 56-5.1 of the Code of Virginia; and

(2) The Company violated the Commission's Safety Standards by the following conduct:

- a) 49 C.F.R. § 192.225 (a) - Failing on seven occasions to perform a weld in accordance with 49 C.F.R. Part 192, Appendix A II.B(4), Section 4.1 1 of API 1104, and RGC's Welding Procedure Number 4, Section M, by not properly preheating the pipe;
- b) 49 C.F.R. § 192.241 (a)(1) - Failing on seven occasions to conduct visual inspections to insure that the welding is performed in accordance with the welding procedure;
- c) 49 C.F.R. § 192.273 (b) - Failing on two occasions to make mechanical joints in accordance with written procedures;
- d) 49 C.F.R. § 192.303 - Failing to properly install Scotchkote Hot Melt Compounds 206P and 226P in accordance with written specifications;
- e) 49 C.F.R. § 192.605 (b)(9) - Failing to have written procedures to take adequate precautions such as grounding of metallic tools, to minimize the danger of accidental ignition of gas in excavated trenches to protect personnel from the hazards of unsafe accumulations of vapor or gas;

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- f) 49 C.F.R. § 192.605 (b)(8) - Failing to have written procedures to periodically review the work done by Company personnel to determine the effectiveness and adequacy of the procedures used in normal operation and maintenance and modifying the procedures when deficiencies are found; and,
- g) 49 C.F.R. § 192.751 (a) - Failing to provide a fire extinguisher while purging a new service line.

The Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

Subsequent to the discovery of the probable violations listed above, RGC took prompt actions to correct those probable violations that could be corrected. In addition to these prompt actions, and as an offer to settle all matters arising from the allegations made against it, RGC represents and undertakes that:

(1) The Company shall pay a fine to the Commonwealth of Virginia in the amount of \$11,500, of which \$3,200 shall be paid contemporaneously with the entry of this Order. The remaining \$8,300 is due as outlined in paragraph (2), below, and may be suspended in whole, or in part, by the Commission, provided the Company tenders the requisite certification that it has completed specific remedial actions, as set forth below in paragraph (2) on or before the scheduled date for completion of said remedial action. At the completion of all remedial actions described below, the Commission may vacate any outstanding amounts. The initial payment, and any subsequent payments, will be made by check, payable to the Treasurer of Virginia, and directed to the attention of the Director, Division of Utility and Railroad Safety, Post Office Box 1197, Richmond, VA 23218-1197.

(2) The Company shall take the following remedial actions:

- (A) The Company shall take over the operation and maintenance of two of the gas master meter systems served by RGC;
- (B) The Company shall revise its operating and maintenance procedures to require that a fire extinguisher be readily available whenever purging a service line from air to gas and that all metallic tools used in direct contact with plastic pipe be grounded during use; and,
- (C) The Company shall review the installation of its commercial and industrial meters to insure the adequacy of the overpressure protection on each of them and take corrective actions where necessary.

(3) On or before February 2, 2004, RGC shall tender to the Clerk of the Commission, with a copy to the Division of Utility and Railroad Safety, an affidavit executed by the Chairman and Chief Executive Officer of RGC, certifying that the Company has completed the remedial actions set forth in Paragraph (2) above.

(4) Upon timely receipt of said affidavit, the Commission may suspend up to \$8,300 of the fine amount specified in paragraph (1) above. Should RGC fail to tender said affidavit or take the actions required by paragraph (2) by February 2, 2004, a payment of \$8,300 shall become due. The Company shall immediately notify the Division of the reasons for its failure to accomplish the actions required by paragraph (2) herein and upon investigation, if the Division determines that the reason for said failure justifies a payment lower than \$8,300, it may recommend to the Commission a reduction in the amount due. The Commission shall determine the amount due. Upon the Commission's determination of the amount due, the Company shall immediately tender to the Commission that amount.

(5) Any fines paid in accordance with this Order shall not be recovered in the Company's rates as part of RGC'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.

The Commission being fully advised in the premises and 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 RGC has made a good faith effort to cooperate with the Staff during the investigation of this matter; and that, the offer of compromise and settlement should be accepted.

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 compromise and settlement made by RGC be, and it hereby is, accepted.

(2) Pursuant to § 56-5.1 of the Code of Virginia, RGC be, and it hereby is, fined in the amount of \$11,500.

(3) The sum of \$3,200 tendered contemporaneously with the entry of this Order is accepted. The remaining \$8,300 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 page 4 of this Order, and files the timely certification of the remedial actions as outlined herein.

(4) 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. PUE-2003-00473
DECEMBER 23, 2003**

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

v.

WASHINGTON GAS LIGHT COMPANY,
Defendant

ORDER OF SETTLEMENT

The Natural Gas Pipeline Safety Act of 1968, as amended by the Accountable Pipeline Safety and Partnership Act of 1996, and as modified by the Pipeline Safety Improvement Act of 2002, 49 U.S.C. § 60101 *et seq.* ("Act"), requires 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 Virginia 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 under § 56-5.1 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"), charged with the investigation of each jurisdictional gas company's compliance with Safety Standards, has conducted various inspections of records, construction, operation, and maintenance activities involving the Washington Gas Light Company ("WG" or "Company"), the Defendant, and alleges that:

(1) WG is a public service corporation as that term is defined in § 56-1 of the Code of Virginia and, specifically a natural gas company within the meaning of § 56-5.1 of the Code of Virginia; and

(2) The Company violated the Commission's Safety Standards by the following conduct:

- a) 49 C.F.R. § 192.303 - Failing to construct a pipeline in accordance with comprehensive written specifications or standards by installing an anode above the pipe;
- b) 49 C.F.R. § 192.317 (a) - Failing on two occasions to take all practicable steps to protect each transmission line or main from unstable soil or other hazards that may cause the pipeline to move or to sustain abnormal loads;
- c) 49 C.F.R. § 192.317 (b) - Failing to take all practicable steps to protect each transmission line or main from accidental damage by vehicular traffic or by other similar causes by not installing barricades;
- d) 49 C.F.R. § 192.319 (b)(2) - Failing to properly backfill in a manner that prevents damage to the pipe; and,
- e) 49 C.F.R. § 192.707 (c) - Failing on twelve occasions to place and maintain line markers along a section of main that is above ground in an area accessible to the public.

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, WG represents and undertakes that:

(1) The Company shall pay a fine to the Commonwealth of Virginia in the amount of \$13,000.00, which shall be paid contemporaneously with the entry of this Order. The payment will be made by check, payable to the Treasurer of Virginia, and directed to the attention of the Director of the Division of Utility and Railroad Safety, Post Office Box 1197, Richmond, Virginia, 23218-1197;

(2) Any fines paid in accordance with this Order shall not be recovered in the Company rates as part of WG'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.

The Commission being fully advised in the premises and 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 WG has made a good faith effort to cooperate with the Staff during the investigation of this matter; and that, the offer of compromise and settlement should be accepted.

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 compromise and settlement made by WG be, and it hereby is, accepted.
- (2) Pursuant to § 56-5.1 of the Code of Virginia, WG be, and it hereby is, fined in the amount of \$13,000.00.
- (3) The sum of \$13,000.00 tendered contemporaneously with the entry of this Order is accepted.
- (4) This case is hereby dismissed, and the papers herein shall be placed in the Commission's file for ended causes.

**CASE NO. PUE-2003-00475
NOVEMBER 14, 2003**

APPLICATION OF
SOUTHSIDE ELECTRIC COOPERATIVE

For authority to incur long-term debt

ORDER GRANTING AUTHORITY

On November 4, 2003, Southside Electric Cooperative ("Applicant" or the "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 incur long-term debt with the Rural Utilities Service ("RUS"). Applicant paid the requisite fee of \$250.

In its application, the Cooperative requests authority to borrow \$10,500,000 in the form of a RUS Treasury Rate Loan. The proceeds will be used to fund a portion of Applicant's two-year construction work plan. The plan specifically includes capital expenditures for distribution facilities.

The loan will have a 35-year maturity. Applicant represents that the interest rate on the loan is established daily by the United States Treasury. Applicant intends to select the interest rate term for each advance of funds. Such interest terms can range from one year to 35 years.

THE COMMISSION, upon consideration of the application and the advice of 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 \$10,500,000 from the RUS, under the terms and conditions and for the purposes set forth in the application.
- 2) Within thirty (30) days of the date of each 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 amount of the advance, the interest rate selected 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 is hereby dismissed.

**CASE NO. PUE-2003-00482
DECEMBER 19, 2003**

JOINT APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY
and
DOMINION TELECOM, INC.

For approval of extension of existing affiliate agreement

ORDER GRANTING APPROVAL

On November 5, 2003, Virginia Electric and Power Company ("Dominion Virginia Power") and Dominion Telecom, Inc. ("Dominion Telecom") (collectively the "Applicants"), filed a joint application with the State Corporation Commission ("Commission") requesting approval, pursuant to Chapter 4 of Title 56 of the Code of Virginia ("Code"), of an extension of the currently effective Pole Attachment Agreement ("Agreement") for the period during which Dominion Resources, Inc. ("Dominion"), continues to have an interest in, and Dominion Virginia Power continues to be an affiliate of, Dominion Telecom, or one year, whichever is earlier.

Dominion Virginia Power is a Virginia public service corporation engaged in the provision of wholesale and retail electric service in Virginia and North Carolina. Dominion Virginia Power is a wholly owned subsidiary of Dominion, a registered public utility holding company pursuant to the Public Utility Holding Company Act of 1935 (the "1935 Act").

Dominion Telecom is a Virginia public service company certificated to provide intrastate interexchange and local exchange telecommunications services throughout Virginia. Dominion Telecom currently provides intrastate interexchange telecommunications services to wholesale customers located from Northern Virginia to Norfolk. It also provides interstate interexchange telecommunications services in other jurisdictions. Dominion Telecom is an "exempt telecommunications company" for purposes of the 1935 Act. Dominion Telecom is a direct, wholly owned subsidiary of Dominion Fibers Ventures, LLC, and an indirect partially owned subsidiary of Dominion.¹ As a subsidiary of Dominion, Dominion Telecom is an affiliate of Dominion Virginia Power.

By Order dated January 31, 2001, in Case No. PUA-2000-00096, the Commission approved the Agreement between Dominion Virginia Power and Dominion Telecom through December 31, 2003. The Agreement governs Dominion Telecom's use of Dominion Virginia Power's distribution poles for

¹ On October 22, 2003, Dominion Virginia Power and Dominion Telecom tiled an application for approval of transactions that would result in Dominion Telecom becoming a wholly owned subsidiary of Dominion. That case, Case No. PUC-2003-00159, is still pending.

the attachment of cables, strand, and associated appliances to support Dominion Telecom's telecommunications business. The Order required that should Dominion Virginia Power "wish to continue operating under the Agreement beyond December 31, 2003, Commission approval shall be required."

Dominion Virginia Power and Dominion Telecom request approval of an extension of the Agreement for the period during which Dominion continues to have an interest in, and Dominion Virginia Power continues to be an affiliate of, Dominion Telecom. Dominion Virginia Power and Dominion Telecom request approval for a limited period because Dominion has announced its intention to sell Dominion Telecom. Dominion Virginia Power and Dominion Telecom, therefore, request approval of an extension of the Agreement for a period of one year or the date upon which Dominion no longer has an ownership interest in Dominion Telecom, whichever occurs first. Dominion Telecom currently attaches to 109 of Dominion Virginia Power's poles.

Under the extension of the Agreement, Dominion Telecom intends to continue to pay Dominion Virginia Power the higher of fully distributed costs or market rates for pole attachments. As stated in the joint application for extension of the existing Agreement, Dominion Telecom would pay Dominion Virginia Power a fee of \$40 per pole for the third year, 2003, of the Agreement. Under the extension, Dominion Telecom will continue to pay Dominion Virginia Power the \$40 fee per pole. Dominion Virginia Power and Dominion Telecom state that, since the approval of the existing Agreement, Dominion Virginia Power has reduced the pole attachment rates for 90% of the unaffiliated telecommunications attachers on its poles. The reduced rates are calculated pursuant to § 224(e)(1) of the Communications Act of 1934. Dominion Virginia Power states that it plans to complete the transitions to the telecommunications attachment formula for all unaffiliated telecommunications attachers over the next several months.

THE COMMISSION, upon consideration of the joint application and representations of the Applicants and having been advised by its Staff, is of the opinion and finds that the above-described extension of the existing Agreement is in the public interest. We will, therefore, approve the requested extension of the Agreement subject to the conditions detailed herein.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, the Applicants are hereby granted approval of the requested extension of the Pole Attachment Agreement through December 31, 2004, or the date upon which Dominion no longer has an ownership interest in Dominion Telecom, whichever occurs first. Approval shall be subject to the pricing provision detailed below.

(2) Prices charged to Dominion Telecom must be at the higher of fully distributed cost or the market rate for such pole attachments.

(3) Should Dominion Virginia Power wish to continue operating under the Agreement beyond December 31, 2004, Commission approval shall be required for such continuation.

(4) Dominion Virginia Power shall request approval of any joint use and sharing arrangements with its affiliate that involve Dominion Virginia Power's rights-of-way, conduits, and ducts that have not been specifically approved by the Commission.

(5) The approval granted herein shall not be deemed to include any approvals other than the extension of the currently effective Pole Attachment Agreement described herein.

(6) The approval granted herein, including approval of the proposed pole attachment rates, does not in any way indicate that the rate charged to Dominion Telecom must be charged to non-affiliates, who are free to negotiate a different rate.

(7) Dominion Virginia Power, if requested by non-affiliates, shall offer and provide service to its poles on terms and conditions that are at least as favorable as those offered or provided to Dominion Telecom. Dominion Virginia Power shall not discriminate in favor of Dominion Telecom in the application for such services or the implementation of any agreements.

(8) Dominion Virginia Power shall, for each application for pole attachment permits submitted by telecommunications companies in Virginia, including affiliates, continue to maintain in its records the following information to be provided to Staff upon request: (a) the date Dominion Virginia Power received the application; (b) the current status of the application; (c) the total amount and description of all application and processing fees; (d) the total amount and description of all engineering, surveying, and related charges to include calculations and number of attachments involved; (e) the total amount and description of all make-ready charges, the calculation of such charges, and the number of attachments involved; (f) the total amount and description of any other charges or costs to include calculations and number of attachments involved; (g) the date when Dominion Virginia Power accepted or denied the application or, if applicable, requested a new re-routed application; and (h) any other information requested by Staff regarding such applications.

(9) The approval granted herein shall have no rate making implications.

(10) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code of Virginia.

(11) 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.

(12) Dominion Virginia Power shall include the transactions covered by the extension of the Pole Attachment Agreement in its Annual Report of Affiliate Transactions submitted to the Director of Public Utility Accounting of the Commission.

(13) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2003-00532
DECEMBER 31, 2003**

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, the Virginia 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"), charged with the investigation of probable violations of the Act, has completed investigations of certain incidents between May 7, 2003, and August 20, 2003, 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 of Virginia;
- (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 and D of the Code of Virginia.
 - (b) Failing on certain occasions to mark within the time prescribed in the Act, in violation of §§ 56-265.19 A and D of the Code of Virginia.
 - (c) Failing on certain occasions to report to the notification center that lines had been marked or they were not in conflict with the proposed excavation, in violation of §§ 56-265.19 A and D of the Code of Virginia.

As evidenced in the attached Admission and Consent document (Attachment B), 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 4, 2003, 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 \$7,750 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.

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 be, and it hereby is, accepted.
- (2) The sum of \$7,750 tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUE-2003-00533
DECEMBER 23, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.
WASHINGTON GAS LIGHT COMPANY,
Defendant

ORDER OF SETTLEMENT

The Natural Gas Pipeline Safety Act of 1968, as amended by the Accountable Pipeline Safety and Partnership Act of 1996, and as modified by the Pipeline Safety Improvement Act of 2002, 49 U.S.C. § 60101 et seq. ("Act"), requires 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 Virginia 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 under § 56-5.1 of the Code of Virginia, which allows the Commission to impose the fines and penalties authorized therein.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Commission's Division of Utility and Railroad Safety ("Division"), charged with the investigation of each jurisdictional gas company's compliance with Safety Standards, has conducted various inspections of records, construction, operation, and maintenance activities involving the Washington Gas Light Company ("WG" or "Company"), the Defendant, and alleges that:

(1) WG is a public service corporation as that term is defined in § 56-1 of the Code of Virginia and, specifically a natural gas company within the meaning of § 56-5.1 of the Code of Virginia; and

(2) The Company violated the Commission's Safety Standard 49 C.F.R. § 192.317 (a) by failing to take all practicable steps to protect each transmission line or main from unstable soil or other hazards that may cause the pipeline to move or to sustain abnormal loads.

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, WG represents and undertakes that:

(1) The Company shall pay a fine to the Commonwealth of Virginia in the amount of \$7,500.00, which shall be paid contemporaneously with the entry of this Order. The payment will be made by check, payable to the Treasurer of Virginia, and directed to the attention of the Director of the Division of Utility and Railroad Safety, Post Office Box 1197, Richmond, Virginia, 23218-1197.

(2) Any fines paid in accordance with this Order shall not be recovered in the Company's rates as part of WG'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.

The Commission being fully advised in the premises and 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 WG has made a good faith effort to cooperate with the Staff during the investigation of this matter; and that, the offer of compromise and settlement should be accepted.

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 compromise and settlement made by WG be, and it hereby is, accepted.

(2) Pursuant to § 56-5.1 of the Code of Virginia, WG be, and it hereby is, fined in the amount of \$7,500.00.

(3) The sum of \$7,500.00 tendered contemporaneously with the entry of this Order is accepted.

(4) This case is hereby dismissed, and the papers herein shall be placed in the Commission's file for ended causes.

**CASE NO. PUE-2003-00540
DECEMBER 2, 2003**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For authority to issue inter-company securities

ORDER GRANTING AUTHORITY

On November 14, 2003, Virginia Electric and Power Company ("Virginia Power" or "the Company") filed an application under Chapters 3 and 4 with the Virginia State Corporation Commission ("Commission") requesting authority to issue and sell up to \$250 million inter-company securities to its corporate parent, Dominion Resources, Inc. ("DRI").

In its application Virginia Power states that with such authority it could potentially access the proceeds that DRI receives from recent or concurrent securities sold in the public finance markets.¹ In such an event, the cost to Virginia Power would match the effective cost to DRI of the related public offering. The Company further states that by utilizing DRI's financing capacity and receptivity in the financial markets to the limited extent requested herein may provide the Company with interest savings it would not otherwise be able to capture.

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 provided that the terms and conditions and market transactions described in the Confidential Supplement to the application are strictly complied with by both Virginia Power and DRI.

Accordingly, IT IS ORDERED THAT:

1) Virginia Power is authorized to issue to DRI up to \$250 million in inter-company securities, under the terms and conditions and for the purposes as detailed in its application and Confidential Supplement, through December 31, 2005.

¹ In a confidential supplement submitted to our Staff ("Confidential Supplement") simultaneously with its application, the Company has indicated that DRI has a specific type of transaction it is contemplating to fund the inter-company securities. Details concerning that type of transaction are contained in the Confidential Supplement and will be held under seal by the Commission until such time as the transactions described therein are complete.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- 2) Virginia Power shall submit a preliminary report of action within ten days after the issuance of any inter company securities pursuant to this Order to include the date of issuance, the amount of issuance, the applicable interest rate, the maturity date, and net proceeds to Applicant and other relevant details concerning the issuance by DRI that funded the inter-company securities.
- 3) Within 60 days of the end of the calendar quarter in which securities are issued, Applicant shall file a more detailed report to include the information required in Ordering Paragraph (2), as well as an itemized list of actual expenses to date associated with the securities issuances, both on a Virginia Power and DRI level, a comparison of the effective rate of Securities issued and any refunded securities, use of proceeds, and a balance sheet reflecting the actions taken.
- 4) On or before February 28, 2006, Applicant shall file a final report of action to include all information required in Ordering Paragraph (3) which incorporates then-current actual expenses and fees paid for the proposed securities issuances.
- 5) The authority granted herein shall have no implications for ratemaking purposes.
- 6) 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.
- 7) 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.
- 8) This matter shall remain under the continued review, audit and appropriate directive of the Commission.

**CASE NO. PUE-2003-00541
DECEMBER 24, 2003**

APPLICATION OF
ATMOS ENERGY CORPORATION

For authority to incur short-term indebtedness pursuant to Virginia Code §§ 56-60 and 56-65.1 and for approval of an affiliate arrangement pursuant to Virginia Code § 56-76 *et seq.*

ORDER GRANTING AUTHORITY

On December 4, 2003, Atmos Energy Corporation ("Atmos" or "Applicant") completed 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 and 56-76 *et seq.*) requesting authority to incur short-term indebtedness up to a maximum of \$400,000,000 at any time between January 1, 2004, and December 31, 2004. 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. Atmos also requests authority to lend short-term funds to affiliates in an amount not to exceed \$100,000,000 at any one time. Applicant paid the requisite fee of \$250.

Atmos proposes to borrow short-term indebtedness by making drawdowns under existing credit facilities or through the use of its commercial paper program. Under the credit facilities, the interest rate may be negotiated at the time of drawdown or based on the then prevailing London InterBank Offered Rate ("LIBOR). Under the commercial paper program, the interest rate is set daily based on market conditions. Applicant states that the funds will be used to maintain its construction budget, to acquire additional assets, to redeem maturing long-term debt securities, to provide working capital, to provide for maximum peak day gas purchases, and for other general corporate purposes. Atmos has in place three separate credit facilities totaling \$393,000,000 of available credit.

Atmos also proposes to continue to lend to its wholly owned subsidiary, Atmos Energy Holdings, Inc. ("AEH"), through a \$100,000,000 short-term credit facility ("Affiliate Facility") for fiscal year 2004. The interest rate on the proposed affiliate transactions will be based on LIBOR plus 275 basis points, 25 basis points higher than the LIBOR plus 250 basis points that Atmos Energy Marketing, LLC ("AEM"), another wholly owned subsidiary of Atmos, would pay to draw down funds from its uncommitted, secured revolving credit facility ("AEM Facility").

According to the application, AEH is a non-regulated natural gas marketing and trading subsidiary of Atmos. The requested loan to AEM is primarily to support the natural gas supply procurement efforts of AEM. AEM's gas procurement is substantially to meet the service requirements of Atmos' regulated sales to end use customers. Applicant also states that AEH is the guarantor of all amounts outstanding under the AEM Facility. The five financial institutions providing the AEM Facility have no recourse to Atmos' regulated utility assets. Applicant also suggests that the \$100,000,000 Affiliate Facility will entail relatively modest risk to Atmos as to any impact on financial standing or as to any impact on Virginia operations.

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 as conditioned below. Since Atmos has only \$393,000,000 in executed credit facilities, it is appropriate to grant approval for the lower amount of existing credit facilities of \$393,000,000.

Moreover, according to our Staff's Action Brief filed in this case, as of September 30, 2003, Atmos had an equity investment in AEH of \$133,586,000. If Atmos were to lend AEH \$100,000,000, its investment in the unregulated subsidiaries would increase to \$233,583,000. This amount represents almost 13% of Atmos' consolidated capitalization. The Commission notes that the non-regulated affiliates of Atmos have less certain revenues and more business risk than its rate-regulated operations. Such risks increase the likelihood of bankruptcy by those affiliates. Indeed, the poor financial health of the energy marketing and trading industry is well documented and the industry continues to struggle since Enron filed for bankruptcy in December of 2001. Many corporations that acquired or expanded into energy marketing and trading operations have cut back significantly or divested their businesses because of poor profitability and loss of access to credit. Clearly, Atmos' investment in AEH comes with a higher risk than rate-regulated utility investment, and if AEH were to falter or fail, Atmos' financial health could also suffer. For example, if AEH were to fail, a significant loss would result in a lower common equity ratio, which could result in a loss of investor confidence in Atmos and likely higher capital costs. Based on the potential for these increased

costs, we find that it is appropriate to place conditions on the Affiliated Facility portion of the application. In imposing these conditions, we note that due to Atmos' organizational structure, Atmos, the entity seeking authority to lend to its unregulated subsidiaries, is a gas distribution company that provides regulated service in a certificated service area in Virginia. This organizational structure affords no effective fence around the utility operations which results in the Virginia ratepayers being exposed to the risks of non-regulated operations. In light of Atmos' increasing investment in its unregulated operations, we will grant this year's request for approval of the Affiliate Facility, however, we strongly urge Atmos to establish an alternative \$100,000,000 credit facility for the non-regulated operations that are non recourse to its utility operations.

Our Staff also notes in its Action Brief that the Affiliate Facility is subordinate to the AEM Facility. Further, Staff has indicated that AEM intends to increase the amount available under the AEM Facility. As currently proposed, the Affiliate Facility would remain subordinate to any expansion of the AEM Facility. Staff suggested that the public interest is not served by this continuing subordination. We agree with our Staff and in order to limit the additional risk exposure from non-regulated operations, we will require that the Affiliate Facility be superior to any increase in the AEM Facility obtained after the date of this Order.

Regarding the pricing of the loans from Atmos to AEH, while Atmos proposes to charge its subsidiary an additional 25 basis points above the AEM Facility, Staff questions whether this rate reflects the actual market cost of a \$100,000,000 credit facility subordinated to the \$210,000,000 credit facility. It has been Commission policy that when a utility provides services to an affiliate, it should be priced at the higher of cost or market. Therefore, we direct Atmos to provide evidence to our Staff regarding the market cost of a \$100,000,000 credit facility, subordinated to the \$210,000,000 facility.

Lastly, our Staff points out in the Action Brief that interest paid from AEH to Atmos is currently booked "below the line" for ratemaking purposes, meaning that even though Atmos and its ratepayers are bearing the risks (and potentially higher debt costs) associated with lending to AEH, base rates do not reflect the higher interest income being received from AEH. Rather it appears that only shareholders stand to benefit from the interest income. We direct our Staff to examine the benefits and risks to both ratepayers and shareholders resulting from the loans to the non-regulated subsidiaries of Atmos and provide recommendations to the Commission as to how best to balance these risks and benefits between ratepayers and shareholders¹ in Applicant's next rate case.

ACCORDINGLY, IT IS ORDERED THAT:

- 1) Applicant is hereby authorized to incur short-term indebtedness in excess of twelve percent (12%) of total capitalization, provided that such debt does not exceed \$393,000,000 at any one time between January 1, 2004, and December 31, 2004. Such authority is granted subject to the terms and conditions and for the purposes set forth in the application.
- 2) Applicant is hereby authorized to lend to AEH short-term funds up to an aggregate amount of \$100,000,000 between January 1, 2004, and December 31, 2004, for the purposes set forth in the application, provided the Affiliate Facility will be superior to any increase in the AEM Facility obtained after the date of this Order.
- 3) Applicant shall file with the Commission quarterly reports of action no later than May 15, 2004, August 15, 2004, and November 15, 2004, 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 the utilities separate from AEH borrowings, the average monthly balance, the average monthly interest rate, and the monthly maximum amount of short-term debt outstanding.
- 4) Applicant shall submit to the Commission a final report of action on or before February 28, 2005, providing the information required in ordering paragraph (3) above for the fourth calendar quarter of 2004. The final report of action shall also include a summary schedule of fees paid by Atmos in 2004 for each line of credit, credit facility, or bank facility or loan, with dates of origination and maturity for each facility in effect during 2004.
- 5) Applicant shall provide to the Divisions of Economics and Finance and Public Utility Accounting the quarterly financial reports for AEH that are provided to its lenders at the same time such reports are provided to the lenders.
- 6) Commission approval shall be required for any subsequent changes in the terms and conditions of the Affiliate Facility.
- 7) The authority granted herein shall not preclude the Commission from applying to Applicant 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 of Applicant in connection with the authority granted herein, whether or not such affiliate is regulated by this Commission.
- 9) Approval of this application shall have no implications for ratemaking purposes.
- 10) Should Applicant wish to obtain authority beyond calendar year 2004, it shall file an application requesting such authority no later than November 1, 2004. Such application shall also include a summary of its actions taken to separate non-regulated financing from dependence on Atmos' utility operations and a detailed description of the progress made during 2004 to obtain fully independent financing for AEH and its subsidiaries.
- 11) This matter shall remain under the continued review, audit, and appropriate directive of the Commission.

¹ If the Staff decides to recognize that there should be compensation for any risks to Atmos' ratepayers, such ratemaking recommendations may include, but are not limited to, imputing the interest income on the \$100,000,000 Affiliate Facility above the line, the use of a hypothetical cost of debt, the use of a hypothetical capital structure, and the imputation of a credit support payment to ratepayers.

**CASE NO. PUE-2003-00543
DECEMBER 16, 2003**

APPLICATION OF
PRINCE GEORGE ELECTRIC COOPERATIVE

For authority to incur long-term debt

ORDER GRANTING AUTHORITY

On December 3, 2003, Prince George Electric Cooperative ("Applicant" or the "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 incur long-term debt with the Rural Utilities Service ("RUS"). Applicant paid the requisite fee of \$25.

In its application, the Cooperative requests authority to borrow \$11,000,000 in the form of a RUS Treasury Rate Loan. The proceeds will be used to fund construction of distribution facilities. The plan specifically includes construction expenditures for a new 115 KV substation and other distribution construction projects.

The loan will have a 35-year maturity. Applicant represents that the interest rate on the loan is established daily by the United States Treasury. Applicant intends to select the interest rate term for each advance of funds. Such interest terms can range from one year to 35 years.

THE COMMISSION, upon consideration of the application and the advice of 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 \$11,000,000 from the RUS, under the terms and conditions and for the purposes set forth in the application.
- 2) Within thirty (30) days of the date of each 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 amount of the advance, the interest rate selected 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 is hereby dismissed.

**CASE NO. PUE-2003-00548
DECEMBER 23, 2003**

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 December 8, 2003, 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 Money Pool, to issue and sell common stock, and to issue long-term debt to an affiliate. The amount of short-term debt proposed in the application exceeds twelve percent of capitalization as defined in § 56-65.1 of the Code of Virginia. Applicants paid the requisite fee of \$250.

On December 22, 2003, Applicants amended their application to indicate that AGLR will have a separate Money Pool for regulated utility subsidiaries ("Utility Money Pool") and another for non-utility subsidiaries ("Non-utility Money Pool"). The separate Utility and Non-utility Money Pools constitute a change to the terms and conditions of the combined Money Pool Agreement that was initially approved by the Commission's Order Granting Authority in Case No. PUF-2000-00025. As found in documents provided by Applicants, some of the terms and conditions of the Utility Money Pool agreement are similar, if not the same, as previously authorized.

VNG, AGLR, and AGL Services request authorization for VNG to: 1) issue short-term debt up to an aggregate balance of \$100,000,000 through participation in the AGLR Utility Money Pool administered by AGL Services; 2) issue long-term debt to AGLR in an amount not to exceed \$250,000,000; and 3) issue and sell common stock to AGLR in an amount not to exceed \$300,000,000, all through December 31, 2004.

Applicants note that the requested level of authority to issue short-term debt, long-term debt, and common stock in this case is identical to the limits previously authorized in Case Nos. PUF-2001-00019 and PUE-2002-00515.

Terms of significance to these various issuances follow. 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 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.

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.

The terms and conditions of long-term debt issued by VNG 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 Lehman Brothers Long Treasury Bond rate as quoted in The Wall Street Journal dated nearest to the time of the loan drawn, plus the appropriate credit spread for AGLRs 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 4,727 shares of common stock without par value to AGLR. If all additional shares of common stock are issued pursuant to this request, the total number of common shares outstanding will be 10,000 shares. This is equal to the total number of shares authorized. The common stock will be sold at the book value of VNG's common equity as of its most recent balance sheet date immediately prior to the sale date.

Applicants state that the proposed issuance of long-term debt and common equity will be used to reduce short-term debt, to recapitalize VNG in connection with its acquisition by AGLR, to refinance maturing long-term debt, and to permanently fund capital projects.

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. Additionally, the Commission is aware of the on-going debate over the possible repeal or amendment of the Public Utility Holding Company Act of 1935 ("PUHCA"). Therefore, the authority granted herein is conditioned upon PUHCA remaining materially unaltered, as detailed below.

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 \$100,000,000, for the period January 1, 2004, through December 31, 2004, under the terms and conditions and for the purposes set forth in the application, as amended.

(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, 2004, under the terms and conditions and for the purposes set forth in the application.

(3) Within thirty (30) days after PUHCA is repealed or materially amended, Applicants shall file an application seeking to continue the authority granted in this proceeding.

(4) The authority granted in this proceeding shall expire ninety (90) days after PUHCA is repealed or materially amended, unless otherwise ordered by the Commission.

(5) Should Applicants seek to extend the authority for VNG to participate in the Utility Money Pool beyond December 31, 2004, Applicants shall file an application requesting such authority no later than November 15, 2004.

(6) Approval of this application shall have no implications for ratemaking purposes.

(7) 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.

(8) The Commission reserves the right pursuant 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 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 submit a preliminary report. 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. Such report shall include a summary of the information noted in Ordering

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Paragraph (9), the cumulative amount of securities issued to date for each type of security and the amount of authority remaining, 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 on or before March 1, 2005, to include all of the information outlined in Ordering Paragraph (9), summarizing the financings entered into pursuant to Ordering Paragraph (2) during the fourth calendar quarter of 2004.

(13) This matter shall be continued subject to the continuing review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2003-00594
DECEMBER 31, 2003**

APPLICATION OF
ATMOS ENERGY CORPORATION

For authority to issue common stock

ORDER GRANTING AUTHORITY

On December 11, 2003, 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 (Va. Code §§ 56-55.3 *et seq.*) requesting authority to issue additional shares of common stock through the Atmos Energy Corporation Retirement Savings Plan ("RSP") and to issue common stock pursuant to its Direct Stock Purchase Plan ("DSPP"). Applicant paid the requisite fee of \$250.

Atmos requests authority to issue common stock up to 1,000,000 additional shares of common stock through its RSP, formerly known as the Employee Stock Ownership Plan and Trust. Under the RSP, Atmos will match every dollar invested by an employee in the RSP up to a maximum of 4% of the employee's annual salary. Each employee may invest up to a maximum of 21% of his or her salary into the RSP, providing a means for additional investment in Atmos and strengthening each employee's direct interest in the financial success of Applicant.

Atmos also proposes to issue up to 2,000,000 additional shares of common stock from time to time through its existing DSPP. Under the DSPP, investors can purchase shares of Atmos' common stock and reinvest all or a portion of their cash dividends in additional shares of common stock. Stock purchases through the DSPP are priced at a three percent discount from the market price of the stock. Applicant indicates that funds from the stock issuances will be used for general corporate purposes. Applicant also asserts that issuance of shares under the RSP and DSPP will ultimately strengthen Atmos' equity ratio, will provide financing flexibility, and may lower its cost of capital.

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 issue and sell up to an additional 1,000,000 shares of common stock through and pursuant to the Atmos Energy Corporation Retirement Saving Plan, under the terms and conditions and for the purposes set forth in the application.
- 2) Applicant is hereby authorized issue and sell up to an additional 2,000,000 shares of common stock under Atmos' Direct Stock Purchase Plan, under the terms and conditions and for the purposes set forth in the application.
- 3) There being nothing further to be done, this matter is hereby closed.

**CASE NO. PUE 2003-00595
DECEMBER 16, 2003**

APPLICATION OF
BLUEFIELD VALLEY WATER WORKS COMPANY

For an increase in rates, fees, and charges pursuant to the Small Water or Sewer Public Utility Act

PRELIMINARY ORDER

By notice dated October 10, 2003, pursuant to the Small Water or Sewer Public Utility Act (§ 56-265.13:1 *et seq.* of the Code of Virginia ("Code")), Bluefield Valley Water Works Company ("Company") notified its customers and the State Corporation Commission's Division of Energy Regulation ("Division") of its intent to increase its rates and fees effective for service rendered on and after November 24, 2003. The Company placed its proposed rates and fees into effect for water service provided on and after December 5, 2003. The short delay in implementing the proposed rates was necessary to allow the Company to file revised tariff sheets with the Division reflecting its proposed increase in rates.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

On December 8, 2003, the Division received a letter from the Town of Bluefield, Virginia ("Town of Bluefield") objecting to the proposed rate increase.¹ On December 10, 2003, the Division received two petitions signed by 39 of the Company's customers opposing the proposed rate increase. The Town of Bluefield and the Company's customers requested a full review of the proposed rate increase by the State Corporation Commission ("Commission"). The number of customers objecting to the proposed rate increase represents approximately 36% of the Company's total customers.

NOW THE COMMISSION, having considered the matter, is of the opinion that, pursuant to § 56-265.13:6 of the Code of Virginia, a hearing should be scheduled on the Company's proposed rate increase, and that the proposed rates and fees should be declared interim and subject to refund from the date of this Order until such time as the Commission renders its final decision in this proceeding. We further find that the Company should file certain financial documents for its operations on or before January 20, 2004. A procedural schedule establishing, among other things, the date of the hearing will be by separate Order of the Commission.

Accordingly, IT IS ORDERED THAT:

(1) This matter shall be docketed and assigned Case No. PUE-2003-00595.

(2) Pursuant to § 56-265.13:6 of the Code of Virginia, the Company's proposed rates are declared to be interim rates effective immediately, and subject to refund with interest, until such time as the Commission renders its final decision in this proceeding.

(3) On or before January 20, 2004, the Company shall submit certain financial information to the Commission's Division of Public Utility Accounting. Such information, based on the Company's proposed test year, shall include, at a minimum, an income statement, balance sheet, customer consumption by month, cash flow statement, 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 increase as required by the Commission's Rules Implementing the Small Water or Sewer Public Utility Act (20 VAC 5-200-40 *et seq.*).

(4) This matter shall be continued subject to further order of the Commission.

¹ The original letter from the Town of Bluefield was dated November 11, 2003, but was never received by the Division. A second letter from the Town of Bluefield dated December 5, 2003, was received by the Division on December 8, 2003. The second letter also enclosed Bluefield's original November 11, 2003, letter.

**CASE NO. PUE-2003-00601
DECEMBER 31, 2003**

APPLICATION OF
ATMOS ENERGY CORPORATION

For an Annual Informational Filing

ORDER ON MOTION

On December 12, 2003, Atmos Energy Corporation ("Atmos" or the "Company") filed a "Motion for Waiver of Annual Informational Filing" with the State Corporation Commission ("Commission"). In its Motion, Atmos alleged that it had notified¹ the Commission on November 6, 2003, that the Company planned to file a general rate case no sooner than 60 days from the date of the notice. Atmos advised that it planned to file its general rate application with the Commission on or before February 27, 2004. Atmos advised that it plans to use operating and financial data for the twelve months ending September 30, 2003, in its general rate filing.

Atmos explained that pursuant to 20 VAC 5-200-30 A 9 of the Rules governing utility rate increase applications and annual informational filings ("Rate Case Rules"), the Company is required to file its Annual Informational Filing ("AIF") for the test year ended September 30, 2003, within 120 days from the end of the test year or by January 30, 2004. Atmos represents that to avoid a duplication of effort, a waiver of the requirement to file its AIF on January 31, 2004, would be appropriate. The Company notes that the data that would be included in its AIF filing will be made a part of its rate case filing. Atmos requested that the Commission waive the requirement that the Company file its AIF on January 31, 2004.

NOW THE COMMISSION, upon consideration of the Company's request, is of the opinion and finds that good cause has been shown for a waiver of the Rate Case Rule requiring Atmos to file an AIF by January 30, 2004; that Atmos' Motion should be granted; that Atmos' general rate application should be filed in Case No. PUE-2003-00507, on or before February 27, 2004, as represented by the Company in its Motion; that in the event Atmos determines not to file a general rate case, it shall, on or before February 27, 2004, file its AIF for the test period ending September 30, 2003, in the proceeding docketed as Case No. PUE-2003-00507; and that this case should be dismissed.

Accordingly, IT IS ORDERED THAT:

(1) This matter is hereby docketed and assigned Case No. PUE-2003-00601.

(2) Atmos' December 12, 2003, Motion is hereby granted.

(3) Atmos need not file an AIF, using the twelve months ending September 30, 2003, as its test year by January 30, 2004.

¹ Atmos' notice for its general rate case application has been docketed as Case No. PUE-2003-00507.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(4) Atmos shall, consistent with the representations made in its Motion, file with the Commission a general rate application for the twelve months ending September 30, 2003, on or before February 27, 2004, in the proceeding docketed as Case No. PUE-2003-00507.

(5) In the event Atmos fails to file a general rate application on or around February 27, 2004, it shall file with the Commission on or before February 27, 2004, an AIF, employing as the test period the twelve months ending September 30, 2003, in the proceeding docketed as Case No. PUE-2003-00507.

(6) There being nothing further to be done in this proceeding, this case shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein made a part of the Commission's files for ended causes.

**CASE NO. PUE-2003-00602
DECEMBER 30, 2003**

APPLICATION OF
CRAIG-BOTETOURT ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On December 22, 2003, Craig-Botetourt Electric Cooperative ("Applicant") filed an application with the Virginia State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia requesting authority to incur long-term debt. Applicant has paid the requisite fee of \$250.

Applicant requests authority to borrow up to \$424,624 from the National Rural Utilities Cooperative Financing Corporation ("CFC"). The proceeds will be used to retire existing debt issued to the Rural Utilities Services ("RUS"). The loan will be structured so that the debt matures in installments throughout the next 8 years. The interest rate on the debt will be determined at the time of advance of funds. The effective interest rate on the CFC debt will be less than 5.0%, the current rate on the existing RUS debt to be retired.

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 \$424,624 from the National Rural Utilities Cooperative Financing Corporation, under the terms and conditions and for the purposes set forth in the application.
- 2) Within thirty (30) days of the date of each advance of funds from CFC, 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 selected, 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 is hereby dismissed.

DIVISION OF SECURITIES AND RETAIL FRANCHISING

CASE NO. SEC-2000-00061 AUGUST 6, 2003

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
DONALD H. SPITZLI,
Defendant

ORDER

On August 9, 2002, the State Corporation Commission ("Commission") issued a Rule to Show Cause in the above captioned proceeding ordering Donald H. Spitzli ("Defendant") to appear before the Commission for failure to comply with a Commission Settlement Order ("Settlement Order") dated November 22, 2000. A hearing was scheduled for April 15, 2003.

On April 14, 2003, the Commission's Division of Securities and Retail Franchising ("Staff"), by counsel, filed a Motion to Dismiss Rule to Show Cause. In support of its application, Staff asserted that: (i) on April 14, 2003, Defendant complied fully with the requirements of the above-mentioned Settlement Order; and (ii) there was no further need to convene a hearing on this matter.

On April 14, 2003, Deborah V. Ellenberger, Chief Hearing Examiner, filed a report in this proceeding. Therein, she recommended that Staff's Motion to Dismiss Rule to Show Cause should be granted.

Upon consideration of the filings submitted and the recommendation of the Chief Hearing Examiner, the Commission is of the opinion and so finds that Motion to Dismiss Rule to Show Cause should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) Staff's Motion to Dismiss Rule to Show Cause issued herein on April 14, 2003, be, and the same is hereby, GRANTED.
- (2) The Rule to Show Cause issued herein on August 9, 2002, against Donald H. Spitzli, be, and the same is hereby, DISMISSED.
- (3) The case is dismissed, and papers herein shall be passed to the filed for ended causes.

CASE NO. SEC-2001-00008 AUGUST 14, 2003

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
DAVID R. TANNER,
Defendant

ORDER

In Tanner, et al. v. State Corporation Commission¹ ("Tanner I") the Supreme Court of Virginia, among other things, affirmed and reversed certain judgments issued by the State Corporation Commission ("Commission") against the defendants² and remanded the matter to the Commission for reconsideration of penalties. On rehearing³ ("Tanner II"), the Court modified its original opinion.⁴ We now address the penalties assessed against David R. Tanner ("Defendant") in light of those rulings.

¹ Tanner et al. v. State Corporation Commission, 265 Va. 148, 158 (2003).

² David R. Tanner, Brian W. Kreider, and James C. Perry.

³ Tanner, et al. v. State Corporation Commission, 266 Va. 170 (2003).

⁴ The Court reaffirmed that Kennsington's Accounts Receivable Purchase and Sales Agreement ("Kennsington Agreements") were not unregistered securities. Additionally, the Court reversed its original position in Tanner I and found that the Postmistress General and Postal Flyers Notes ("Promissory Notes") were not covered securities and, as a result, must be registered.

The Defendant was ordered to appear before the Commission to show cause⁵ why he should not be penalized pursuant to § 13.1-521 of the Virginia Securities Act⁶ ("Act") and permanently enjoined from transacting business as a securities agent in the Commonwealth pursuant to § 13.1-519 of the Act for certain alleged violations.

After the hearing conducted on April 23 and 24, 2001, the Commission accepted the penalties recommended by the Hearing Examiner, and issued a judgment⁷ on December 21, 2001, wherein the Defendant was penalized \$1,000 for violation of § 13.1-504 A of the Act; the sum of \$11,000 for twenty-two (22) violations⁸ of § 13.1-507 of the Act; \$ 1,000 for one violation of § 13.1-502 (2) of the Act; and that he be permanently enjoined from transacting business as a securities agent in Virginia.

Thereafter, the Defendant⁹ appealed the Commission's judgment to the Supreme Court of Virginia ("Court"). In Tanner I, the Court, among other things, reversed the Commission judgment as to the Defendant as it related to the Kennington Accounts Receivable Agreements ("Kennington Agreements"). This position was reaffirmed in Tanner II.

The Commissioner found that the Defendant sold three (3) of the Kennington Agreements. Base upon the Court's order of June 6, 2003, the Defendant's overall penalty is reduced by \$1,500, decreasing the penalty from \$13,000 to \$11,500. The Court affirmed the rest of the Commission's judgment to the Defendant.

Upon consideration of filings submitted, the applicable law, the report of the Hearing Examiner, and the opinions of the Supreme Court of Virginia, referred to above, the Commission is of the opinion and so finds that the penalties imposed upon the Defendant in its judgment are reduced as they relate to the sale of the Kennington Agreements.

Accordingly, IT IS ORDERED THAT:

- (1) Defendant is penalized, pursuant to § 13.1-521 of the Act, \$1,000 for one violation of § 13.1-504 A of the Act.
- (2) Defendant is penalized, pursuant to § 13.1-521 of the Act, the sum of \$11,500 for nineteen violations of § 13.1-507 of the Act.
- (3) Defendant is penalized, pursuant to § 13.1-521 of the Act, \$1,000 for one violation of § 13.1-502 (2) of the Act.
- (4) Defendant is permanently enjoined, pursuant to § 13.1-519 of the Act, from transacting business as a securities agent in the Commonwealth.
- (5) This case is dismissed from the docket, and the papers herein shall be passed to the file for ended causes.

⁵ The Commission issued a consolidated Rule to Show Cause on February 12, 2001, which, among other things, alleged violations of the Virginia Securities Act against The Charterhouse Group, Ltd., and several of its agents ("Charterhouse") (Case No. SEC-2001-00004), including David R. Tanner (Case No. SEC-2001-00008); Brian W. Kreider (Case No. SEC-2001-00013); and James C. Perry (Case No. SEC-2001-00016).

⁶ 13.1-501 *et seq.* of the Code of Virginia.

⁷ Individual judgments were issued by the Commission against Defendants Tanner, Kreider and Perry.

⁸ \$500 per violation.

⁹ For purpose of appeal the Tanner judgment (Case No. SEC-2001-00008) was consolidated with the respective Commission judgments issued against Kreider (Case No. SEC-2001-00013) and Perry (Case No. SEC-2001-00016) and reviewed collectively under Supreme Court Record Nos. 020938, 020939, and 020940.

**CASE NO. SEC-2001-00008
AUGUST 20, 2003**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
DAVID R. TANNER,
Defendant

AMENDING ORDER

On August 14, 2003, the State Corporation Commission ("Commission") entered an Order ("Order") in the above-captioned matter.

It has come to the attention of the Commission that Ordering Paragraph (2) of the Order is defective in that it erroneously penalizes the Defendant \$11,500 instead of \$9,500 for nineteen (19) violations¹ of §13.1-507 of the Virginia Securities Act ("Act").²

¹ \$500 per violation.

² Section 13.1-501 *et seq.* of the Code of Virginia.

Accordingly, IT IS ORDERED THAT Ordering Paragraph (2) of the Order of August 14, 2003, be, and the same is hereby, AMENDED to read as follows:

- (1) Defendant is penalized, pursuant to § 13.1-521 of the Act, the sum of \$9,500 for nineteen (19) violations of §13.1-507 of the Act.
- (2) The case is dismissed, and the papers herein are passed to the file for ended causes.

**CASE NO. SEC-2001-00013
AUGUST 14, 2003**

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

v.

BRIAN W. KREIDER,
Defendant

ORDER

In Tanner, et al. v. State Corporation Commission¹ ("Tanner I") the Supreme Court of Virginia, among other things, affirmed and reversed certain judgments issued by the State Corporation Commission ("Commission") against the defendants² and remanded the matter to the Commission for reconsideration of penalties. On rehearing³ ("Tanner II"), the Court modified its original opinion.⁴ We now address the penalties assessed against the Brian W. Kreider ("Defendant") in light of those rulings.

The Defendant was ordered to appear before the Commission to show cause⁵ why he should not be penalized pursuant to § 13.1-521 of the Virginia Securities Act⁶ ("Act") and permanently enjoined from transacting business as a securities agent in the Commonwealth pursuant to § 13.1-519 of the Act for certain alleged violations.

After the hearing conducted on April 23 and April 24, 2001, the Commission accepted the penalties recommended by the Hearing Examiner, and issued a judgment⁷ on December 21, 2001, wherein the Defendant was penalized \$1,000 for violation of § 13.1-504 A of the Act; the sum of \$11,000 for twenty-two (22) violations⁸ of § 13.1-507 of the Act; and that the Defendant be permanently enjoined from transacting business as a securities agent in Virginia.

Thereafter, the Defendant⁹ appealed the Commission's judgment to the Supreme Court of Virginia ("Court"). In Tanner I, the Court, among other things, reversed the Commission judgment as to the Defendant relating to the Kennington Accounts Receivable Agreements ("Kennington Agreements"). This position was reaffirmed in Tanner II.

The Defendant did not sell any Kennington Agreements. Based upon the Court's order of June 6, 2003, the penalties imposed against the Defendant by the Commission would not be reduced, but would remain at \$12,000. The Court affirmed the rest of the Commission's judgment as to the Defendant.

Upon consideration of filings submitted, the applicable law, the report of the Hearing Examiner, and the opinions of the Supreme Court of Virginia, referred to above, the Commission is of the opinion and so finds that the penalties imposed upon the Defendant in its judgment should remain as indicated.

¹ Tanner et al. v. State Corporation Commission, 265 Va. 148, 158 (2003).

² Brian W. Kreider, James C. Perry, and David R. Tanner.

³ Tanner, et al. v. State Corporation Commission, 266 Va. 170 (2003).

⁴ The Court reaffirmed that Kennington's Accounts Receivable Purchase and Sales Agreement ("Kennington Agreements") were not unregistered securities. Additionally, the Court reversed its original position in Tanner I and found that the Postmistress General and Postal Flyers Notes ("Promissory Notes") were not covered securities and, as a result, must be registered.

⁵ The Commission issued a consolidated Rule to Show Cause on February 12, 2001, which, among other things, alleged violations of the Virginia Securities Act against The Charterhouse Group, Ltd., and several of its agents ("Charterhouse") (Case No. SEC-2001-00004 *et al.*), including, Brian W. Kreider (Case No. SEC-2001-00013); James C. Perry (Case No. SEC-2001-00016); and David R. Tanner (Case No. SEC-2001-00008).

⁶ Section 13.1-501 *et seq.* of the Code of Virginia.

⁷ Individual judgments were issued by the Commission against Defendants Kreider, Perry and Tanner.

⁸ \$500 per violation.

⁹ For purpose of appeal the Kreider judgment (Case No. SEC-2001-00013) was consolidated with the respective Commission judgments issued against Perry (Case No. SEC-2001-00016) and Tanner (Case No. SEC-2001-00008) and reviewed collectively under Supreme Court Record Nos. 020940, 020939, and 020938.

Accordingly, IT IS ORDERED THAT:

- (1) Defendant is penalized, pursuant to § 13.1-521 of the Act, \$1,000 for one violation of § 13.1-504 A of the Act.
- (2) Defendant is penalized, pursuant to § 13.1-521 of the Act, the sum of \$11,000 for twenty-two violations of § 13.1-507 of the Act.
- (3) Defendant is permanently enjoined, pursuant to § 13.1-519 of the Act, from transacting business as a securities agent in the Commonwealth.
- (4) This case is dismissed from the docket, and the papers herein shall be passed to the file for ended causes.

**CASE NO. SEC-2001-00016
AUGUST 14, 2003**

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

v.
JAMES C. PERRY,
Defendant

ORDER

In Tanner, et al. v. State Corporation Commission¹ ("Tanner I") the Supreme Court of Virginia, among other things, affirmed and reversed certain judgments issued by the State Corporation Commission ("Commission") against the defendants² and remanded the matter to the Commission for reconsideration of penalties. On rehearing³ ("Tanner II"), the Court modified its original opinion.⁴ We now address the penalties assessed against the James C. Perry ("Defendant") in light of those rulings.

The Defendant was ordered to appear before the Commission to show cause⁵ why he should not be penalized pursuant to § 13.1-521 of the Virginia Securities Act⁶ ("Act") and permanently enjoined from transacting business as a securities agent in the Commonwealth pursuant to § 13.1-519 of the Act for certain alleged violations.

After the hearings conducted on April 23 and 24, 2001, the Commission accepted the penalties recommended by the Hearing Examiner, and issued a judgment⁷ on December 21, 2001, wherein Perry was penalized \$1,000 for violation of § 13.1-504 A of the Code; the sum of \$9,000 for eighteen (18) violations⁸ of § 13.1-507 of the Act; \$ 1,000 for one violation of § 13.1-502 (2) of the Act; and that he be permanently enjoined from transacting business as a securities agent in Virginia.

Thereafter, the Defendant⁹ appealed the Commission's judgment to the Supreme Court of Virginia ("Court"). In Tanner I, the Court, among other things, reversed the Commission judgment as to the Defendant as it related to the Kennsington Accounts Receivable Agreements ("Kennsington Agreements"). This position was reaffirmed in Tanner II.

The Commission found that the Defendant sold one (1) of the Kennsington Agreements. Based upon the Court's order of June 6, 2003, the Defendant's penalty is reduced by \$500, decreasing the penalty from \$11,000 to \$10,500. The Court affirmed the rest of the Commission's judgment as to the Defendant.

¹ Tanner et al. v. State Corporation Commission, 265 Va. 148, 158 (2003).

² James C. Perry, David R. Tanner, and Brian W. Kreider.

³ Tanner, et al. v. State Corporation Commission, 266 Va. 170 (2003).

⁴ The Court reaffirmed that Kennsington's Accounts Receivable Purchase and Sales Agreement ("Kennsington Agreements") were not unregistered securities. Additionally, the Court reversed its original position and found that the Postmistress General and Postal Flyers Notes ("Promissory Notes") were not covered securities and, therefore, must be registered.

⁵ The Commission issued a consolidated Rule to Show Cause on February 12, 2001, which, among other things, alleged violations of the Virginia Securities Act against The Charterhouse Group, Ltd., and several of its agents ("Charterhouse") (Case No. SEC-2001-00004 *et al.*), including James C. Perry (Case No. SEC-2001-00016); David R. Tanner (Case No. SEC-2001-00008); and Brian W. Kreider (Case No. SEC-2001-00013).

⁶ 13.1-501 *et seq.* of the Code of Virginia.

⁷ Individual judgments were issued by the Commission against defendants Perry Tanner, and Kreider.

⁸ \$500 per violation.

⁹ For purpose of appeal the Perry judgment (Case No. SEC-2001-00016) was consolidated with the respective Commission judgments issued against Kreider (Case No. SEC-2001-00013) and Tanner (Case No. SEC-2001-00008) and reviewed collectively under Supreme Court Record Nos. 020940, 020939, and 020938.

Upon consideration of filings submitted, the applicable law, the report of the Hearing Examiner, and the opinions of the Supreme Court of Virginia, referred to above, the Commission is of the opinion and so finds that the penalties imposed upon the Defendant in its judgment are reduced as they relate to the sale of the Kennsington Agreements.

Accordingly, IT IS ORDERED THAT :

- (1) Defendant is penalized, pursuant to § 13.1-521 of the Act, \$1,000 for one violation of § 13.1-504 A of the Act.
- (2) Defendant is penalized, pursuant to § 13.1-521 of the Act, the sum of \$8,500 for seventeen violations of § 13.1-507 of the Act.
- (3) Defendant is penalized, pursuant to § 13.1-521 of the Act, \$1,000 for one violation of § 13.1-502 (2) of the Act.
- (4) Defendant is permanently enjoined, pursuant to § 13.1-519 of the Act, from transacting business as a securities agent in the Commonwealth.
- (5) This case is dismissed from the docket, and the papers herein shall be passed to the file for ended causes.

**CASE NO. SEC-2001-00052
AUGUST 1, 2003**

PETITION OF
STEVEN R. DICKEY

For relief under the Retail Franchising Act

ORDER DISMISSING PETITION

On July 24, 2003, came Steven R. Dickey, Petitioner, by counsel, and Bay Colony, Ltd., HRB Royalty, Inc., H & R Block, Inc., and Brian Schell, Respondents, by counsel, and filed with the Clerk of the State Corporation Commission ("Commission") a Stipulation and Order of Dismissal with Prejudice.

THE COMMISSION, having considered the Stipulation and Order of Dismissal with Prejudice finds that the Petitioner and Respondents have stipulated a resolution of this matter and have jointly requested that this action be dismissed.

Accordingly, IT IS ORDERED THAT:

- (1) The Petition of Steven R. Dickey, for relief under the Retail Franchising Act, be, and the same is hereby, DISMISSED with prejudice.
- (2) Each party shall bear its own fees and costs, including attorney fees.
- (3) The papers herein are passed to the file for ended causes.

**CASE NOS. SEC-2001-00116, SEC-2001-00111, SEC-2001-00112, SEC-2001-00117,
SEC-2001-00114, SEC-2001-00119, SEC-2001-00120, and SEC-2001-00115
DECEMBER 19, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

BRIGHT COVE SECURITIES, INC.,
21st CENTURY TECHNOLOGIES ESCROW,
21st CENTURY TECHNOLOGIES FUNDING, LLC,
21st CENTURY TECHNOLOGIES FUNDING, LPs
ADVANTAGE REAL ESTATE MANAGEMENT LLC,
ADVANTAGE REAL ESTATE MATURITY FUND, LPs
INTEGRATED BROKERAGE SERVICES, INC.,

and

ALLEN DRAKE,
Defendants

JUDGMENT ORDER

The Commission entered a Rule to Show Cause on March 15, 2002, on behalf of the Division of Securities and Retail Franchising ("Division") against the Defendants listed above, alleging the Defendants violated certain provisions of the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code of Virginia and certain of the applicable securities rules, Securities Rules ("Rule") 21 VAC 5-10-10 et seq. The Commission assigned this case to Michael D. Thomas, Hearing Examiner, to conduct a hearing for the Commission. The case was heard on November 18, 2002. The Hearing Examiner issued his Report setting forth his recommended findings of fact and conclusions of law on October 2, 2003. Defendant Allen Drake ("Drake") filed comments to the Hearing Examiner's Report on October 23, 2003. Upon consideration of the Report and the record in this case, the Commission is of the opinion and finds as follows:

1. The Commission specifically adopts and incorporates herein the factual findings of the Hearing Examiner's Report issued on October 2, 2003.
2. Drake, as principal of 21st Century Technologies LLC (the general partner of 21st Century Technologies Funding LPs, hereinafter "21st Century Technologies LPs"), violated § 13.1-502 (3) of the Act by engaging in transactions, practices, or a course of business which operated as a fraud or deceit upon the purchasers of 21st Century Technologies LPs partnership units.
3. Drake, as principal of Advantage Real Estate Management LLC (the general partner of Advantage Real Estate Maturity Fund, LPs, hereinafter "Advantage Real Estate LPs") violated § 13.1-502 (3) of the Act by engaging in transactions, practices, or a course of business which operated as a fraud or deceit upon the purchasers of Advantage Real Estate LPs' partnership units.
4. Drake violated § 13.1-507 of the Act by offering and selling unregistered securities, in the form of stock of 21st Century Technologies, Inc. ("21st Century Technologies").
5. Drake violated § 13.1-502 (3) of the Act by engaging in transactions, practices, or a course of business which operated as a fraud or deceit upon the purchasers of 21st Century Technologies stock.
6. Defendant Bright Cove Securities, Inc. ("Bright Cove") violated § 13.1-504 B of the Act by employing Drake as an agent when Drake was also employed as an agent for Defendant Integrated Brokerage Services, Inc. ("Integrated Brokerage").
7. Integrated Brokerage violated § 13.1-507 of the Act by offering and selling unregistered stock of 21st Century Technologies.
8. Integrated Brokerage violated § 13.1-502 (3) of the Act by engaging in transactions, practices, or a course of business which operated as a fraud or deceit upon the purchasers of 21st Century Technologies stock.
9. Integrated Brokerage violated § 13.1-504 B of the Act by employing at least three unregistered agents who offered and sold unregistered securities.
10. Integrated Brokerage violated § 13.1-504 B of the Act by employing Drake as an agent when he was also employed as an agent of Bright Cove.
11. Integrated Brokerage violated Rule 21 VAC 5-20-240 A and B by failing to maintain the books and records required by the Rule.
12. Integrated Brokerage violated Rule 21 VAC 5-20-250 A and B by failing to create, develop, or preserve the required records of a broker-dealer.
13. Integrated Brokerage violated Rule 21 VAC 5-20-280 A 9 by arbitrarily determining the sale price of 21st Century Technologies stock depending upon the customer.
14. Integrated Brokerage violated Rule 21 VAC 5-20-280 A 14 by selling restricted shares of 21st Century Technologies stock at a discount to the market price without telling purchasers the stock would not be freely tradable for at least twelve months after the date of sale.
15. Integrated Brokerage violated Rule 21 VAC 5-20-280 A 16 by routinely guaranteeing customers that 21st Century Technologies stock was going to be profitable.
16. Integrated Brokerage did not violate Rules 21 VAC 5-20-260 A through D, 21 VAC 5-20-270, 21 VAC 5-20-280 A 3, 21 VAC 5-20-280 A 20, and 21 VAC 5-20-280 A 22, in that the Division failed to provide evidence of the alleged violations of these securities rules at the hearing.
17. Integrated Brokerage did not violate Rules 21 VAC 5-20-289 A 1 and 21 VAC 5-20-289 A 2 in that the Division's counsel failed to reference the appropriate rule section in the Rule to Show Cause.
18. Defendant 21st Century Technologies Escrow, Case No. SEC-2001-00111, should be closed since Defendant is a doing business name of Integrated Brokerage. Case No. SEC-2001-00120 should be titled Integrated Brokerage Services, Inc. d/b/a 21st Century Technologies Escrow.
19. Defendant 21st Century Technologies Funding LLC (the general partner of 21st Century Technologies Funding, LPs, hereinafter "21st Century Technologies LPs") violated § 13.1-502 (3) of the Act by engaging in transactions, practices, or a course of business which operated as a fraud or deceit upon the purchasers of 21st Century Technologies LPs' partnership units.
20. Defendant 21st Century Technologies LPs violated § 13.1-502 (3) of the Act by engaging in transactions, practices, or a course of business which operated as a fraud or deceit upon the purchasers of 21st Century Technologies LPs' partnership units.
21. Defendant Advantage Real Estate Management LLC (the general partner of Advantage Real Estate LPs) violated § 13.1-502 (3) of the Act by engaging in transactions, practices, or a course of business which operated as a fraud or deceit upon the purchasers of Advantage Real Estate, LPs' partnership units.
22. Defendant Advantage Real Estate LPs violated § 13.1-502 (3) of the Act by engaging in transactions, practices, or a course of business which operated as a fraud or deceit upon the purchasers of Advantage Real Estate LPs' partnership units.

Accordingly, IT IS ADJUDGED AND ORDERED THAT:

- (1) Drake is penalized, pursuant to § 13.1-521 of the Act, the sum of \$60,000 for 12 violations of § 13.1-502 (3) of the Act.

- (2) Drake is penalized, pursuant to § 13.1-521 of the Act, the sum of \$340,000.00 for 340 violations of § 13.1-507 of the Act.
- (3) Bright Cove is penalized, pursuant to § 13.1-521 of the Act, the sum of \$5,000.00 for 1 violation of § 13.1-507 of the Act.
- (4) Integrated Brokerage is penalized, pursuant to § 13.1-521 of the Act, the sum of \$675,000.00 for 675 violations of § 13.1-507 of the Act.
- (5) Integrated Brokerage is penalized, pursuant to § 13.1-521 of the Act, the sum of \$55,000 for 11 violations of § 13.1-502 (3) of the Act.
- (6) Integrated Brokerage is penalized, pursuant to § 13.1-521 of the Act, the sum of \$20,000 for 4 violations of § 13.1-504 B of the Act.
- (7) Integrated Brokerage is penalized, pursuant to § 13.1-521 of the Act, an aggregate sum of \$5,000 for multiple violations of Rule 21 VAC 5-20-240 A and B.
- (8) Integrated Brokerage is penalized, pursuant to § 13.1-521 of the Act, an aggregate sum of \$5,000 for multiple violations of Rule 21 VAC 5-20-250 A and B.
- (9) Integrated Brokerage is penalized, pursuant to § 13.1-521 of the Act, an aggregate sum of \$5,000 for multiple violations of Rule 21 VAC 5-20-280 A 9.
- (10) Integrated Brokerage is penalized, pursuant to § 13.1-521 of the Act, an aggregate sum of \$5,000 for multiple violations of Rule 21 VAC 5-20-280 A 14.
- (11) Integrated Brokerage is penalized, pursuant to § 13.1-521 of the Act, an aggregate sum of \$5,000 for multiple violations of Rule 21 VAC 5-20-280 A 16.
- (12) 21st Century Technologies LLC is penalized, pursuant to § 13.1-521 of the Act, an aggregate sum of \$5,000 for multiple violations of § 13.1-502 (3) of the Act.
- (13) 21st Century Technologies Funding LPs is penalized, pursuant to § 13.1-521 of the Act, an aggregate sum of \$5,000 for multiple violations of § 13.1-502 (3) of the Act.
- (14) Advantage Real Estate Management LLC is penalized, pursuant to § 13.1-521 of the Act, an aggregate sum of \$5,000 for multiple violations of § 13.1-502 (3) of the Act.
- (15) Advantage Real Estate LPs is penalized, pursuant to § 13.1-521 of the Act, an aggregate sum of \$5,000 for multiple violations of § 13.1-502 (3) of the Act.
- (16) Drake is permanently enjoined, pursuant to § 13.1-519 of the Act, from future violations of the Act.
- (17) Bright Cove is permanently enjoined, pursuant to § 13.1-519 of the Act, from future violations of the Act.
- (18) Integrated Brokerage is permanently enjoined, pursuant to § 13.1-519 of the Act, from future violations of the Act. Case No. SEC-2001-00111 is closed and Case No. SEC-2001-00120 shall hereinafter be referred to as Integrated Brokerage Services, Inc., d/b/a 21st Century Technologies Escrow.
- (19) Alleged violations of Rules 21 VAC 5-20-260 A through D, 21 VAC 5-20-270, 21 VAC 5-20-289 A 1 and 2, 21 VAC 5-20-280 A 3, A 20 and A 22, in the Commission's Rule to Show Cause, are hereby dismissed from this case.
- (20) This case is dismissed from the docket, and the papers herein shall be placed among the ended causes.

**CASE NO. SEC-2002-00055
JANUARY 14, 2003**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
KEVIN L. HARRELL,
Defendant

SETTLEMENT ORDER

The Commission's Division of Securities and Retail Franchising ("Division") has instituted an investigation of Defendant, Kevin L. Harrell ("Harrell"), pursuant to § 13.1-518 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia.

As a result of its investigation, the Division alleges that (i) Harrell offered and sold securities, to wit: an investment contract in the form of membership in First American Financial Services Club, as an unregistered agent in violation of § 13.1-504 A of the Act, (ii) Harrell offered for sale and sold unregistered securities, to wit: an investment contract, in violation of § 13.1-507 of the Act, and (iii) Harrell engaged in a practice or course of business which operated as a fraud or deceit in violation of § 13.1-502(3) of the Act.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Defendant neither admits nor denies the allegations, but admits to the Commission's jurisdiction and authority to enter this order.

As a proposal to settle all matters arising from the allegations made against it, the Defendant has offered, and agreed to comply with, the following terms and undertakings:

(A) Harrell has made an offer of restitution to the three known Virginia investors, which has been accepted and paid.

(B) Pursuant to § 13.1-521 of the Act, Harrell agrees to pay a penalty of eighty thousand dollars (\$80,000). In lieu of paying said penalty to the Commission, Harrell agrees to repay the one known North Carolina investor the principal paid, plus six percent (6%) interest per year from the date of investment until paid, less any income. Harrell agrees to pay at least five hundred dollars (\$500) per month, beginning April 2003. Harrell agrees that failure to make payments will result in the penalty becoming immediately due to the Commission.

(C) Pursuant to § 13.1-518 of the Act, Harrell agrees to pay to the Commission the sum of five thousand dollars (\$5,000) to defray the costs of the investigation.

(D) Harrell will offer and sell in the Commonwealth, whether directly or indirectly, only securities that are either registered under the Act or exempted therefrom.

(E) It is recognized and understood that if the Defendant fails to comply with any of the foregoing terms and undertakings, then the Commission reserves the right to take whatever action it deems appropriate, including but not limited to instituting a show cause proceeding under the Act or other applicable statutes based on such failure to comply, on the allegations contained herein and/or on such other allegations as are warranted, and the Defendant will not contest the exercise of the right reserved.

The Division has recommended that the Defendant's offer of settlement be accepted pursuant to the authority granted to the Commission in § 12.1-15 of the Code of Virginia. Accordingly,

IT IS ORDERED THAT:

(1) Pursuant to the authority granted to the Commission in § 12.1-15 of the Code of Virginia, the Defendant's offer of settlement is accepted;

(2) The Defendant shall fully comply with the aforesaid terms and undertakings of the settlement;

(3) Harrell, pursuant to Section 13.1-521 of the Act, shall pay to the Commission the sum of eighty thousand dollars (\$80,000) as a penalty and, pursuant to § 13.1-518 of the Act, pay to the Commission the sum of five thousand dollars (\$5000) to defray the costs of investigation, and that the Commission recover from Harrell said amounts; provided that said penalty and costs are suspended upon the condition that Harrell shall perform the undertakings listed under Items A and B listed above. If Harrell fails to perform such undertakings, then the full penalty and costs thereon shall become immediately due and payable by Commission order;

(4) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding as described above, 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-2002-00056 and SEC-2002-00057
APRIL 29, 2003**

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

v.

ANTHONY JOHN CARREA
SENIOR RETIREMENT SERVICES, INC.
Defendants

JUDGMENT

By Rule to Show Cause issued against Defendants Anthony John Carrea ("Carrea") and Senior Retirement Services, Inc. ("Senior Retirement"), on December 20, 2002, the State Corporation Commission ("Commission") assigned this case to Michael D. Thomas, Hearing Examiner, to conduct a hearing for the Commission. After a hearing on the merits, the Hearing Examiner issued his Report ("Report") setting forth his recommended findings of fact and conclusions of law on March 19, 2003. The Report allowed Defendants twenty-one (21) days in which to provide comments. Neither Defendant has filed comments. Upon consideration of the Report and the record in this case, the Commission is of the opinion and finds as follows:

(1) A copy of the Report of Hearing Examiner was mailed to the Defendant.

(2) Defendant Carrea was present in the courtroom on March 4, 2003, for the hearing, but failed to remain or make an appearance at the hearing.

(3) Defendants Senior Retirement and Carrea were registered as an investment advisor and investment advisor representative, respectively, with the Commission until December 31, 2002. Carrea was registered as a broker-dealer agent until May 23, 2002. Each Defendant was domiciled in Virginia with a business address of 144 Business Park Drive, Suite 206, Virginia Beach, Virginia 23462.

(4) Carrea violated § 13.1-502 (2) of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia on two (2) occasions by obtaining money by means of untrue statements of material fact.

(5) Carrea violated Commission's Securities Rule ("Rule") 21 VAC 5-20-230 A on thirteen (13) occasions by failing to notify the Commission within thirty (30) calendar days of the date of any complaint, pleading or notice of any civil, criminal or administrative charge.

(6) Carrea violated Rule 21 VAC 5-20-280 B 1 on two (2) occasions by borrowing money from customers, Ms. Charlotte Kane for \$40,000 and Mr. Winnard Holloman for \$100,000.

(7) Senior Retirement violated 13.1-502 (2) on two (2) occasions by obtaining money by means of untrue statements of material fact.

(8) Senior Retirement violated Rule 21 VAC 5-20-230 A on thirteen (13) occasions by failing to notify the Commission within thirty (30) calendar days of the date of any complaint, pleading, or notice of any criminal, civil or administrative charge.

(9) Senior Retirement violated § 13.1-503 of the Act on one hundred fifty-two (152) occasions by committing dishonest and unethical business practices.

Accordingly, IT IS ADJUDGED AND ORDERED THAT:

(1) The Commission adopts in part and rejects in part, the findings and recommendations contained in the Hearing Examiner's Report.

(2) Carrea is penalized, pursuant to § 13.1-521 of the Act, the sum of \$1,500.00 for two (2) violations of § 13.1-502 (2) of the Act.

(3) Carrea is penalized, pursuant to § 13.1-521 of the Act, the sum of \$9,750.00 for thirteen (13) violations of Rule 21 VAC 5-20-230 A.

(4) Carrea is penalized, pursuant to § 13.1-521 of the Act, the sum of \$10,000 for two (2) violations of Rule 21 VAC 5-20-280 B 1.

(5) Senior Retirement is penalized, pursuant to § 13.1-521 of the Act, the sum of \$1,500.00 for two (2) violations of § 13.1-502 (2) of the Act.

(6) Senior Retirement is penalized, pursuant to § 13.1-521 of the Act, the sum of \$9,750 for thirteen (13) violations of Rule 21 VAC 5-20-230 A.

(7) Senior Retirement is penalized, pursuant to § 13.1-521 of the Act, the sum of \$114,000 for one hundred and fifty-two (152) violations of § 13.1-503 of the Act.

(8) Carrea is permanently enjoined, pursuant to § 13.1-519 of the Act, from transacting the business of an investment advisor representative or a broker-dealer agent in the Commonwealth of Virginia.

(9) Senior Retirement is permanently enjoined pursuant to § 13.1-519 of the Act from acting as an investment advisor in the Commonwealth of Virginia.

(10) The costs of investigation recommended by the Hearing Examiner is not adopted.

(11) In lieu of paying these penalties to the Commonwealth, Defendants have ninety (90) days in which to present a plan to the Commission by which Defendants will make monetary restitution to Ms. Charlotte Kane and Mr. Winnard Holloman. The Commission must approve the plan prior to its implementation, and if approved, the Commission may vacate, in whole or in part, the penalties imposed in this matter. Any restitution plan must have a reasonable time limit agreed upon by Commission staff and Defendants, but shall not exceed five (5) years.

(12) This case is continued generally for the Defendants to present a plan of restitution.

**CASE NO. SEC-2003-00004
JANUARY 23, 2003**

APPLICATION OF
EASTERN VIRGINIA CONFERENCE OF THE INTERNATIONAL PENTECOSTAL HOLINESS CHURCH
5201 Courthouse Road
Prince George, Virginia 23875

For an Order of Exemption Under § 13.1-514.1 B of the Code of Virginia, as amended

ORDER OF EXEMPTION

THIS MATTER came for consideration upon written application dated November 22, 2002, with exhibits attached thereto, as subsequently amended, of Eastern Virginia Conference of the International Pentecostal Holiness Church ("EVC") requesting that certain 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 and that certain employees of EVC be exempted from the agent registration requirements of said Act.

BASED UPON THE INFORMATION submitted, the following facts, in addition to others not enumerated herein, appear to exist: EVC is an unincorporated Virginia church association operating not for private profit but exclusively for religious purposes; EVC intends to offer and sell First Mortgage Bonds Series of January 20, 2003, in an approximate aggregate amount of \$1,250,000 on terms and conditions as more fully described in the Prospectus filed as a part of the application; said securities are to be offered and sold by Vickie Rebeck and Chuck Davis who will not be compensated for their sales efforts; and said securities may also be offered and sold by broker-dealers so registered under the Act.

THE COMMISSION, based on the facts asserted by EVC in the written application and exhibits, is of the opinion and finds, and does hereby ADJUDGE AND ORDER that, pursuant to the provisions of § 13.1-514.1 B of the Act, the securities described above be, and they hereby are, exempted from the securities registration requirements of the Act, and Vickie Rebeck and Chuck Davis be, and they hereby are, exempted from the agent registration requirements of said Act.

**CASE NO. SEC-2003-00005
APRIL 18, 2033**

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

v.

JEFFERSON PILOT SECURITIES CORPORATION,
Defendant

SETTLEMENT ORDER

The Commission's Division of Securities and Retail Franchising ("Division") has instituted an investigation of Defendant, Jefferson Pilot Securities Corporation, pursuant to § 13.1-518 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia.

As a result of its investigation, the Division alleges:

1. Defendant failed to exercise diligent supervision over the general securities activities, including the sale of penny stocks, of one of its agents, Paul G. Romweber, in violation of the Commission's Rule 21 VAC 5-20-260B.
2. Defendant failed to enforce the firm's written supervisory procedures relating to the sale of general securities in violation of the Commission's Rule 21 VAC-20-260D.

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, Defendant has offered, and agrees to comply with, the following terms and undertakings:

1. Defendant will refrain from any further conduct which constitutes a violation of the Act or the Commission's Rules promulgated thereunder.
2. Defendant, pursuant to § 13.1-521 of the Act, will pay to the Commonwealth a penalty in the amount of fifteen thousand dollars (\$15,000).
3. Defendant, pursuant to § 13.1-518 of the Act, will pay to the Commission the sum of eleven thousand five hundred dollars (\$11,500) to defray the costs of the investigation.

The Division has recommended that Defendant's offer of settlement be accepted pursuant to authority granted to the Commission in § 12.1-15 of the Code of Virginia.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Pursuant to the authority granted to the Commission in § 12.1-15 of the Code of Virginia, Defendant's offer of settlement is accepted.
2. Defendant fully comply with the aforesaid terms and undertakings of the settlement.
3. Pursuant to § 13.1-521 of the Act, Defendant pay to the Commonwealth a penalty in the amount of fifteen thousand dollars (\$15,000).
4. Pursuant to § 13.1-518 of the Act, Defendant pay to the Commission the sum of eleven thousand five hundred dollars (\$11,500) to defray the costs of the investigation.
5. The total sum of twenty-six thousand five hundred dollars (\$26,500) tendered by Defendant contemporaneously with the entry of this Settlement Order is accepted.
6. This case is dismissed from the Commission's docket and the papers herein be placed in the file for ended causes.

**CASE NO. SEC-2003-00010
JUNE 27, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

Ex Parte: In Re Amendments to Securities Act Rules

ORDER ADOPTING AMENDED RULES

On April 18, 2003, the Division of Securities and Retail Franchising ("Division") mailed notice of proposed amendments to the Commission's Securities Act Rules ("Rules") and forms to all issuer agents, broker-dealers, and investment advisors pending registration or registered under the Virginia Securities Act, § 13.1-501 et seq. of the Code of Virginia, and to other interested parties. Notice of the proposed amendments was also published in several newspapers in general circulation throughout Virginia, and in the "Virginia Register of Regulations" on April 21, 2003. The notices describe the proposed amendments, and afforded interested parties an opportunity to file written comments or requests for hearing.

Written comments were filed by The Investment Company Institute, Washington, D.C., Financial Planning Association (FPA) Government Relations Office located in Washington, D.C., Geoffrey Foisie, a registered investment advisor located in Alexandria, Virginia, Brinkley, McNerney, Morgan, Solomon & Tatum, LLP, a Florida law firm, and Beach Financial Advisory Service located in Virginia Beach, Virginia. After considering the comments received, comments were addressed both formally and informally. Each comment received a written response by the Division or Division's counsel. Several substantive changes were necessary, but acceptable to the Division. In addition, the Division addressed some minor inconsistencies.

The Commission, upon consideration of the proposed amendments as modified, the written comments filed, the recommendation of the Division, and the record in this case, finds that the proposed modified amendments should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The evidences of mailing and publication of notice of the proposed Rules and forms amendments shall be filed in and made part of the record in this case.

(2) The proposed Rules and forms amendments are adopted effective July 1, 2003. A copy of the modified Rules and forms amendments is attached to and made part of this order.

(3) 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 "Securities Act 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. SEC 2003-00012
OCTOBER 21, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.
STEVEN E. HUTEK,
Defendant

SETTLEMENT ORDER

The Commission's Division of Securities and Retail Franchising ("Division") has instituted an investigation of Defendant, Seven E. Hutek, pursuant to § 13.1-518 of the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code of Virginia.

As a result of its investigation, the Division alleges that:

1. Defendant was President of Southern Capital Securities, Inc., a broker-dealer which was so registered under the Act until November 16, 1999.
2. Defendant was registered under the Act as an agent of Southern Capital Securities, Inc. between October 21, 1997, and April 1, 1999.
3. Defendant, in violation of § 13.1-504 A of the Act, sold through Southern Capital Securities, Inc., promissory notes in United States Automobile Acceptance SNP-III, Inc. ("USAA SNP-III Notes") to a Virginia resident on September 11, 1997, at which time Defendant was not registered as a Virginia agent with Southern Capital Securities, Inc.
4. Defendant, in violation of the Securities Act Rule 21 VAC 5-20-280 B 3, in the sale of the promissory notes, maintained fictitious account information in order to execute transactions.
5. Defendant, in violation of Securities Act Rule 21 VAC 5-20-280 B 5, divided or otherwise split agent commissions, profits or other compensation from the purchase or sale of securities in question in this state with a person not also registered as an agent for the same broker-dealer.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

6. Defendant, in violation of § 13.1-502(3) of the Act, in the offer and sale of the promissory notes, indirectly engaged in a course of business which operated as deceit upon the purchaser.

The Defendant neither admits nor denies the Division's allegations, but admits to the Commission's jurisdiction and authority to enter this order.

As a proposal to settle all matters arising from the allegations made against him as described in this order, Defendant has offered and agrees to comply with the following terms and undertakings:

- (1) Defendant will refrain from any further conduct which constitutes a violation of the Act or the Rules promulgated thereunder.
- (2) Defendant, pursuant to § 13.1-521 of the Act, will pay a penalty to the Commonwealth in the amount of one thousand five hundred dollars (\$1,500.00) contemporaneously with the entry of this order.
- (3) Defendant, pursuant to § 13.1-518 of the Act, will pay to the Commission the sum of five hundred dollars (\$500.00) as reimbursement for the costs of the Division's investigation, contemporaneously with the entry of this order.
- (4) Defendant agrees that, should he seek registration as a broker-dealer agent in this Commonwealth, he will pay an additional penalty to the Commonwealth in the amount of six thousand dollars (\$6,000.00) and will pay to the Commission an additional sum of one thousand dollars (\$1,000.00) as reimbursement for the costs of the Division's investigation prior to approval of such registration.

The Division has recommended that Defendant's offer of settlement be accepted pursuant to the authority granted to the Commission in § 12.1-15 of the Code of Virginia.

NOW, THEREFORE, IT IS ORDERED THAT:

- (1) Pursuant to the authority granted to the Commission in § 12.1-15 of the Code of Virginia, Defendant's offer of settlement is accepted.
- (2) Defendant fully comply with the aforesaid terms and undertakings of the settlement.
- (3) Pursuant to § 13.1-521 of the Act, Defendant shall pay a penalty to the Commonwealth in the amount of one thousand five hundred dollars (\$1,500.00) and the Commonwealth recover of and from Defendant said amount.
- (4) Pursuant to § 13.1-518 of the Act, Defendant shall pay to the Commission the sum of five hundred dollars (\$500.00) as reimbursement for the costs of the Division's investigation.
- (5) The total sum of two thousand dollars (\$2,000.00) tendered by Defendant contemporaneously with the entry of this order is accepted.
- (6) Defendant, pursuant to § 13.1-519 of the Act, is hereby enjoined from transacting business as a broker-dealer agent in this Commonwealth until such time as Defendant applies for registration with the Division and Defendant pays the remaining penalty balance of six thousand dollars (\$6,000.00) to the Commonwealth and the costs of investigation balance of one thousand dollars (\$1,000.00) to the Commission as set forth in this order.
- (7) The Commission shall retain jurisdiction in the matter for all purposes.

**CASE NO. SEC-2003-00013
APRIL 29, 2003**

APPLICATION OF
THE GUILFORD COMPANY

For an official interpretation pursuant to the Virginia Securities Act § 13.1-525

OFFICIAL INTERPRETATION

THIS MATTER came before the Commission for consideration upon the letter-application of the Guilford Company ("Applicant") dated February 19, 2003, filed under § 13.1-525 of the Virginia Securities Act, § 13.1-501 *et seq.* of the Code of Virginia ("Act"), by its counsel and upon payment of the requisite fee. Applicant has requested a determination as to whether or not the Guilford Company, and its present and future officers and employees must register pursuant to § 13.1-504A (ii) of the Act, as investment advisors or investment advisor representatives. The pertinent information contained in the application is summarized as follows:

Applicant is a "family advisor" organized by the Kirby family for the purpose of providing certain financial services exclusively to the members of the family. Applicant does not, and does not intend to, hold itself out publicly as providing investment advisory services and has no clients outside the Kirby family. Currently there are four individual clients, several family trusts, and a family charitable foundation as the Applicant's clients. Some clients are Virginia residents.

The Applicant represents that it does not engage in broker/dealer activities and does not maintain custody of client funds or securities. Rather, several banks perform custodial duties on behalf of the Kirby family. In addition to investment advice, the Applicant reviews and reconciles all monthly statements for dividends, interest payments and other transactions for the family members individually as well as for the family trusts, and provides a bill paying service for one member of the Kirby family.

The Applicant represents that it is wholly owned by two members of the Kirby family, and it is anticipated that future stock ownership will remain within the Kirby family.

Applicant further represents that all Applicant's clients support the Applicant's application for relief from the regulatory requirements of the Act and that they do not seek the protections afforded by these requirements.

THE COMMISSION, upon consideration of and in reliance upon the information supplied by Applicant, is of the opinion and finds that the Applicant, whose activities are performed as described above, as well as its officers and employees, are not within the intent of the Act's definition of investment advisor and investment advisor representative as defined by § 13.1-501 of the Act. The Commission's opinion is based solely upon the information provided by Applicant and any deviation therefrom will be subject to further Commission determination.

IT IS THEREFORE ORDERED THAT the Applicant, whose activities are performed as described above, and its present and future officers and employees are excluded from the definitions of investment advisor and investment advisor representative and therefore are not required to register as an investment advisor and investment advisor representatives pursuant to § 13.1-504A (ii) of the Act.

**CASE NO. SEC-2003-00014
NOVEMBER 4, 2003**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
BEAR, STEARNS & CO., LLC,
Defendant

CONSENT ORDER

Bear, Stearns & Co. LLC, ("Bear Stearns" or the "Firm") is a broker-dealer registered in the Commonwealth of Virginia; and

Coordinated investigations into Bear Stearns' activities in connection with certain conflicts of interest that research analysts were subject to during the period of July 1, 1999 through June 30, 2001 have been conducted by a multi-state task force and a joint task force of the U. S. Securities and Exchange Commission, the New York Stock Exchange, and the National Association of Securities Dealers (collectively, the "regulators"); and

Bear Stearns 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

Bear Stearns has advised regulators of its agreement to resolve the investigations relating to its research practices; and

Bear Stearns agrees to implement certain changes with respect to its research and banking practices, and to make certain payments; and

Bear Stearns 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 (the "Order");

NOW, THEREFORE, the State Corporation Commission, as administrator of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, hereby enters this Order:

I. JURISDICTION/CONSENT

Bear Stearns admits the jurisdiction of State Corporation Commission ("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.

II. FINDINGS OF FACT

A. Background and Jurisdiction

1. Bear Stearns, a Delaware corporation with its principal place of business in New York, New York, is a subsidiary of The Bear Stearns Companies, Inc. Bear Stearns provides equity research, sales, and trading services; merger and acquisition advisory services; venture capital services; and underwriting services on a global basis.

2. Bear Stearns is registered with the Securities and Exchange Commission ("Commission"), is a member of the New York Stock Exchange, Inc. ("Exchange") and the NASD, Inc. ("NASD") and is licensed to conduct securities business on a nationwide basis.

3. Bear Stearns is currently registered with the Commonwealth of Virginia as a broker-dealer, and has been so registered since March 19, 1981.

4. This action concerns the time period of July 1, 1999 to June 30, 2001 (the "relevant period"). During that time, Bear Stearns engaged in both research and investment banking ("IB") activities

B. Overview

1. During the relevant period, the Firm sought and did IB business with many companies covered by its research. Research analysts were encouraged to participate in IB activities, and that was a factor considered in the analysts' compensation system. In addition, the decision to initiate and maintain research coverage of certain companies was in some cases coordinated with the IB Department and influenced by IB interests.
2. As a result of the foregoing, certain research analysts at the Firm were subjected to IB influences and conflicts of interest between supporting the IB business at the Firm and publishing objective research.
3. The Firm had knowledge of these IB influences and conflicts of interest yet failed to establish and maintain adequate policies, systems and procedures that were reasonably designed to detect and prevent the influences and manage the conflicts.

C. Research Analyst Participation in Investment Banking Activities

1. Research analysts were responsible for providing analysis of the financial outlook of particular companies in the context of the business sectors in which those companies operated and the securities market as a whole.
2. Research analysts evaluated companies by, among other things, examining financial information contained in public filings, questioning company management, investigating customer and supplier relationships, evaluating companies' business plans and the products or services offered, building financial models and analyzing competitive trends.
3. After synthesizing and analyzing this information, analysts produced research in the form of full reports and more abbreviated formats that typically contained a recommendation, a price target, and a summary and analysis of the factors relied upon by the analyst.
4. The Firm distributed its analysts' research internally to various departments at the Firm and externally to the Firm's retail and institutional investing clients. In addition, the Firm sold some of its research directly to non-clients, disseminated it through distribution agreements with other broker dealers, made it available to third party subscription services such as First Call, and offered it for sale via market websites such as MultexInvestor.
5. In addition to performing research functions, certain research analysts participated or assisted in IB activities. These IB activities included identifying companies as prospects for IB services, participating in "pitches"¹ of IB services to companies, attending "road shows"² associated with underwriting transactions, and speaking to investors to generate interest in underwriting transactions.
6. In preparation for each "pitch" the bankers, with the analyst's input, prepared a "pitch book" which was distributed at the meeting and contained a summary of the Firm's presentation.
7. The pitch books, in some instances, identified the covering analyst by name, provided information about that analyst's background and reputation, sometimes characterizing the analyst as the "ax" in his or her coverage sector, and highlighted the success of Bear Stearns' underwritten IPOs covered by the analyst. The pitch books also highlighted such factors as the number of lead and co-managed IPOs that the Firm currently had under research coverage. This information was intended to convey to the issuer that such treatment would be accorded to it if Bear Stearns received the mandate for the IB transaction.
8. The analyst's reputation played a role in pitching the Firm's IB services to potential clients. Issuers often chose an investment bank because of the reputation of the analyst that would cover the company's stock.
9. The pitch to an issuer by the research analyst contributed to Bear Stearns' ability to win investment banking deals and receive investment banking fees from that and subsequent investment banking relationships.
10. The investment banking division at Bear Stearns advised corporate clients and helped them execute various financial transactions, including the issuance of stock and other securities. Bear Stearns frequently served as the lead or as a co-lead underwriter in initial public offerings ("IPOs") -- the first public issuance of stock of a company that has not previously been publicly traded -- and follow-on offering of securities.
11. During the relevant period, investment banking was an important source of revenues and profits for Bear Stearns. In 2000, investment banking generated more than \$965 million in net revenues, or approximately eighteen percent of Bear Stearns' total net revenues.
12. The IB activities in which analysts participated also included participating in commitment committee³ and due diligence activities in connection with underwriting transactions and from time to time assisting the IB Department in providing merger and acquisition ("M&A") and other advisory services to companies.
13. The Firm encouraged research analysts to support the IB and other businesses of the Firm. With regard to IB, research analysts were encouraged to work in partnership with the IB Department by participating in the foregoing IB activities, and the level of certain research analysts' participation in these IB activities was sometimes significant.

¹ A "pitch" is a presentation made by bankers and research analysts to a potential IB client in order to obtain the mandate for an upcoming IB transaction. In competing for an IB mandate, the Firm typically sent bankers and the analyst to meet with company management to persuade the company to select the Firm as one of the investment bankers in a contemplated transaction. At these "pitch" meetings Firm bankers would present their level of expertise in the company's sector and discuss their previous experience with other such companies, as well as their view of the company's merits and likelihood of success.

² A "road show" is a series of presentations made to potential investors in conjunction with the marketing of an upcoming underwriting.

³ The "commitment committee" was responsible for, among other things, evaluating and determining the Firm's participation in IPOs and other IB transactions.

- a. On September 23, 1999, the Head of Research provided research analysts with guidelines to follow in drafting their business plans. The guidelines stated they were "designed to help [the research analysts] focus on executing and delivering [their] goals, improving [their] overall contribution to the firm and enhancing [their] relationships with [their] partners throughout the firm." These guidelines requested the research analysts to describe their contributions to nine separate areas of the Firm's business. With respect to the area identified as "Banking," the guidelines stated: "After your business plan meeting with your bankers please discuss any ideas you have generated for deal origination and timing of coverage for existing or proposed corporate relationships. Include or attach to your business plan a list of stocks you and your corporate finance team have agreed upon as priorities. Include plans to help market transactions or to introduce M&A activity. Discuss any plans to drop coverage where there is no longer a strategic fit."
- b. In her 1997/1998 business plan, an analyst stated, "If I were any more aggressive in the banking area, my office would be on the third floor [location of IB offices of the Firm]."

14. In connection with their participation in IB activities, certain research analysts and investment bankers ("bankers") communicated, in various frequency and extent, through meetings and via telephone and electronic mail ("e-mail").

15. The IB department at the Firm was organized into industry groups that corresponded to certain research sectors. Research analysts were aware that, in certain circumstances, their positive and continued coverage of particular companies was an important factor for the generation of investment banking business. Thus, some research analysts and bankers coordinated the initiation and maintenance of research coverage, based upon, among other things, investment-banking considerations.

On February 9, 2000, two bankers and an analyst submitted a joint business plan to the co-heads of the IB technology group. The stated purpose of the memorandum was to "describe a strategy for investment banking and research coverage and coordination of companies which provide Internet enabling technologies. The near-term goal is to establish an organized and prioritized calling effort with an emphasis on cultivating fewer and deeper, lead managed relationships." [Emphasis in original.]

D. Participation in Investment Banking Activities was a Factor in Evaluating and Compensating Research Analysts

1. The compensation system at the Firm provided an incentive for research analysts to contribute to all areas of the Firm's business, including participating in IB activities and assisting in generating IB business for the Firm. Research analysts' participation in IB activities was one of several factors considered in determining their compensation. Notes of staff meetings reflect the following statements by the Head of Research to analysts:

- a. "I'd like to remind everyone how you get paid at Bear Stearns. It is based on your contribution to your team and your contribution to the firm . . . Notice that being a partner with banking is part of the analyst job description. You are not compared or matrixed or in any way paid on a formula. Working on transactions is not incremental to your compensation, it is an expected part of it."
- b. "I need to remind you that investment banking revenues are not incremental to your bonus. Being a partner to banking is part of your job. You are paid on performance and based on your contribution to the firm."

2. The performance of research analysts was evaluated through an annual review process. Where not set by contract, the research analyst's salary and annual bonus were also determined through this process.

3. Information on the analyst's job performance was gathered through annual self-evaluations, analyst's business plans, surveys of management, and trading and institutional sales department personnel, e-mail and oral feedback from employees in the IB and other departments at the Firm, and the Firm's institutional clients.

4. The research analysts' annual business plans contained, among other things, their contributions to various areas of the Firm, including IB, for the past year, and their plans for improving their contribution to these areas of the Firm, including IB, in the coming year.

5. In their self-evaluations, which were used to communicate their accomplishments to and petition management for increased compensation, analysts discussed such areas as their rankings in independent research polls, the scope of their research coverage, their participation in industry conferences, and the Firm's Autex rankings in stocks they covered. Certain research analysts provided extensive information regarding their assistance to IB, including accomplishments, goals, and participation in lead- and co-managed underwritings, and sometimes also including the revenues to the Firm associated with the IB transactions on which the analyst worked. In addition, analysts were occasionally requested to inform research management of fees generated by the IB transactions on which they worked.

- a. In an October 24, 2000 e-mail to the Head of Research, a senior analyst summarized his 9 key accomplishments during fiscal year 2000. The first and largest point, which dealt with his contributions to IB, stated as follows:

"*Corporate finance: generated over \$23 million in fees to the firm in nine separate transactions: *Storage networking: identified a new financial opportunity for the firm, which resulted in six transactions ...I should be designated as a finder for Ancor [Ancor Communications], JNI [JNI Corp.] and Vixel [Vixel Corp.]. *iAppliances: identified a new industry category ...which was a source of two IPOs... *Agilent [Agilent Technologies]: I should be designated as a finder -- or at least a save for Agilent. BS pitched the business and lost. I went in and re-won the business, generated fees of around \$2.5 million to the

firm." The e-mail to the Head of Research included a spreadsheet listing the IB transactions on which he had worked and the associated revenues to the Firm. The Head of Research praised the format of the summary and suggested she might have all research analysts submit theirs in the same form.

- b. In a June 21, 2001 e-mail from a member of the research management staff, the research analysts were requested to submit information regarding all banking transactions that had closed or that were pending in their sectors during the prior 6-month period.

6. Certain research analysts perceived that the amount of their bonus would be influenced by their contribution to and impact on the firm's IB business, and the fees generated by IB transactions on which they worked.

7. Research analysts were encouraged to support and assist all areas of the Firm and to participate in IB activities and activities that enhanced the reputation of the Firm's IB business. Based upon statements by research management indicating that partnership with banking was part of their job as research analysts, the inclusion of a "Banking" section in their annual business plans, information regarding IB transactions in their self-evaluations, and requests from research management for specific information regarding IB transactions in their coverage sectors, certain research analysts believed that the revenues generated by their participation in IB activities was an important factor in their evaluations and compensation. Accordingly, some research analysts were encouraged to participate in IB activities, increase IB revenues, and enhance the reputation of the Firm, including its IB business.

8. Research Analysts' salaries and bonuses were determined by a multiple factor-based approach. Among other things, analysts were judged for compensation purposes based on the performance of their stock picks, their impact on the buy-side accounts as measured by votes, the Firm's market share in trading volume in the stocks they covered, their participation in IB activities, and the fees and secondary trading commissions generated from those activities were considered.

E. Investment Banking Interests Influenced the Firm's Decisions to Initiate and Maintain Research Coverage

1. In general, the Firm determined whether to initiate and maintain research coverage based upon institutional investors' interest in the company, and the company's importance to the sector or IB considerations, such as attracting companies to the Firm to generate IB business or maintaining a positive relationship with existing IB clients.

2. The nature and duration of research coverage were important criteria for a company's choice of a broker dealer for IB services. The pitch books typically contained information stating, among other things, that: "an important element to successfully executing an IPO is having an assurance that the Firm will provide research coverage to the IPO candidate in the offering and in the aftermarket."

3. The Firm generally initiated coverage on companies that engaged the Firm in an IB transaction. In pitching for IB business, the Firm sometimes represented to the company the frequency with which reports would be issued.

4. The Firm's ratings system, which was intended to reflect the long-term prospects of a rated stock, allowed research analysts to assign one of five ratings to a stock: (1) "Buy" - Expected to outperform the local market by 20% in the next 12 months. Strong conviction and typically accompanied by an identifiable catalyst; (2) "Attractive" - Expected to outperform the local market by 10% or more, it is usually more difficult to identify the catalyst; (3) "Neutral" - Expected to perform in line with the local market; (4) "Unattractive" - Expected to underperform the local market; and (5) "Sell" - Avoid the stock.

5. During the relevant period, there was a sharp downturn in the stock market and stocks in certain sectors performed poorly. During this period, the Firm did not issue ratings of "Unattractive" or "Sell" in connection with any covered companies in these sectors.

6. Research management communicated with IB management to ensure that research opportunities were appropriately aligned with identified IB opportunities.

7. The Stock Selection Committee was ultimately responsible for making the determination to initiate coverage of a given company. The Head of Research was ultimately responsible for making the determination to maintain research coverage. Nonetheless, IB considerations sometimes influenced the decision to initiate and maintain coverage.

8. Some research analysts and bankers actively coordinated the initiation and maintenance of research coverage based upon, among other things, IB considerations. This coordination consisted of meetings and communications by telephone and e-mail.

9. In some circumstances, research coverage was initiated based on IB considerations.

In an April 19, 2000 e-mail from a member of his staff, the head of the IB Technology Group communicated the following to the Heads of Research and IB as well as numerous analysts and bankers: "[Analyst A] and [Analyst B] agree that [Analyst B] will be the analyst covering CacheFlo [Cacheflow]. [Banker] and [Analyst B] will discuss with CacheFlo what the planned timing of their offering will be so as to insure that if we initiate coverage in advance of the transaction we will not be prohibited from being an underwriter. [Analyst B] and [Banker] will also stress to the company that if we initiate coverage we expect our position in the company's future financing and strategy actions to be materially improved."

10. Given that research analysts participated in determining in which IB transactions in their sectors the Firm would participate, if the Firm determined to participate in an equity offering for a company, it was expected the company would qualify for an initial "Buy" rating.

11. An analyst who anticipated initiating coverage of such a company with less than a "Buy" rating informed IB in advance as follows.

- a. In a February 8, 2000 e-mail to bankers and the Head of Research, this analyst stated: "Just wanted to be sure that everyone knows that we will be using an Attractive rating on go.com. If anyone has any comments or issues, please let me know."
 - b. In a March 17, 2000 e-mail to research analysts, an associate analyst stated: "I talked to [the liaison between research and IB] and we have the go ahead to initiate on IPET [Pets.com] with an Attractive rating. According to [the liaison] we should explain somewhere in the text, why our opinion about the company's prospects have changed from the time we initiated coverage."⁴
 - c. In his annual evaluation, this analyst was criticized as follows: "Has been working poorly w/bankers - in changing opinions after the firm has committed to co. mgmts". The analyst testified that he believed the statement related to his communicating his opinions regarding companies to bankers in a timely manner, and that if his opinion regarding a company changed from a more positive opinion to a more negative opinion about a company after a banker had already made some sort of commitment to a company, it made life difficult for the banker and was not ideal from his standpoint. He went on to testify that, particularly in his highly volatile sector, companies often changed a lot between the time of the first organizational meeting and the date of the IPO.
12. In some circumstances, the determination to maintain research was influenced by IB considerations.
- a. Due to IB influences, a supervisory analyst perceived and communicated to others that IB approval was required before coverage could be dropped. In response to an inquiry by an associate analyst regarding dropping coverage of 2 companies, a supervisory analyst stated in an April 19, 2002 e-mail: "[The Head of Research] says before dropping coverage, you need to get permission from both: 1. the market makers on the trading desk, 2. the bankers."
 - b. In an April 3, 2000 e-mail to the Heads of Research and IB as well as numerous members of both departments, a banker discussed a company's decision to exclude the Firm from a follow-on offering. He stated: "I expressed significant disappointment with the fact that they neglected to discuss this issue with us prior to this time and that they left us no choice but to drop research coverage and trading, since they obviously did not value our support to date. [Analyst] - As we discussed, feel free to drop at any time. I told the CFO that you would likely put out a note, but did not know when." In a follow-up e-mail the Head of Research stated that she agreed with the decision to drop coverage. The analyst ultimately determined not to drop coverage.

F. Research Analysts Were Visible on Stocks to Generate Investment Banking Business

1. Issuers also considered investment banks' aftermarket trading support as a factor in selecting an investment bank. The Firm's trading volume and trading rank were factors it promoted to IB clients in pitch presentations.
2. The Firm distributed to sales and trading personnel and research analysts the "Trading Focus List," which contained stocks of companies from which the Firm was seeking or with which the Firm had IB business.
3. A research analyst actively marketed companies on the Trading Focus List in order to obtain IB business.
 - a. In a December 10, 1999 e-mail, an analyst wrote the following to Equity Trading copied to the Heads of Research and IB: "Subject: Pls make the trading of Packeteer a top priority. I spent two days with Packeteer ('PKTR') management this week visiting investors. Management are extremely happy with our research coverage and banking services. But they have repeatedly indicated to me that our trading stat. is not satisfactory...CEO hinted to me many times that we have a chance for the books for the secondary if we improve the trading...They are likely to do a secondary in Q1 - mostly likely late January/early February; could be as much as \$200 MM deal. Please help us in improving our trading immediately. We will do whatever it takes from the research side."
 - b. In a September 14, 2000 e-mail to Equity Trading, the same analyst wrote the following regarding banking client SonicWall ("SNWL"): "We need help in boosting our trading stat for SNWL. Both management and their VC called me yesterday complaining about our trading - #2 in August and #3 so far in September. More importantly, they argued that we are not supporting the stock when it is weak...I made a positive call on Monday but am not getting much support. Pls help us here since this important technology client indicated to me that if we do not improve, it will hurt our banking relationship with the company."
 - c. In a March 8, 2001 e-mail, the same analyst again wrote to Equity Trading regarding two IB clients he covered: "Subject: MUSE [Micromuse] and ISSX [Internet Security Systems] autex - both on focus list. On MUSE - we dropped from #3 or 4 in 2000 to #10 in Feb and March to date. I just called the trader to see what we can do. I have been extremely active on the name- took management to Boston, Denver, Minneapolis and KC in February alone. Do not quite understand. Pls follow up. ISSX - we dropped from #2 or #3...to #11 in March. I am very active on ISSX also. Thanks for your help on this." Equity Trading responded: "What do you want me to do? Get some orders on the stock yourself. Generate some order flow!" The analyst replied: "I am trying...but are the traders on these two stocks good?"

⁴ In fact, Bear Stearns had not yet initiated coverage on IPET at the time this e-mail was sent.

4. In order to raise or maintain the Firm's visibility on stocks with which the Firm wanted to do IB business, certain research analysts nominated companies to participate at Firm sponsored conferences, took company managements on non-deal road shows, hosted field trips for institutional investors to companies' headquarters and arranged other meetings between institutional investor clients and companies.

5. Research analysts were visible on stocks of companies with which the Firm wanted to do IB business in order to generate IB business.

G. Research Analysts Were Subject to Pressure by Covered Companies

1. Certain research analysts communicated regularly with employees of the companies that they covered, including executive and senior management of those companies. These communications occurred through telephone and e-mail exchanges, company-sponsored events, and analyst calls.

2. Research analysts were sometimes subject to pressure from companies they covered to issue better ratings and recommendations. Research analysts understood that negative ratings and recommendations could adversely affect the Firm's ability to attract and retain IB business from those companies.

On November 2, 2000, in his 2000 self-evaluation an analyst wrote in a section entitled "Areas to Improve: We want our banking clients to know that our research is objective and independent but always sensitive to their best interests. There have been instances in my career where certain banking clients felt that our research and public comments weren't sensitive to their interests. This is a very important issue for us and we take it most seriously. We will continue to make every effort to be sensitive to our clients and our banking partners."

3. When research analysts downgraded or issued a negative comment on a banking client, they sometimes received direct feedback from high-ranking company officials.

In an August 24, 2000 e-mail, a banking client responding to a downgrade of his company wrote: "Your earnings estimates are on track, however, given the downgrade, I sure would have liked to see you give us a lower bar on revenue...[W]hile we affirmed the revenue estimate, they were definitely a stretch. Seems a shame to waste a downgrade by not buying the opportunity for us both to over-perform going forward..."

H. In Certain Instances, the Firm Published Exaggerated or Unwarranted Research

1. On several occasions, the conflicts of interest discussed above resulted in analysts publishing recommendations and/or ratings that were exaggerated or unwarranted, and/or contained opinions for which there was no reasonable basis. The following are examples of how these conflicts affected the research.

- a. Bear Stearns lead managed the IPO and secondary offerings for SonicWall in November 1999 and March 2000 respectively. An analyst rated the stock a "Buy" from the IPO until April 2002. In January 25, 2001 while they were participating in a SonicWall conference call the analyst stated to his associate: "I am trying to make them look good...on the dso and the growth etc." A few minutes later he added: "we got paid for this...and I am going to Cancun tomorrow b/c of them!"
- b. Bear Stearns initiated coverage of MUSE with an "Attractive" rating in September 1999, raised the rating to a "Buy" in January 2000 and maintained a "Buy" rating on the stock until July 2002. While listening to a MUSE analyst call on July 18, 2001, an analyst suggested to his associate that he was going to downgrade his rating on the stock to "Attractive". The associate disagreed with the suggestion and the analyst responded that the stock was "dead money!" However, the analyst did not downgrade his rating on the stock, instead issuing research the same day maintaining his "Buy" rating.
- c. Bear Stearns lead managed the IPO for CAIS Internet, Inc. in May 1999. The analyst rated the stock a "Buy" from the IPO through his last report on the company in November 2000. On January 24, 2001, in response to an e-mail reporting extensive service failures at CAIS the analyst stated: "Any other scoop on this piece of shit?" A few days later, in response to an institutional client's request for his thoughts on CAIS' 4th quarter, the analyst stated: "It's up a lot year to date...don't overstay your welcome on this one."
- d. Bear Stearns co-managed the IPO and secondary offerings for Digital River in August and December 1998 respectively. The Firm, via three successive analysts, rated the stock a "Buy" from the IPO until April 2002. In an April 1, 2002 e-mail to his IB counterpart an analyst stated: "I have to tell you, I feel a bit compromised today. I have told every client on the phone that they should avoid or short the stock over the last few months. I have been fairly hands-off on DRIV [Digital River, a stock under his coverage], primarily because of the banking prospect that you and [Another Banker] have noted. Today, clearly the stock is down a lot. The artificial Buy rating on the stock, while artificial, still makes me look bad. In the future, I'd like to have more leeway with the ratings, even for companies like Digital River, where we have a relationship on the banking side. I trust it would benefit all of us."

I. The Firm Made A Payment for Research

1. In August 2000, as part of an offering that took place in May 2000, the Firm made a payment of \$102,750 to another broker-dealer in connection with research coverage it provided for Andrx Corp. ("ADRX"), a Bear Stearns' investment banking client in connection with an underwriting transaction for which Bear Stearns was a lead manager.

2. Bear Stearns did not take steps to ensure that this broker-dealer disclosed in its research that it had been paid to issue research on ADRX. Further Bear Stearns did not disclose or cause to be disclosed the details of this payment.

J. Bear Stearns Failed to Adequately Supervise Its Research and Investment Banking Departments

1. While the role of the research analysts was to produce objective research, the Firm also encouraged them to participate in IB activities. As a result of the foregoing, research analysts were subject to IB influences and conflicts of interest between supporting the IB business at the Firm and publishing objective research.

2. The Firm had knowledge of these IB influences and conflicts of interest yet failed to manage them adequately to protect the objectivity of its published research.

3. Bear Stearns failed to establish and maintain adequate policies, systems and procedures reasonably designed to ensure the objectivity of its published research. Although Bear Stearns had some policies governing research analyst activities during the relevant period, these policies were inadequate and did not address the conflicts of interest that existed.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to § 13.1-501 *et seq.* of the Code of Virginia.
2. The Commission finds the following relief appropriate and in the public interest.
3. The Commission finds that:
 - a. Bear Stearns failed to ensure that analysts who issued research were adequately insulated from pressures and influences from covered companies and investment banking. This conduct was a dishonest and unethical practice under 21 VAC 5-20-280 E 12.
 - b. Bear Stearns failed to reasonably supervise its employees to ensure that its analysts who issued research were adequately insulated from pressures and influences from covered companies and investment banking as required by 21 VAC 5-20-260.

IV. ORDER

On the basis of the Findings of Fact, Conclusions of Law, and Bear Stearns' consent to the entry of this Order, for the sole purpose of settling this matter, prior to a hearing and without admitting or denying any of the Findings of Fact or Conclusions of Law.

IT IS HEREBY ORDERED:

1. This Order concludes the investigation by the Commission's Division of Securities and Retail Franchising ("Division") and any other action that the Division could commence under the Act on behalf of the Commonwealth of Virginia as it relates to Bear Stearns, relating to certain research or banking practices at Bear Stearns.
2. Bear Stearns will refrain from violating 21 VAC 5-20-280 E 12 and 21 VAC 5-20-260 pursuant to § 12.1-15 of the Code of Virginia in connection with the research practices referenced in this Order and will comply with 21 VAC 5-20-280 E 12 and 21 VAC 5-20-260 in connection with the research practices referenced in this Order and will comply with the undertakings of Addendum A, incorporated herein by reference.
3. If payment is not made by Bear Stearns or if Bear Stearns defaults in any of its obligations set forth in this Order, the Commission may vacate this Order, at its sole discretion, upon 10 days notice to Bear Stearns and without opportunity for administrative hearing.
4. This Order is not intended by the Commission to subject any Covered Person to any disqualifications under the laws of any state, the District of Columbia or Puerto Rico (collectively, "State"), including, without limitation, any disqualifications from relying upon the State registration exemptions or State safe harbor provisions. "Covered Person" means Bear Stearns, or any of its officers, directors, affiliates, current or former employees, or other persons that would otherwise be disqualified as a result of the Orders (as defined below).
5. It is further ordered that this Order constitutes and includes a waiver by the Commission of any and all limitations and disqualifications that may ensue from the entry of this order that would otherwise affect, restrict or limit the business of Bear Stearns and its predecessors, subsidiaries and affiliates or their ability to participate in offerings or avail themselves of exemptions including, without limitation, the Uniform Limited Offering Exemption, as and to the extent now or hereafter adopted by the Commission.
6. It is further ordered that this Order is not intended to prohibit Bear Stearns from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, transfer agent, or entity or person of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.
7. The SEC Final Judgment, the NYSE Stipulation and Consent, the NASD Letter of Acceptance, Waiver and Consent, this Order and the order of any other State in related proceedings against Bear Stearns (collectively, the "Orders") shall not disqualify any Covered Person from any business that they otherwise are qualified, licensed or permitted to perform under applicable law of the Commonwealth 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.

8. For any person or entity not a party to this Order, this Order does not limit or create any private rights or remedies against Bear Stearns including, without limitation, the use of any e-mails or other documents of Bear Stearns or of others regarding research practices or limit or create liability of Bear Stearns or limit or create defenses of Bear Stearns to any claims.

9. 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 Bear Stearns in connection with certain research and/or banking practices at Bear Stearns.

V. MONETARY SANCTIONS

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that:

As a result of the Findings of Fact and Conclusions of Law contained in this Order, Bear Stearns shall pay a total amount of \$80,000,000.00. This total amount shall be paid as specified in the SEC Final Judgment as follows:

\$25,000,000 to the states (50 states, plus the District of Columbia and Puerto Rico) (Bear Stearns' offer to the state securities regulators hereinafter shall be called the "state settlement offer"). Upon execution of this Order, Bear Stearns shall pay the sum of \$545,408 of this amount to the Treasurer, Commonwealth of Virginia, as a civil monetary penalty pursuant to § 13.1-521 of the Act. The total amount to be paid by Bear Stearns to state securities regulators pursuant to the state settlement offer may be reduced due to the decision of any state securities regulator not to accept the state settlement offer. In the event another state securities regulator determines not to accept Bear Stearns' state settlement offer, the total amount of the Virginia payment shall not be affected, and shall remain at \$545,408;

\$25,000,000 as disgorgement of commissions, fees and other monies as specified in the SEC Final Judgment;

\$25,000,000, to be used for the procurement of independent research, as described in the SEC Final Judgment;

\$5,000,000, to be used for investor education, as described in Addendum A, incorporated by reference herein.

Bear Stearns agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to payment made pursuant to any insurance policy, with regard to all penalty amounts that Bear Stearns shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. Bear Stearns further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any penalty amounts that Bear Stearns shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. Bear Stearns understands and acknowledges that these provisions are not intended to imply that the Commonwealth of Virginia would agree that any other amounts Bear Stearns shall pay pursuant to the SEC Final Judgment may be reimbursed or indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit with regard to any state, federal or local tax.

NOTE: A copy of Addendum 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-2003-00015 NOVEMBER 4, 2003

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

v.
CREDIT SUISSE FIRST BOSTON LLC,
Defendant

CONSENT ORDER

Credit Suisse First Boston LLC, f/k/a Credit Suisse First Boston Corporation ("CSFB"), is a broker-dealer registered in the Commonwealth of Virginia; and

Coordinated investigations into CSFB's activities in connection with certain of its equity research and IPO stock allocation practices during the period of 1998 through 2001 have been conducted by a multi-state task force and a joint task force of the U.S. Securities and Exchange Commission, the New York Stock Exchange, and the National Association of Securities Dealers (collectively, the "regulators"); and

CSFB has advised regulators of its agreement to resolve the investigations relating to its research and stock allocation practices; and

CSFB agrees to implement certain changes with respect to its research and stock allocation practices, and to make certain payments; and

CSFB 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 (the "Order");

NOW, THEREFORE, the State Corporation 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 FACT

CSFB admits the jurisdiction of the State Corporation Commission ("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.

1. Summary

From July 1998 through December 2001 (the "relevant period"), CSFB used its equity research analysts to help solicit and conduct investment banking business. By providing incentives for equity research analysts to assist in the generation of investment banking revenues, CSFB created and fostered an environment with conflicts of interest that, in some circumstances, undermined the independence of research analysts and affected the objectivity of the reports they issued.

The conflicts of interest and pressure on equity research analysts to contribute to investment banking revenue were particularly present in CSFB's Technology Group, headed by Frank Quattrone, where research analysts' supervision and compensation were closely aligned with investment banking. CSFB's investment banking revenue, driven mostly by technology stocks, steadily and significantly increased, from \$1.79 billion in 1998, to \$2.32 billion in 1999, and to \$3.68 billion in 2000. The sphere of influence and authority that Quattrone exercised at CSFB remained significant throughout the technology boom.

CSFB's efforts to attract potential and continued investment banking business created pressure on equity research analysts to initiate and maintain favorable coverage on investment banking clients. This pressure at times undermined equity research analyst objectivity and independence. CSFB's marketing, or "pitch," materials in some instances implicitly promised that a company would receive favorable research if it agreed to use CSFB for its investment banking business. In addition, companies, in some instances pressured analysts to continue coverage or maintain a certain rating or else risk losing the company as an investment-banking client. In certain instances, these factors compromised the independence of equity research analysts and impaired the objectivity of research reports.

The independence of some of CSFB's equity research analysts was also impaired by the fact that they were evaluated, in part, by investment banking professionals and that their compensation was influenced by their contribution to investment banking revenues. Indeed, the vast majority of their overall compensation, in the form of bonuses, was based on the investment banking revenues generated by the firm. In many instances, bonuses for non-technology equity research analysts' were directly linked to revenue generated by the firm on specific investment banking transactions. The fact that an equity research analyst's bonus was in part related to revenue from investment banking business created pressure on analysts to help generate more investment banking revenue.

The undue and improper influence imposed by CSFB's investment bankers on the firm's technology research analysts caused CSFB to issue fraudulent research reports on two companies: Digital Impact, Inc. ("Digital Impact") and Synopsys, Inc. ("Synopsys"). The reports were fraudulent in that they expressed positive views of the companies' stocks that were contrary to the analysts' true, privately held beliefs. In these instances, investment bankers pressured research analysts to initiate or maintain positive research coverage to obtain or retain investment banking business, and the analysts were pressured or compelled to compromise their own professional opinions regarding the companies at the direction of the firm's investment bankers. In addition, as to Numerical Technologies, Inc. ("Numerical Technologies"), Agilent Technologies, Inc. ("Agilent"), and Winstar Communications, Inc. ("Winstar") - the pressure on analysts resulted in the issuance of research reports that lacked a reasonable basis, failed to provide a balanced presentation of the relevant facts, made exaggerated or unwarranted claims, or failed to disclose material facts; as to NewPower Holdings, Inc. ("NPW"), CSFB issued research reports which, at times, failed to disclose that CSFB and the research analysts covering NPW had proprietary interests in NPW.

CSFB also engaged in improper IPO "spinning" activities. From 1999 until April 2001, CSFB, through its Technology Private Client Services Group, a department within the Technology Group, allocated shares in CSFB's lead-managed technology IPOs to executive officers of its investment banking clients who were in a position to provide investment banking business to CSFB. This group engaged in such spinning with the belief and expectation that the executives would steer investment banking business for their companies to CSFB. CSFB opened discretionary trading accounts on behalf of these executives. Since most of the IPOs offered by CSFB were "hot" (i.e., they began trading in the aftermarket at a premium), and since portions of the allocations were typically "flipped" out (i.e., sold almost immediately) once the aftermarket opened, the spinning produced large, instantaneous profits for those executives who participated in these arrangements. By having CSFB brokers control trading in these accounts, the executives who owned some of these accounts were able to realize profits in excess of \$1 million through this IPO activity.

2. CSFB's Structure and Procedures Created Conflicts of Interest for Equity Research Analysts and, in Certain Circumstances, Undermined Their Independence and Affected the Objectivity of Their Reports

a. Overview of CSFB

CSFB LLC ("CSFB"), or a predecessor firm thereof, has been a NASD member since 1936. CSFB, headquartered in New York, is part of the Credit Suisse First Boston business unit, a global investment bank whose businesses include securities underwriting, sales and trading, investment banking, private equity, financial advisory services, investment research, and asset management. The Credit Suisse First Boston business unit is a subsidiary of Credit Suisse Group, which is headquartered in Switzerland. On November 3, 2000, Credit Suisse Group acquired Donaldson, Lufkin & Jenrette Securities Corporation ("DLJ"), another NASD member firm. As of December 31, 2002, the Credit Suisse First Boston business unit had approximately 23,400 employees worldwide.

b. The Supervisory Structure of CSFB's Technology Group Created Conflicts of Interest for Equity Research Analysts and Lacked Sufficient Supervision of the Technology PCS Group

Until June 1998, all of CSFB's equity research was issued through research analysts who worked in the Equity Research Department and who reported to the Director of Equity Research. Until that time, no equity research analysts were supervised by or had any reporting obligations to anyone in any investment banking department.

In June 1998, CSFB recruited Frank Quattrone, who was then in a senior position at Deutsche Bank Securities (also known as Deutsche Morgan Grenfell Inc. or "DMG") to head a distinct unit the Technology Group at CSFB that would provide an array of services to technology companies. Quattrone became the Managing Director of the CSFB Technology Group's Investment Banking Division, and negotiated a contract with CSFB to maintain the Technology Group as a semi-autonomous, "firm-within-a-firm" unit within CSFB through December 2001.

Quattrone established separate departments within the Technology Group for corporate finance (investment banking), mergers and acquisitions, equity research, and a department devoted to private client services ("PCS"), each of which reported to him. One of the purposes of the PCS department was to provide personal brokerage services to officers of investment banking clients of the Technology Group. The directors of the Technology Group Research Department and PCS Department had dual reporting obligations to Quattrone and to department directors in the firm's Equities Division, but as a practical matter, the principal reporting line was to Quattrone until a change in procedures instituted in June 2001.

CSFB hired individuals who had worked closely with Quattrone at DMG to fill many senior level positions, including each of the department directors, within the Technology Group. Many of the people whom CSFB hired to work in the Technology Group had worked together previously at DMG. In fact, many of the equity research analysts and investment bankers whom CSFB employed from July 1998 through 2001 were recruited or merged into CSFB from other firms. The first infusion of those professionals came in July and August 1998, when the directors and others from DMG formed the Technology Group at CSFB. Given the wholesale move of the personnel, including senior management in research and investment banking, the reporting structure, work ethic, and future expectations of their roles likewise carried over to their new positions at CSFB.

As a result of the structure set forth above, Quattrone exercised his authority to apply an overall Technology Group strategy in his supervision of the Group's research analysts. He used that authority for "resource allocation" to influence the determination of those sectors, and in some cases the particular companies on which Technology Group research would initiate or maintain coverage. As a consequence of Quattrone's influence, Technology Group investment bankers were, at times, able to influence the sectors, and in some cases the particular companies, for which CSFB technology research analysts initiated or maintained coverage. At times, this determination was based on the level of CSFB's actual or anticipated investment banking business with a particular company.

c. Investment Banking Revenue Was a Major Source of Revenue and Influence at CSFB

From 1998 to 2000, CSFB's income from investment banking rose dramatically, fueled primarily by the technology sector offerings completed under Quattrone's leadership. In 1998, driven in large part from the revenue generated by the newly formed Technology Group, CSFB's investment banking revenue increased from approximately \$1.47 billion to approximately \$1.79 billion or 21 percent. In 1999, the importance of investment banking as a major source of revenue continued to grow, as did its revenue and number of employees. That year, revenue from investment banking grew to approximately \$2.318 billion, a 22 percent increase over 1998. Also in 1999, largely through the efforts of the Technology Group, CSFB managed more domestic IPOs than any other investment banking firm. By 2000, CSFB's investment banking revenue had mushroomed to approximately \$3.681 billion, a full 59 percent increase over the previous year. Investment banking revenue in 2000 represented the largest percent increase in revenue for CSFB, constituting its second largest revenue source behind equity trading and sales and accounting for 30 percent of the firm's total revenues.

d. CSFB's Equity Research Analysts' Bonuses Were Determined, in Part, by the Degree to Which They Assisted Investment Banking, Thereby Compromising Research Independence

Non-Technology Research

From July 1998 until May 2001, equity research analysts in non-technology sectors at CSFB received bonuses that were directly and indirectly based on the amount of investment banking revenue they helped generate. This created a conflict of interest for research analysts who had an incentive to help win investment banking deals for CSFB while they were also expected to issue objective research regarding those companies.

Specifically, equity research analysts were paid up to three percent of the net revenue generated by an investment banking deal, with a maximum bonus of \$250,000 per deal. Some equity research analysts were also guaranteed a minimum bonus of either \$15,000 or \$20,000 for the investment banking deals on which they worked, depending on whether CSFB was lead or co-manager of the deal. This compensation was not part of the annual bonus, but was pursuant to employment contracts, paid on a quarterly basis. This program was initiated to provide an incentive for research analysts to assist in winning investment banking business. According to the Director of Equity Research:

the head of equity capital markets and investment banking, felt that they needed some help in '98 in generating additional ... help on investment banking transactions or at least ... having analysts feel that it was somewhat part of their compensation.

The actual amount paid to a research analyst was based on the level of contribution that the research analyst made in connection with investment banking deals, as decided with input from the investment bankers. The conflict was evident in the reviews performed by investment bankers as well as self-reviews prepared by research analysts.

In evaluating the performance of equity research analysts to determine their compensation, investment bankers used a form that judged the analyst by origination of the deal, execution of the deal, and follow-through. Each section allowed for handwritten comments and called for the investment banker to rank the research analyst from one to three.

In one such evaluation, an investment banker wrote that the research analyst's "input and track record was critical to winning this business.... [The analyst] performed at her normal high level making a lot of investor calls.... [The analyst's] initiation of research coverage was timely and insightful. She has been a supporter of the stock despite difficult Internet environment."

Technology Group Research

From July 1998 until December 2001, equity research analysts employed in the Technology Group were compensated, in part, based on their contribution to investment banking deals. The vast majority of equity research analysts' compensation was derived from the bonus received rather than the base salary. At CSFB, it was not uncommon for a more senior level Technology Group research analyst to have a salary of \$100,000 - \$250,000, and also receive a bonus of \$5,000,000 - \$10,000,000 or higher. The Technology Group bonus pool was funded by fifty percent of technology-related investment banking revenues minus select expenses (including mergers and acquisitions) as well as a percentage of revenue generated by secondary sales and trading in technology stocks, and a percentage of Technology PCS revenues. In determining the allocation for each analyst, the Director of Technology Research stated that he would review revenue generated with respect to each company followed by the analyst, including revenues relating to banking, sales, trading, derivatives, high yield, private placements, and specialty gains on the desk. That amount of revenue formed the "starting point" of determining an individual's bonus, after which additional factors such as the analysts' rating in polls were considered. The Director of Technology Research made an initial recommendation regarding the bonus component of a research analyst's compensation. The final decision was made by three people: Quattrone, and the heads of the Technology Group Mergers and Acquisitions and Corporate Finance departments.

The influence of investment banking revenue to the bonus is evidenced in an e-mail from Quattrone to Technology Group officers, including officers in the research department. The subject line of the e-mail included "Please submit your revenue sheets if you want the highest bonus possible." In the e-mail, Quattrone wrote in part, "Your trusty management team is meeting ... to determine compensation for the group...." The message then urged all the officers to submit a list of the banking deals they participated in so as to ensure a complete list for determining compensation. The emphasis on a research analyst's contribution to investment banking revenues, along with the influence of Quattrone and other department head in determining compensation, created a conflict of interest for analysts who were charged with the responsibility of preparing and issuing objective research reports.

e. Investment Bankers Evaluated Research Analysts' Performance, Thereby Influencing Their Bonuses and Compromising Research Analysts' Independence

From July 1998 through 2001, investment bankers who worked with equity research analysts on investment banking deals, in both the Equity and Technology Groups, participated in the analysts' annual performance evaluations, which in turn affected analysts' bonuses. This input from investment bankers provided a further incentive to equity research analysts to satisfy the needs of investment bankers and their clients, and placed additional pressure on research analyst to compromise their independence.

In 2000, CSFB investment bankers used a specific form in order to evaluate equity research analysts, entitled "Evaluation By Banking and Equity Capital Markets Professionals." On the form, investment bankers reviewed the work of specific research analysts under different categories and provided an overall ranking for the analyst.

As an example, in one section called "Business Leadership," an investment banker wrote of a research analyst: "Coordinates ideas in support of Banking Business; good commercial instinct. Develops and utilizes relationships with client Senior Management, including CEO's, in pursuing business. Represents firm well."

The conflict between conducting objective research and attracting and retaining investment banking clients was also evidenced in analysts' self-reviews. For example, one analyst wrote in his self-evaluation: "Trying to manage the research/banking balance. Particularly challenging for me given the amount of banking we do and our dominant banking franchise that has deep roots at CSFB."

f. CSFB's Technology Research Analysts Played a Key Role at Investment Banking "Pitches" to Help CSFB Win Investment Banking Deals – Including at Times the Implicit Promise of Favorable Research

Between July 1998 and 2001, Technology Group research analysts played a key role in helping to win investment banking business for CSFB. Once CSFB's technology bankers – with the assistance of the technology research analysts – determined that a company was a strong candidate for an offering, a technology research analyst assisted in CSFB's sales "pitch" to the company, in which CSFB would explain why it should be chosen as the lead managing underwriter for the offering. Quattrone described the relationship between the technology research analysts and investment bankers as follows: "[I]n many of the things that we did with our clients, both groups [Technology Banking and Technology Research] were involved. And the clients experienced CSFB, and in some sense both bankers and analysts worked together in a collaborative fashion to deliver service to a client."

As part of the sales pitch, technology research analysts prepared selling points regarding their research to be included in the pitch books presented to the company. They also routinely appeared with investment bankers at the pitches to help sell CSFB to the potential client. The Director of Research for the Technology Group, described the technology research analyst as the "star of the show" at pitches. CSFB pitch books to potential clients included representations about the role the technology research analyst would play if CSFB obtained the business. The analyst's written and oral presentations, and the presence of a research analyst at the pitch, strongly implied and at times implicitly promised that CSFB would provide positive research if awarded the investment banking business.

For example, in the pitch book for Numerical Technologies, the discussion regarding research coverage headlined "Easy Decision...Strong Buy," implicitly promising that CSFB would issue a "strong buy" rating upon initiation of coverage. In another example, in a Fall 1999 pitch to a different technology company, CSFB's pitch book stated that the particular CSFB technology research analyst who would cover the company "[g]ets it," would "pound the table" for the company, and would be the company's "strongest advocate." In addition, the pitch book stated that research analyst would engage in "pre-marketing one-on-one meetings [with potential investors] prior to launch."

In describing the "Role of Research," the pitch book provided a roadmap for the amount and type of coverage that the equity research department would issue in the first year after initiating research, including some research issued at least monthly, and inclusion of the company's stock as a "focus stock." The pitch book noted that CSFB's equity research department would also provide (a) "[s]ignificant 'front-end' effort to position the company's story

in a prospectus and at roadshows"; (b) a "[s]ales force 'teach-in' to begin communicating the [company's] opportunity to investors"; (c) "active involvement on roadshow"; (d) "[d]irect follow-up with key investors after one-on-one meetings"; and (e) "standalone" company reports.

In another pitchbook, CSFB highlighted that it maintained the highest post-IPO trading volume in a company whose public offering it led while noting that other investment banks did not maintain similar trading volume for their banking clients. At the same time, CSFB highlighted that its research analysts maintained a "strong buy" rating even though the company announced results below estimates. In the pitchbook, CSFB distinguished itself from other deal managers who were shown to have reduced their ratings based upon that financial information. CSFB implied through this pitchbook that the firm would maintain positive research for companies that have entered into investment banking deals with CSFB.

g. Equity Research Analysts Were at Times Pressured by Investment Bankers to Initiate or Maintain Positive Research Coverage

CSFB investment bankers, including senior bankers, at times pressured research analysts to initiate or maintain coverage on companies to further ongoing or potential investment banking relationships. Bankers at times applied undue pressure on equity research analysts to initiate research on companies they otherwise would not have covered, maintain ratings they otherwise would have lowered, and maintain coverage of companies they otherwise would have dropped, but for the investment banking relationship.

In June 1999, CSFB's Technology Group investment bankers learned from a corporate official at Gemstar-TV Guide International, Inc. ("Gemstar") that the company was interested in conducting a secondary offering of its stock. Company officials informed the CSFB investment bankers that publication of research by CSFB was a prerequisite to CSFB being named the investment banker for the planned offering. A Technology Group investment banker informed the company official that CSFB would initiate coverage by July. The investment banker then informed the analyst of the potential investment banking business and noted that it was conditioned on CSFB initiating research for the company. When the research analyst informed the investment banker that other obligations, including administrative responsibilities, would keep him from conducting the necessary research in the time frame mentioned by the banker, Quattrone challenged the research analyst's priorities and directed that he conduct the review of the company on a more aggressive schedule.

On June 15, 1999, an investment banker in the Technology Group wrote an e-mail to the research analyst with a copy to Quattrone, stating that one of Gemstar's representatives had:

adamantly stated that there will be no [investment banking] transaction without prior research. As you know [another Gemstar representative] has also expressed this same sentiment with regards to working on CSFB. We informed [the Gemstar representative] that you intend to initiate coverage by July, which would facilitate a September offering. ... The main takeaway from the meeting was that there is an opportunity for a very large secondary offering in the second half of this year. We need research for this to happen.

Later that day, the research analyst e-mailed the investment banker, with a copy to Quattrone, stating that he could not even look at the matter for almost another three weeks, given his need to study for an examination. In response to that e-mail, Quattrone instructed the research analyst by e-mail to "take a day off from your test prep and go down this week or next." Quattrone then e-mailed the chain of messages to the heads of other Technology Group departments and another individual, noting that Quattrone was "trying to shame" the research analyst into conducting the due diligence and ultimately initiating research coverage of the company without delay.

Another example of this kind of conduct relates to Allaire Corp. ("Allaire"), which develops and supports software for a variety of web applications. In January 1999, CSFB acted as the lead manager for Allaire's IPO, earning more than \$3.5 million from the offering. CSFB was also the lead manager of a secondary offering for Allaire in September 1999. The total fees for that offering exceeded \$10 million. On February 19, 1999, CSFB initiated coverage of Allaire with a "buy" rating. CSFB continued to cover and issue research on Allaire until the research analyst covering the company left CSFB in April 2000. At the time of his departure when the stock was trading at approximately \$130 per share, the research analyst had a buy rating on the company. Another research analyst was tapped to assume coverage of Allaire at that time.

The new research analyst's assumption of coverage was delayed and, as of early July 2000, the analyst assigned to cover Allaire had issued no new research on the company. In a July 17, 2000 e-mail to Quattrone, the Head of Technology Research, and others, a CSFB investment banker insisted that "[w]e need to do everything in our power to ensure that" the new research analyst "initiates coverage on Allaire." In that e-mail, the investment banker noted, among other things, that CSFB had received favorable fees and splits in connection with its underwriting services for the IPO, the secondary and another transaction and that Allaire's CEO was unhappy with CSFB's research sponsorship of Allaire since late 1999. In a responsive e-mail, Quattrone stated: "We need to make this happen asap." On August 14, 2000, a new research analyst assumed coverage of Allaire, maintaining the previous analyst's a buy rating while the stock was trading between \$30 - \$35 per share. A month later, on September 18, 2000, once the stock had dropped below \$10 per share, the research analyst downgraded the stock to a "hold" rating.

On one occasion, Quattrone urged certain bankers and research analysts to threaten to drop coverage of a company in an effort to obtain the lead manager position for an investment banking offering. In January 2000, CSFB was attempting to obtain a lead manager position for Aether Systems, Inc. ("Aether"). When Quattrone was informed that Aether had offered CSFB only the co-manager role, and not the bookrunner position for the offering, Quattrone attempted to use his authority by stating in a January 29, 2000 e-mail to investment bankers and research analysts:

[N]o ... way do we accept this proposal. [P]lease discuss with me [and others] first thing in the morning. [W]e have agreed on the script, which is books or walk and drop coverage.

h. CSFB Technology Group's Practice of Allowing Equity Research Analysts to Discuss a Proposed Rating with Company Executives in Advance of Publishing the Rating Caused Undue Pressure to Initiate or Maintain Positive Research Coverage, and at Times Compromised Equity Research Analyst Independence

CSFB Technology Group allowed its research analysts to provide executives of companies for whom they were about to issue research, with copies of analyses and proposed ratings of their reports for editorial comment prior to dissemination. Technology Group research analysts provided this information, in part, in an attempt to maintain their good standing with the company. This type of direct interaction between analysts and issuers provided additional pressure on the equity research analysts and at times compromised the independence of the research analysts.

For example, on October 29, 1999, while preparing to re-initiate coverage for Razorfish, Inc. ("RAZF"), a Technology Group research analyst wrote to the RAZF CEO:

With icube about to close, we need to think about resuming coverage of the fish. I want your opinion on rating. We would have taken you to a strong buy but given the recent stock run, does it make sense for us to now keep the upgrade in our back pocket in case we need it? Either way, I don't care. You guys deserve it, I just don't want to waste it.

The CEO of RAZF responded to the research analyst, stating: "I think we should re-initiate with a buy and a higher price target and keep the upgrade for a little while.... Although its [sic] getting hard to justify the valuations."

In this case, the research analyst re-initiated coverage on November 3, 1999 with a strong buy rating when the stock was trading at \$34. He reiterated and maintained that strong buy from January 12, 2000, when the stock was trading at \$39 per share, until October 27, 2000, when he finally lowered his rating to a buy rating when the stock was trading at \$4. The research analyst maintained that buy rating until May 4, 2001, when RAZF was trading at just \$ 1.14. At that time, he once again downgraded to a hold rating.

3. CSFB Issued Fraudulent Equity Research Reports on Two Companies in the Technology Sector: Digital Impact and Synopsys. Those Reports Were Unduly Influenced by Investment Banking Considerations

The undue, improper influence that investment banking exerted over research analysts caused technology research analysts to issue fraudulent research reports on two companies, Digital Impact and Synopsys. Specifically, investment bankers pressured research analysts to initiate or maintain positive research coverage of these two companies in order to obtain or retain investment banking business. The analysts were pressured or compelled to compromise their own professional opinions regarding companies at the direction of the firm's investment bankers.

a. Digital Impact, Inc.

Digital Impact, Inc. ("DIGI") is a company involved in online direct marketing. CSFB acted as the lead manager for the DIGI IPO in November 1999, earning more than \$5 million from the offering. Following the IPO, a CSFB technology research analyst initiated coverage with a "buy" rating. At that time, DIGI traded for just under \$50 per share. Between January 2000 and April 2001, as the stock price declined to less than \$2 per share, CSFB maintained either a "buy" or a "strong buy" rating on the stock.

In May 2001, after the original analyst had left CSFB, a senior research analyst in the Technology Group was assigned coverage of DIGI. At that time, DIGI was trading for less than \$2 per share. CSFB assumed coverage and "buy" ratings in June and July 2001. Thereafter, the senior research analyst then met with the company and determined that he wanted to drop coverage of DIGI, noting that DIGI's "market opportunity was just very competitive ... and ... they were going to have ... a difficult time thriving in that environment."

The senior research analyst attempted to drop coverage of DIGI on two occasions. On both attempts, the senior research analyst acceded to requests from an investment banker in the Technology Group that he not drop coverage. In a September 4, 2001 e-mail, the senior research analyst informed two investment bankers of his continued desire to drop coverage of DIGI. That day, one of the investment bankers responded:

I think [the other investment bankers] will ask for continued cov'g on DIGI given ongoing relationship, good [venture capitalists] and CSFB led IPO.

Despite his own desire to drop coverage of the stock, the research analyst acceded to the desires of the investment banker and did not drop coverage on DIGI. The research analyst maintained coverage, and left the "buy" rating unchanged until October 2, 2001, when CSFB downgraded DIGI to a "hold" rating.

b. Synopsys, Inc.

Internal e-mail correspondence among research analysts regarding Synopsys shows that the pressure imposed by investment bankers on research analysts to initiate or maintain favorable coverage was not an isolated problem at CSFB. In May 2001, a technology research analyst wrote an e-mail to the Head of Technology Research, complaining of:

Unwritten Rules for Tech Research: Based on the following set of specific situations that have arisen in the past, I have 'learned' to adapt to a set of rules that have been imposed by Tech Group banking so as to keep our corporate clients appeased. I believe that these unwritten rules have clearly hindered my ability to be an effective analyst in my various coverage sectors.

The research analyst wrote that, after downgrading a company in 1998, his investment banking counterpart "informed [him] of unwritten rule number one: that 'if you can't say something positive, don't say anything at all.'" Regarding a second company about which he had reported in 1999, the analyst wrote that he:

issued some cautionary comments in the Tech Daily. ... CEO completely lost his composure and swore to the banker, ... that [second company] would never do any business with CSFB (another GS client we were trying to court). At the time, [the investment banker] informed me of unwritten rule number two: 'why couldn't you just go with the flow of the other analysts, rather than try to be a contrarian?'

The technology research analyst applied these "unwritten rules" to Synopsys, which he had rated as a "strong buy" from July 1999 through June 2000. Specifically, the technology research analyst wrote that he:

[s]uspected a down-tick in guidance coming and wanted to moderate rating from strong buy to buy. However, banking felt this might impact CSFB's ability to potentially do business with the company downstream. ... By following rules 1 & 2, I had successfully managed not to annoy the company, or banking.

Based on these incidents, the analyst concluded that he was "not naïve enough to lack a sense of appreciation of the role of investment banking (and banking fees) for the franchise."

4. CSFB Issued Research on Four Companies that Lacked a Reasonable Basis, Made Exaggerated or Unwarranted Claims, was Imbalanced, or Lacked Full and Accurate Disclosures

As to four companies, CSFB's equity research analysts issued research that lacked a reasonable basis for the claims made, made exaggerated or unwarranted claims, failed to provide a balanced presentation of the relevant facts, and/or failed to disclose important information about the company or CSFB's and its research analyst's relationship to the company.

a. Numerical Technologies, Inc.

In April 2000, CSFB acted as lead manager on the IPO of Numerical Technologies for which it received a fee of more than \$5.4 million. Following the IPO, a Technology Group research analyst informed a company official that he planned to initiate coverage with a "buy" rating. The official complained about the proposed rating to an investment banker at CSFB. According to the analyst, the investment banker successfully urged the analyst, "against [the analyst's] better judgment," to initiate coverage with a "strong buy" rating.

b. Agilent Technologies, Inc.

In certain instances, CSFB equity research analysts maintained positive ratings in published research reports, while conveying a more negative outlook regarding the stock to their institutional customers within the text of the written research reports. In describing the ratings used from July 1998 through 2001 and beyond, research analysts did not use the same description of the rating as CSFB's published description. According to one senior research analyst:

Different analysts have different ways they would interpret a hold rating ... And I think it's probably fair to say that for a number of analysts, particularly because of the fear of backlash that we get from a company ... or ... that we get from institutional investors, there would be a hesitancy to use the "sell" rating. So analysts did have a tendency to somehow use a hold with more of a negative slant to it.

[T]he monthly review and comment we would verbally describe what we meant by each of the four ratings that I mentioned before. But there was a lot of latitude left to the individual analyst to kind of use the rating I don't want to say in a custom tailored way, but certainly there would be some judgment applied by the analyst in terms of how they would use this specific rating to their sector.

This approach manifested itself with regard to Agilent Technologies, Inc. CSFB was the co-manager for the November 17, 1999 IPO, earning more than \$5.7 million in fees. A technology research analyst initiated coverage of the company with a "buy" rating on December 13, 1999. On July 21, 2000, the analyst reiterated his "buy" rating, while also describing in his research report that the company had announced that its healthcare business was likely to have an operating loss at least as wide as the previous quarter's loss of \$30 million. The report reiterating the "buy" rating also disclosed in the body of the report that the company announced that third quarter earnings would be 18-22 cents per share, compared to the 35 cents average estimate of analysts polled.

The report also indicated that:

Agilent is rated Buy, only in the most generous sense, though in the short term we would only buy it on extreme weakness, with a 12-24 month time horizon. Our near-term concern is that problems are not typically resolved in one or two quarters.

CSFB maintained its "buy" rating until February 2001 when it finally downgraded to "hold." This came only after Agilent preannounced second quarter revenues and suspended earnings guidance for the remainder of the year, citing a "dramatic slowdown in customer demand." CSFB's positive rating of Agilent for an extended period of time despite negative news was cited by a research analyst in CSFB as an example of maintaining a positive rating while signaling negative news to large institutional clients.

Following the July 21, 2000 report on Agilent, a CSFB technology research analyst cited the coverage of Agilent to another CSFB research analyst who was facing some "tough decisions" on rating two companies that CSFB had helped take public. The first analyst noted that he wanted to give one of the companies a neutral rating but was "wondering how to approach this based on banking sensitivities." The other analyst responded suggesting that the analyst "ask [the analyst who covered Agilent for the July 21, 2000 report] about the 'Agilent Two-Step'. That's where in writing you have a buy rating (like we do on [the other company], and thank God it's not a strong buy) but verbally everyone knows your position."

c. Winstar

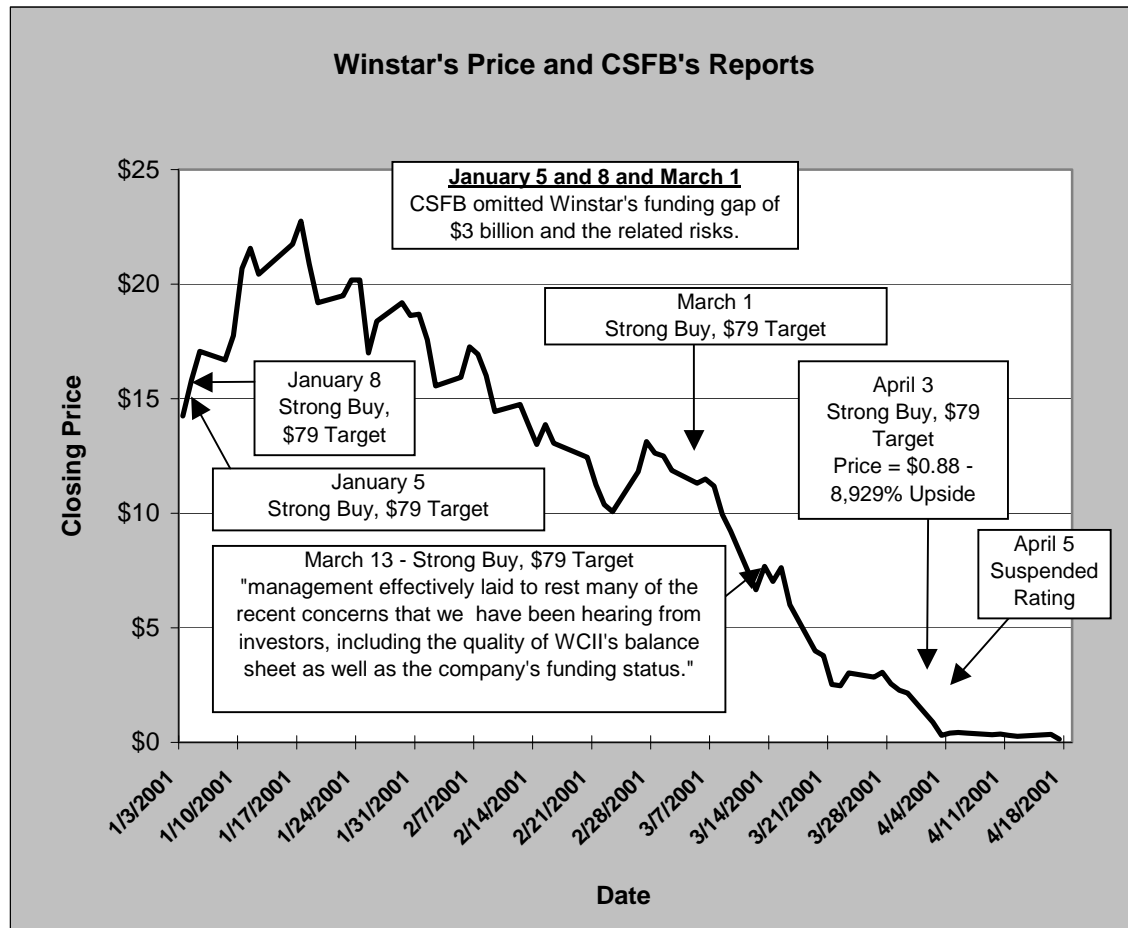
Winstar Communications, Inc. ("Winstar"), a provider of broadband telecommunications services, traded on the Nasdaq National Market using the symbol WCII. Winstar competed in the capital-intensive competitive local exchange carrier, ("CLEC"), industry with much larger, established regional Bell operating companies to provide "last-mile" networks to businesses.

Winstar never operated at a profit, suffered significant losses, and needed large amounts of capital to survive. As of September 30, 2000, it had more than \$2 billion in accumulated deficits. For the year ended December 31, 2000, Winstar had revenue of \$759.3 million, a net loss of \$894.2 million, and (\$9.67) in earnings per share. Net loss to common stockholders totaled more than \$1 billion. On April 5, 2001, Winstar announced a scaled-back

business plan and the layoff of 2,000 employees - 44 percent of its work force. On April 18, 2001, Winstar filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code.

CSFB, acting through two research analysts in its Equity Research Department, wrote and issued research reports during 2001 that lacked a reasonable basis for its target price and failed adequately to disclose risks of investing in Winstar. Indeed, CSFB's reports during this period did not indicate that investing in Winstar was risky. The firm had initiated equity research coverage of Winstar in May 2000, with a "strong buy" rating and a 12-month target price of \$79. CSFB retained the \$79 target price from January 5, 2001, through April 3, 2001, even as the stock plummeted from approximately \$17 to \$0.31 per share and the market capitalization collapsed more than 99%, from \$1.6 billion to \$30 million.

The following graph demonstrates how CSFB maintained a "strong buy" rating while Winstar's stock price fell:



CSFB Lacked a Reasonable Basis for the \$79 Target Price

In three reports between March 1, 2001 and April 5, 2001, when CSFB suspended its rating for Winstar, CSFB's \$79 target price for the company was not reasonable. The target price failed to reflect Winstar's deteriorating stock price, extensive funding needs, likely changes in fundamentals, and over-leveraged balance sheet, as well as the bleak capital markets environment. The target price of \$79 per share represented unreasonably high returns:

- 3/01/01 -- actual price: \$12.5000 % Upside: 632%
- 3/13/01 -- actual price: \$ 7.6875 % Upside: 1028%
- 4/03/01 -- actual price: \$ 0.3125 % Upside: 25,280%

From March 1, 2001 forward, CSFB's target price was more than 50 percent higher than the target price of any other firm covering Winstar.

Reports issued in 2001 also failed to disclose that the terms "target price," "price objective," or "percentage upside" did not represent the price at which CSFB believed Winstar stock would be trading in 12 months. Instead, CSFB used those terms to reflect the theoretical value of Winstar's worth in 12 months if a buyer valued Winstar using CSFB's valuation methodology. CSFB, however, failed to disclose that it was using the terms in this manner.

CSFB Failed Adequately to Disclose Significant Risks of Investing in Winstar

The January 5, 2001, January 8, 2001, and March 1, 2001 reports failed adequately to disclose the risks of investing in Winstar, particularly the risks related to funding, including Winstar's need to raise more than \$3 billion to fund its business plan to reach a free cash flow positive status and the risk that Winstar might not be able to raise the necessary funds.

In a March 13, 2001 research report, CSFB again failed adequately to disclose the risks of investing in Winstar. While disclosing for the first time that Winstar needed to raise more than \$3 billion, the report significantly downplayed the risk that Winstar might not be able to do so:

[W]e maintain our forecast that WCII is funded into 1Q02 While we currently forecast that WCII needs over \$3B of additional capital to reach a free cash flow positive status, WCII management effectively laid to rest many of the recent concerns that we have been hearing from investors, including the quality of WCII's balance sheet as well as the company's funding status.

While CSFB research reports identified certain issues relating to funding, those reports did not adequately disclose funding risks or other concerns regarding funding that CSFB equity analysts discussed in internal e-mails. On February 8, 2001, a CSFB equity analyst sent an e-mail with a chart showing Winstar's cash flows. The e-mail stated:

this is FYI ... I worked this up to convince myself that wcii was indeed funded through FY01... I've included everything I know about for them over the next year, and it looks like they have \$185M left at the end of the year.

Such analysis should have been included in CSFB's disseminated research in order to present a balanced picture of the risks of investing in Winstar.

On March 22, 2001, CSFB's senior Winstar equity research analyst e-mailed a customer, who had raised questions about investor concerns and funding in the CLEC sector. The analyst acknowledged in his e-mail that there were funding concerns.

On April 5, 2001 when Winstar's price closed at \$0.44, CSFB issued a report suspending its rating. In the report, CSFB explained that the suspension was:

following the announcement of a major scale back in the firm's expansion plans but without any positive developments on the much anticipated drive to secure additional sources of funding – both equity and network capacity sales. Given WCII's lack of balance sheet flexibility due to approximately \$360M of cash interest obligations in FY01 (growing to over \$400M in FY02) and the current bleak capital markets environment, we believe that a significant balance sheet restructuring is one of the only situation under which the company can avoid more draconian scenarios.

CSFB had not adequately disclosed in earlier reports the concerns mentioned in the April 5, 2001 report.

d. NPW

CSFB at times had a proprietary interest in NPW that was not disclosed in research reports issued by the firm. Further, CSFB research analysts covering NPW also had personal proprietary interests in the company but the firm failed to disclose those interests in the published reports. The ownership interests of the firm and the research analysts created a conflict of interest that should have been disclosed.

NPW was incorporated in November 1999 as EMW Energy Services Corporation, a division of Enron Energy Services (a division of Enron Corporation ("Enron")). Until January 6, 2000, Enron held all issued and outstanding shares of NPW. NPW's business was to provide natural gas and electricity to retail customers in newly deregulated state markets while obtaining the gas and electricity wholesale from Enron. In January and July 2000, DLJ assisted with two private placements for NPW and received approximately \$1 million in investment banking revenues. DLJ invested \$42.5 million in the two private placements through its affiliated partnerships, known as the "DLJ Merchant Banking Partnerships," in return for approximately 9.7 percent of NPW.

On October 5, 2000, NPW conducted an IPO and offered 24 million shares at \$21 per share. DLJ and CSFB were the joint lead underwriters and earned approximately \$15.7 million in fees. After the IPO, CSFB, through its acquisition of DLJ, owned 7.9 percent of NPW, while Enron owned 44 percent of the company. In 2000, CSFB and DLJ combined received approximately more than \$12.4 million in investment banking revenues from Enron. In 2001, CSFB received approximately \$21.6 million in investment banking revenues from Enron. From October 2000 to November 2001, CSFB issued 18 "Buy" or "Strong Buy" research reports on NPW. CSFB failed to disclose its proprietary interest in NPW in four of these research reports issued to the public during that period.

Also during that period, the senior research analyst covering NPW held undisclosed investments in NPW. The senior analyst invested approximately \$21,000 of his own money, which was leveraged 5:1 by CSFB, in NPW through DLJ partnerships that owned NPW shares. In addition, an associate research analyst who assisted in preparing the reports, and whose name appeared on the reports, held 200 shares of NPW from November 7, 2000, to June 14, 2001. From October 2000 to November 2001, CSFB did not disclose either of the research analysts' financial interests in NPW in the 18 NPW research reports issued to the public.

6. CSFB's Technology PCS Group Engaged In Improper IPO "Spinning" Allocations to Corporate Executives of Investment Banking Clients

Quattrone established the Technology PCS (Private Client Services) Group to be part of the Technology Group. The Director of Technology PCS had a primary and direct reporting responsibility to Quattrone with a secondary "dotted-line" reporting responsibility to the Director of CSFB's PCS Department. Technology PCS focused exclusively on the technology sector. Technology PCS operated independently of CSFB's other PCS brokers. The Technology PCS client base consisted, almost exclusively, of officers of investment banking clients of the Technology Group.

From approximately March 1999 through April 2001, Technology PCS improperly allocated "hot" IPO stock to executives of investment banking clients and improperly managed the purchase and sale of that stock through discretionary trading accounts. CSFB's Technology Group gave improper preferential treatment to these company executives with the belief and expectation that the executives would steer investment banking business for their companies to CSFB.

These executives profited from their allocations of "hot" IPO stock. During this time period, the share value of the technology-related IPOs in which CSFB served as bookrunning manager increased dramatically, with the average share price increase in the immediate aftermarket exceeding 99 percent. In some instances, the aftermarket trading was significantly higher. On December 9, 1999, for example, IPO shares of VA Linux Systems stock, which had a public offering price ("POP") of \$30 per share, closed after the first day of aftermarket trading at \$239.25 per share, representing a 698 percent increase over the offering price. Technology PCS began selling its clients' VA Linux IPO shares on a discretionary basis when the stock was at \$227 per share. Technology PCS allocated 92,000 VA Linux IPO shares to 110 discretionary accounts. Within one day of the offering, the Technology PCS brokers sold 41,400 shares (representing approximately 45 percent of the Technology PCS allocation) out of the discretionary accounts, resulting in one-day realized profits of almost \$6.4 million.

a. Discretionary Accounts were Established for "Strategic" Executive Officers of Issuers

Pitchbooks used by the Technology Group to win an issuer's investment banking business referenced the discretionary accounts. Consistent with those references and representations made at "pitches," an issuer had to award CSFB its investment banking mandate before the issuer's officers were afforded the opportunity to open discretionary accounts and given access to IPO shares by CSFB. Likewise, CSFB considered ways to reduce or eliminate IPO allocations to executives who changed employment and were no longer affiliated with those companies.

Once Technology Group received a mandate, Technology PCS established discretionary accounts for executives who were considered to be "strategic." "Strategic" was commonly understood by Quattrone and Technology PCS managers to refer to the overall business relationship CSFB had with the issuer, including potential future investment banking business. The head of Technology PCS defined "strategic" as "senior decision makers" at existing or prospective investment banking clients of the Technology Group who could influence their companies' choice of investment banker. The accounts were ranked based on the executive's perceived influence in this regard, and "hot" IPO shares were allocated based on the ranking. Allocations ranged from 1200 shares for accounts ranked one, to 300 shares for accounts ranked 4.

Technology PCS did not apply standard CSFB qualification standards (i.e. assets under management, trading revenue production, length of the brokerage relationship, etc.) for the opening of these discretionary accounts. Instead, the decision was based largely on the executive's position and influence at the company. Technology PCS established a minimum funding level of \$100,000 that was subsequently raised to \$250,000. Technology PCS also set \$250,000 as the maximum level of funds with which customers could fund the discretionary accounts. These discretionary accounts were limited to the purchase and sale of stock purchased through CSFB IPOs. The account holders were not permitted to buy or sell other securities in these accounts, as a result of which Technology PCS turned away millions of dollars of potential customer investments. The number of discretionary accounts serviced by Technology PCS reached a peak in 2000 of approximately 285.

b. Technology PCS Allocated Shares in Every IPO to the Discretionary Accounts and "Flipped" Stock out of the Accounts, Generating Large Trading Profits for the favored Executives

The Technology PCS Group allocated shares to the discretionary accounts in every IPO in which the Technology Group was involved. Senior Technology Group managers participated in determining allocations to discretionary accounts and deciding for whom such accounts were to be opened. The overwhelming majority of those IPOs were "hot." Technology PCS personnel decided when and how many IPO shares to sell from the discretionary accounts. In some cases, all the shares allocated to discretionary accounts were sold for a profit on the IPO's first day of trading in the secondary market. In other cases, half the shares were sold within one or two days of the offering and the remaining half sold sometime later. In virtually all instances, the "flipping" of IPO shares out of the discretionary accounts resulted in the account holders receiving substantial profits with no individual effort and minimal market risk.

The table below provides examples of the extraordinary gains realized in these discretionary accounts and correlates them with the investment banking fees paid to CSFB by the companies with which the account holders were associated:

Acct #	Company	Position	Rank	Life of Acct. (in years)	Total Gain	Internal Rate of Return	IB fees to CSFB
RD1210	Egreetings	CFO	3	1.4	\$585,000	335.98%	\$4,678,000
RD1260	El Sitio	Co-founder	1	1.31	\$1,015,000	950.24%	\$4,911,000
RD1660	Next Level Comm.	CFO	2	1.25	\$710,000	470.45%	\$9,860,000
RD1930	Phone.com	Chairman & CEO	1	1.0	\$1,285,000	268.71%	\$80,720,000
RD2040	iPrint.com	CEO	2	1.15	\$353,000	240.46%	\$1,297,000

c. Unofficial "Performance Reports" were Developed and Distributed by Technology PCS Group Personnel to the Account Holders

Technology PCS prepared unofficial "Performance Reports" measuring the extraordinary performance of these discretionary accounts and furnished the reports to the discretionary account holders. These reports, distributed monthly, showed, among other things, the length of time the account had been open, the amount of contributions to the account, the total gain in the account (before fees) and the account's rate of return. These unofficial reports were meant to ensure that the discretionary account holders were aware of the extraordinary gains being generated for them through the flipping of IPO shares. Some show total gains over the life of the account exceeding \$1 million. One report shows that in little more than a year and a half (September 19, 1999 to June 8, 2001), the account had a rate of return in excess of 3,800%.

II.

CONCLUSIONS OF LAW

1. The State Corporation Commission ("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 Commission finds that the above conduct is in violation of 21 VAC 5-20-280 A 18 and 21 VAC 5-20-260.
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 CSFB's consent to the entry of this Order, for the sole purpose of settling this matter, prior to a hearing and without admitting or denying any of the Findings of Fact or Conclusions of Law.

IT IS HEREBY ORDERED:

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 CSFB relating to certain research or banking practices at CSFB.
2. Pursuant to § 12.1-15 of the Code of Virginia, CSFB will refrain from violating 21 VAC 5-20-280 A 18 and 21 VAC 5-20-260 and will comply with the with the Act and the Regulations in connection with the research practices referenced in this Order and will comply with the undertakings of Addendum A, incorporated herein by reference.
3. As a result of the Findings of Fact and Conclusions of Law contained in this Order, and in accordance with the terms of the Final Judgment entered in a related proceeding filed by the U.S. Securities and Exchange Commission, CSFB shall pay a total amount of \$225,000,000.00. This total amount shall be paid as specified in the SEC Final Judgment as follows: \$75,000,000 to the states (50 states, plus the District of Columbia and Puerto Rico) (CSFB's offer to the state securities regulators hereinafter shall be called the "state settlement offer"). Upon execution of this Order, CSFB shall pay the sum of \$1,636,223.00 of this amount to the Treasurer, Commonwealth of Virginia, as a as a civil monetary penalty pursuant to § 13.1-521 of the Act. The total amount to be paid by CSFB to state securities regulators pursuant to the state settlement offer may be reduced due to the decision of any state securities regulator not to accept the state settlement offer. In the event another state securities regulator determines not to accept CSFB's state settlement offer, the total amount of the Commonwealth of Virginia payment shall not be affected, and shall remain at \$1,636,223.00; \$75,000,000 as disgorgement of commissions, fees and other monies as specified in the SEC Final Judgment; \$50,000,000, to be used for the procurement of independent research, as described in the SEC Final Judgment; CSFB agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to payment made pursuant to any insurance policy, with regard to all penalty amounts that CSFB shall pay pursuant to the Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. CSFB further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any penalty amounts that CSFB shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. CSFB understands and acknowledges that these provisions are not intended to imply that Virginia would agree that any other amounts CSFB shall pay pursuant to the SEC Final Judgment may be reimbursed or indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit with regard to any state, federal or local tax.
4. If payment is not made by CSFB or if CSFB defaults in any of its obligations set forth in this Order, the Commission may vacate this Order, at its sole discretion, upon 10 days notice to CSFB and without opportunity for hearing.
5. This Order is not intended by the Commission to subject any Covered Person to any disqualifications under the laws of any state, the District of Columbia or Puerto Rico (collectively, "State"), including, without limitation, any disqualifications from relying upon the State registration exemptions or State safe harbor provisions. "Covered Person" means CSFB, or any of its officers, directors, affiliates, current or former employees, or other persons that would otherwise be disqualified as a result of the Orders (as defined below).
6. The SEC Final Judgment, the NYSE Stipulation and Consent, the NASD Letter of Acceptance, Waiver and Consent, the Order and the order of any other State in related proceedings against CSFB (collectively, the "Orders") shall not disqualify any Covered Person from any business that they otherwise are qualified, licensed or permitted to perform under the applicable law of Commonwealth 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.
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 CSFB including, without limitation, the use of any e-mails or other documents of CSFB or of others regarding research practices, limit or create liability of CSFB or limit or create defenses of CSFB 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 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 CSFB in connection with certain research and banking practices at CSFB.

NOTE: A copy of Addendum 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-2003-00016
OCTOBER 30, 2003**

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

v.

GOLDMAN, SACHS & CO. CRD # 361,
Defendant

ORDER

Goldman, Sachs & Co. ("Goldman Sachs") is a broker-dealer registered in the Commonwealth of Virginia; and

Coordinated investigations into Goldman Sachs's activities in connection with its potential conflicts of interest by research analysts, the issuance of research that might have lacked objectivity, and potentially improper sharing of research information with public companies and the investment banking division of the firm during the period of approximately 1999 through 2001 ("Relevant Period") have been conducted by a multi-state task force and a joint task force of the U.S. Securities and Exchange Commission, the New York Stock Exchange, and the National Association of Securities Dealers (collectively, the "regulators"); and

Goldman Sachs has cooperated with regulators conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and providing regulators with access to facts relating to the investigations; and

Goldman Sachs has advised regulators of its agreement to resolve the investigations relating to its research practices; and

Goldman Sachs agrees to implement certain changes with respect to its research practices, and to make certain payments; and

Goldman Sachs elects permanently to waive any right to a hearing and appeal pursuant to the State Corporation Commission's ("Commission") Rules of Practice and Procedure 5 VAC 5-20-10 *et seq.* with respect to this Consent Order ("Order").

I.

JURISDICTION

Goldman Sachs, neither admits nor denies the findings of fact and conclusions of law contained in this Order, but admits to the jurisdiction of the Commission and authority to enter this Order.

II.

FINDINGS OF FACT

1. As set forth in greater detail herein, in general, during the Relevant Period, certain of the procedures and processes in place to insulate Goldman Sachs's equity research analysts (hereafter "analysts" or "research analysts") from pressures and influences from covered companies or investment banking were not sufficient. Also, in general, during the Relevant Period, in some respects Goldman Sachs failed to exercise reasonable supervision so as to ensure that, in the context of the procedures and processes in place, its research analysts were sufficiently insulated from pressures and influences from covered companies or investment banking.

2. Goldman Sachs is a leading global investment banking and securities firm that, among other things, offers underwriting services to companies seeking to sell their securities to the public. In addition to its prominent investment banking operations, Goldman Sachs also offers extensive services to its institutional investor clients and its private wealth management clients (principally high net worth individuals), has an active securities sales and trading business, and maintains a separate division to perform research on equity securities.

3. For the companies for which Goldman Sachs provides equity research coverage, Goldman Sachs analysts issue periodic reports and make investment recommendations. During the Relevant Period, Goldman Sachs's equity research ratings included four investment ratings:

Recommended List - expected to provide price gains of at least 10 percentage points greater than the market over the next 6-18 months;

Market Outperformer - expected to provide price gains of at least 5-10 percentage points greater than the market over the next 6-18 months;

Market Performer - expected to provide price gains similar to the market over the next 6-18 months; and

Market Underperformer - expected to provide price gains of at least 5 percentage points less than the market over the next 6-18 months.

In addition, Goldman Sachs had one shorter-term rating:

Trading Buy - expected to provide price gains of at least 20 percentage points sometime in the next 6-9 months.

4. In addition to ratings, the research reports generally contained Goldman Sachs's analysis of the covered company's financial prospects.

A. INVESTMENT BANKING DIVISION'S RELATIONSHIP TO AND INFLUENCE ON RESEARCH DIVISION.***Portrayal of Research***

5. Goldman Sachs held itself out as generating and providing research reports that were the product of objective research and the opinions of the firm's research division. During the Relevant Period, Goldman Sachs disclosed various conflicts of interest-related disclaimers in its research reports, including investment banking relationships with covered companies.

6. The research reports and ratings of companies covered by Goldman Sachs analysts as well as Goldman Sachs's list of recommended stocks were made available to Goldman Sachs's institutional investor clients and its private wealth management clients, principally high net worth individuals. On occasion, the substance of Goldman Sachs's research reports, in whole or in part also was reported in the U.S. financial news media.

7. Goldman Sachs's equity research included formal, so-called "blue-stripe" reports, notes, and comments.

8. Goldman Sachs's research or the content of its research was disseminated by various means, including: by mail, via facsimile, distributions at client meetings, via e-mail, via Goldman Sachs's research Website for clients, telephone conversations by analysts and salespersons, and as part of analysts' appearances on television, at seminars, and at industry conferences.

9. The 2002 mission statement by Goldman Sachs's U.S. research department was: "Regain our pre-eminent status through independent, high-quality, differentiated product and service."

Research analyst assistance to investment banking.

10. During the Relevant Period, research coverage by analysts (including at Goldman Sachs) was a factor many issuers took into account in awarding investment banking business. The reputation of Goldman Sachs's analysts was sometimes a factor in winning investment banking business from certain issuers. Goldman Sachs's use of its research analysts for investment banking business went beyond simply relying on the reputation of its analysts; Goldman Sachs's research analysts assisted in evaluating and marketing certain investment banking business.

11. Frank Governali, co-head of Goldman Sachs's research for the telecommunications sector, joined Goldman Sachs in mid-1999. In January 2000, he e-mailed a former colleague at another investment bank: "It's been a good first 6 months, and its [sic] been very busy. There has not been a day when we're not involved with some deal, so I'm learning a lot more about that side of the business than I experienced at [the other investment bank]."

"Research alignment" process

12. In connection with making coverage decisions in the context of limited resources, Goldman Sachs implemented a Research Alignment process whereby the Investment Banking Division, the Equities Division, and the Research Division "work collaboratively to insure a strategic alignment of [Goldman Sachs's] business - that the biggest opportunities for investment banking and equities were being covered, that [Goldman Sachs] had the right Research resources in the right places, and that [Goldman Sachs's] Research reputation for independent and thoughtful analysis was sustained if not enhanced." In the context of Investment Banking, Research Alignment "insur[es] that companies of strategic and/or commercial importance to both IBD and Research are covered by an analyst and a banking team. . . . [I]deal candidates for coverage are those that are franchise defining, and/or those that offer a meaningful opportunity for significant revenue in the relatively near term."

13. Sector captains were appointed within investment banking to "coordinate *all* banker requests for Research coverage; work with IBD teams and ECM [Equity Capital Markets] to establish priority rankings within the sector and reach consensus with Research counterparts."

14. A January 2001 research retreat reminded analysts that investment banking sector captains were to "[w]ork directly with Research counterparts to agree on names and timing" of companies to be covered and to "[d]etermine IBD priority ranking of *each* company needing Research, including rationale and timing."

15. Representatives of investment banking and research met periodically to review companies that were candidates for research coverage. In May 2000, the heads of research reported: "Of the 63 companies highlighted which offered equity opportunities over the next 12 months or which were SuperLeague targets, 40 are now considered no longer active, 9 have been picked up by Research, and 14 still need coverage, based on recent banker input"

16. The Research Alignment process was designed to ensure that the various interested areas of the firm (including Investment Banking and Equities) had effective input into which issuers to cover and when to initiate coverage. Goldman Sachs states that the research alignment did not dictate the substance of research.

Goldman Sachs's compensation structure and employee performance review system

17. As with all professional employees of the firm, analyst compensation consisted of a salary and a discretionary bonus. Analyst compensation at Goldman Sachs was based on many factors, including, among other things, the level of compensation that analysts could command in the market for their particular industry or sector specialty - which might be impacted by the level of investment banking activity in that sector - whether an analyst was ranked in broker polls, *Greenwich Survey*, *Institutional Investor*, and performance reviews - which, as discussed below, often made reference to contributions to investment banking. Analysts received no formulaic or other compensation with respect to specific investment banking projects. Comments in some employee evaluations indicated that some analysts were involved in many aspects of investment banking-related activities and reflected certain employees' beliefs that participating or assisting in investment banking activities was a factor in measuring the analyst's performance.

18. Goldman Sachs introduced a new program in June 2000 to strengthen "firmwide marketing . . . including how we leverage our brand, advertise, and in particular, cross-sell" Strengthening cross-selling efforts was defined as a "top strategic priority for 2000." A \$50,000 award was created to recognize individuals across all divisions of the firm who "cross-sell or help deliver a significant mandate to another business unit or division."

19. Goldman Sachs explored and took steps toward the development of a potential "Analyst Scorecard" in 2001, to measure the success of analysts' work, including "client contact and revenue generation," and "the analyst's involvement with IBD transactions, and associated fees [to be earned by Goldman Sachs]." In connection with this process, Goldman Sachs created spreadsheets, for each analyst, listing the number of investment transactions in which the analyst was involved and the total value of investment banking fees involved in those transactions. Goldman Sachs determined not to implement the Analyst Scorecard. Had Goldman Sachs decided to implement the Analyst Scorecard, the investment banking deals with the largest estimated revenues to Goldman Sachs would have resulted in higher scores on the Analyst Scorecard.

20. In February 2002, Goldman Sachs introduced its Research Pentathlon. There were five areas being measured: polls, stock picking, commercial, reviews, and culture. As part of the commercial measurement: "analysts [were] measured according to their banking and trading activity." Each analyst was required to identify those "announced or closed banking transactions in your sector that took place" during the prior period. For example, in a February 15, 2002, e-mail, an analyst was told to indicate whether he had "Introduced Senior Management to GS Banking," "Attended Pitch," or "Led Sales Call," and to "rate the scale of your overall involvement" ranging from minimal to critical.

21. All Goldman Sachs employees, including analysts, were evaluated as part of the firmwide "360 degree" review process. During the Relevant Period, analysts, like all other employees at the firm, were evaluated not only by supervisors, peers, and subordinates in the research division, but also by employees in other divisions and departments of the firm with whom the analyst had worked, including to varying extents investment banking and equity sales and trading. The evaluations that employees submitted during the 360 degree review process generally were anonymous. In most cases, even the analyst's supervisor who orally delivered the year-end review to the analyst did not know the identities of the employees who made comments about the analyst. The specific comments in the 360 degree reviews were not shown to analysts but certain comments may have been discussed or described in some cases. Rather, after reading all of the 360 degree reviews, reviewing other indicators of performance and taking into account his or her own assessment of the analyst's performance, the analyst's supervisor would provide an overall assessment of the analyst's performance.

Comments about analysts in the 360 degree review

22. Some employee evaluations referred to investment banking revenues on transactions in which the analyst had a role and to the fact that analysts might be involved in many aspects of investment banking.

- a. For example, one employee commented that an analyst was: "Very hard working, focused and eager to do a good job and win business." He said the analyst was "Becoming much more proactive about sharing info with banking. A good team player and very cooperative. Well focused on banking issues and GS [Goldman Sachs] business overall." Another evaluation of the same analyst commented that: "He is a great help to the Banking franchise. Always willing to impart his expertise and seems happy to take the time to explain complex strategic and positioning issues." A different evaluation of this analyst stated: "[Analyst] takes a high level of pride in his analysis and work, and has put out a number of carefully researched and well-written pieces which are definitely value-added to clients."
- b. An evaluation of another analyst stated: "She did a super job with the IB client as well as investors on the Coinstar CSO. . . . She became more comfortable over time that IB fee-paying potential should be a consideration in her list [of companies to cover]. Though [analyst] worked closely with IB putting her initial list together, [analyst] is fairly (sometimes fiercely) independent. I strongly suggest that she use the resources that IB offers as she works evaluating companies (e.g. when changing her [financial] model, please inform/consult the IB team)."
- c. A comment about one analyst stated: "Hard to say how much of poor investment decisions have been because banking drove the outcome." Another comment about the same analyst said: "[Analyst] has a very high integrity in her work."
- d. An evaluation of Frank Governali stated: "Frank is swamped and needs help. The demands placed upon him by his banking duties threatens the very franchise that has allowed him to become such a powerful banking asset. Frank is a very good analyst who is thoughtful, user friendly, creative and totally inaccessible." Another evaluation of Governali stated "his overall integrity is a strong feature."
- e. An evaluation of another analyst stated: "There are still times when [analyst] does not think commercially about a client. There have been times when [analyst] is going to see an important CEO target and no one from banking is even aware that he has the meeting." Another comment about the same analyst said: "His analysis is considered very objective and is widely used by clients."

Performance evaluations influenced compensation

23. Training for new analysts taught that their performance evaluation criteria included "Revenue production . . . [and] 360° feedback from IBD bankers."

Analyst business plans

24. During the Relevant Period, analysts were required to develop business plans that discussed a broad range of areas such as what the analyst's plans were for Global Research with respect to both products and services, what major investment themes the analyst would develop relating to his or her coverage universe, and what investor conferences the analyst had planned. One of the many such categories covered by the business plans was how the analyst planned to assist the investment banking efforts of the firm. As noted below, the business plans included questions that implied that the research analysts' contribution to the firm's investment banking business plan was part of their job. Business plan forms asked analysts to explain, among other things:

- a. "How much of your time will be devoted to IBD?"
- b. "Are you using/managing IBD effectively? How can you work more effectively with IBD to exploit the opportunities available to the firm? What specific opportunities do you see? Do you have alignment - do you have counterparts in IBD you work with to approach business in an integrated fashion? How can IBD help you in conferences, client meetings, etc?"

- c. "What stocks do you plan to add at current team size? . . . Have you discussed this coverage with relevant IBD, Equities and other users?"
 - d. "With which corporates do you have a better relationship with senior management than IBD does? How will you use that to enhance GS business opportunities?"
25. Analyst responses included:
- a. In response to the question: "What are the three most important goals for you in 2000?" one analyst replied: "1. Get more investment banking revenue. 2. Get more investment banking revenue. 3. Get more investment banking revenue."
 - b. Another analyst commented: "My two most important company specific research reports in 2000 will likely be the initiation of coverage reports of the two Latin American e-Finance companies that we may IPO this year." [An IPO is an initial public offering.]
 - c. An analyst expressed the view that "flexible/opportunistic research can be a *big* business driver for GS." In discussing "Lessons Learned," the analyst also stated that: "Reputational issues surrounding this business demand that we properly manage it" including "Independence of Research."
 - d. In response to the question of which firms present the toughest competition to an analyst and what the competition does better, one analyst remarked about the firm Sanford Bernstein: "Bernstein also gives us a run because they have equivalent manpower to what we have, but they cover only about half as many stocks and don[']t have any banking business. We just have an incredibly difficult time beating the thought leadership these guys are able to put back on the table as a result of that focus."

Analysts' assistance to investment banking

26. An August 2001 presentation to managers of the research division on Research Alignment states: "The individual company coverage provided by Global Investment Research helps drive the majority of the firm's largest businesses, from winning financing deals and advisory business to obtaining orders in the secondary market." The presentation also states: "the Research Alignment process was developed with the goal of quantifying, at the individual company, industry and sector levels, the available revenue opportunities to Goldman Sachs on both the Equities (trading) and IBD (equity issuance, high yield issuance and M&A) sides of the business." On the investment banking side, this assistance included, among other things, identifying potential investment banking opportunities, assisting in pitching investment banking business, and assisting in selling securities being underwritten by Goldman Sachs.

27. Analysts assisted investment banking at the firm by using their knowledge of particular industry sectors and companies within those sectors to identify potential investment banking opportunities.

28. An analyst wrote to an investment banker, wanting to "harmonize with you strategically" to pursue an investment banking opportunity with one of the companies in the technology sector that the Research Division wanted to cover. The analyst suggested offering research coverage of the issuer to be in a position to obtain investment banking business.

29. A widely distributed 2001 e-mail discussed "an *Internal Use Only* report for Investment Banking in the Americas highlighting Research views on potential investment banking activity in each sector." The "report will provide our bankers with a record of our ideas, and credit when our prescience leads to a transaction."

30. In October 1999, an analyst sent an e-mail thanking equity salespeople and private wealth management representatives at Goldman Sachs for arranging investors for a non-deal roadshow for company management to present a potential share repurchase to potential investors. The day after the roadshow was completed, the company awarded Goldman Sachs a mandate to repurchase 5% of the company's outstanding stock. The analyst told the salespeople and private wealth management representatives: "your efforts have already borne positive fruit" because "Goldman Sachs received the mandate for [this share repurchase] as a direct reward for the work you all did."

Assistance in making pitches

31. In an April 20, 2000, e-mail, an investment banker told two analysts at the firm that in preparation for an investment banking pitch to a potential issuer [Loudcloud], that the company suggested that the analysts "come prepared to SELL." The banker proposed that part of the pitch include a draft research report on the potential issuer so that Goldman Sachs could say "we are so excited about the story that we have already begun writing the report." The analyst predicted to the investment bankers: "WE WILL WIN THIS MANDATE!!!"

32. Frank Governali was credited by a Goldman Sachs banker as the determining factor in winning an early 2000 IPO for a foreign issuer: "Frank was fully involved in pitching this and thanks to him, we received a sole-book mandate with Joint lead of [another investment bank]." Moreover, the banker told other analysts "your input will be critical to the success of this IPO."

Assistance in explaining and marketing IPOs to institutional investor clients

33. Analysts often assisted in marketing the securities to be sold in an IPO. One issuer's "Lead Banker Selection Criteria" stated: "Need to understand commitment of senior analysts that they will be the 'lead' research analyst on the deal and in the aftermarket." This "commitment" was understood to include the following with respect to analysts:

- a. "Spending time personally with the CFO to refine the financial model and define appropriate IPO and ongoing business metrics."
- b. Assisting with the roadshow presentation.

c. "They personally will pro-actively market [the issuer] to the institutional community and be available on a regular basis to respond to institutional investor questions."

34. A March 2001 pitchbook stated: "Leverage the role of research in marketing the [issuer's] story."

35. An analyst commented about an issuer: "I have been out aggressively telling the story, and the volume has picked up noticeably." The issuer's stock had moved from \$50 on August 2, 2000, to over \$60 on August 25, 2000, the day of this e-mail.

36. Responding to complaints by a potential issuer about a downgrade of the sector, an analyst told the potential issuer: "Both [analyst] and I continue to view the [potential issuer] offering in these difficult markets [as] our highest priority, and remain committed to doing everything we can to get us to a successful outcome over the coming days and beyond. . . . We continue to use every opportunity including client discussions of the macro environment to highlight [potential issuer's] short and long-term differentiation against a lot of the public models." The analyst closed by saying: "Again, I want to stress that both [analyst] and I remain committed to the short and long-term success of [potential issuer]."

The time and effort expended by analysts to assist investment banking efforts varied

37. In self-reported time estimates for 2000, one analyst estimated he spent 40% of his time on investment banking-related activities while another analyst estimated his investment banking-related activities consumed 55% of his time.

38. Business plans prepared by analysts included an estimate of how much of the analyst's time not devoted to Research would be devoted to each of four divisions of the firm, including Investment Banking and Equities. In 1999, different analysts estimated they would spend between 5% and 75% of their non-Research time on Investment Banking, which included all merger and acquisition and financing activities (dividing 100% of their non-Research time among the four divisions listed in the question).

Research alignment effectiveness

39. Goldman Sachs's "Global Investment Research IBD Alignment Process" was summarized as follows in 2000: "US Investment Research appears to be on the right track with our IBD alignment initiative."

- a. "[R]esearch analysts, on 429 different occasions, solicited 328 transactions in the first 5 ½ months of this fiscal year."
- b. "Research was involved in 82% of all 'won business' solicitations."
- c. "Research was involved in 49% of 'lost business' solicitations."
- d. "Only 4.3% of all IBD 'lost business' was attributed to lack of research coverage."
- e. "IR [Investment Research] was involved in 31 mergers amounting to \$56 billion."
- f. "IR was involved in 209 financing transactions not reported in MarketView amounting to \$83 billion."
- g. "In addition to financings, US IR was involved in a significant number of merger advisories, solicitations, and other transactions which have either not yet closed or were not captured [in the] database."

Influences of investment banking personnel on research and the timing of research coverage

40. In at least some instances, analysts sent drafts of research reports to investment banking before publicizing them. An advance copy of changes to a research report was sent to two employees in the investment banking division for their comments "to speed up the approval process."

41. One analyst stated in a business plan: "Since our banking ties are so close to each one of the companies mentioned above along with the fact that these companies are direct competitors with each other, it is incredibly difficult to voice strong opinions in these sectors."

42. In early 2000, Goldman Sachs investment banking client "Ask Jeeves" expressed concern that Goldman Sachs had yet to initiate research coverage on the issuer. The issuer e-mailed Goldman Sachs's investment banker saying its stock was "dropping like a rock," and stating: "Our hopes were that a buy coverage from our lead banker might help stabilize the stock." Goldman Sachs's investment bankers complained to analysts who stated that "[w]ith research commitment committee approval and an improvement in the market, research coverage is imminent."

Discussion of research capabilities in Goldman Sachs pitchbooks

43. Some Goldman Sachs investment banking pitches included a discussion of the benefits the issuers would receive from Goldman Sachs research. In some cases, this included reference to Goldman Sachs research ratings for other companies covered by Goldman Sachs analysts.

Examples of pitches featuring the roles of analysts

44. An October 2000 pitchbook for GeneProt explained the "[r]ole of investment research analyst," as "creating the story . . . marketing the story . . . [and] following the story." A pitchbook for MFS Investment Management included a list of the various ratings provided by the analyst on the companies he covered, stated a "[g]lobal sales effort led by analysts," and contained a diagram of the role of analysts in an initial public offering.

45. A July 2000 pitchbook to Crown Castle said "Goldman Sachs has been a constant bull on the tower sector" and stated the fact that "Goldman Sachs has placed Crown Castle on our Recommended List, our Firm's highest investment rating."

46. Another pitchbook said: "[Goldman Sachs analyst] has sold more stock than any research analyst in the sector." The pitchbook provided a list of other companies covered by the analyst - none had a "Market Underperformer" rating, eight had Market Performer ratings, four were listed as Market Outperformers, and five were on the firm's Recommended List.

Goldman Sachs's investment bankers had input into research coverage decisions

47. Investment banking and equities personnel had input into decisions regarding the initiation and termination of research coverage for certain issuers.

48. On July 12, 2000, Goldman Sachs assigned a Market Outperformer rating for RSL Communications. By October 11, 2000, the stock had dropped below \$1.50 so the analyst sent an e-mail to Frank Governali asking when Goldman Sachs could drop coverage of RSLC. Governali responded: "Good que[s]tion. I'll Call the bankers soon and ask their view."

49. An investment banker informed an analyst in 2000 that the head of research had approved "dropping coverage of Olympic Steel (ZEUS) and Birmingham Steel (BIR)."

50. In September 1999, an investment banker sent an e-mail to an analyst stating: "Our list for you to publish on from the IBD front is (in order): . . ." Five issuers were then listed (four of which were investment banking prospects).

51. A 360 degree review of one analyst stated: "Initiated coverage of . . . [two examples cited] promptly after being co-manager on the initial public offering. NOT picking up coverage of [another company] as the company stiff-armed IBD when selecting underwriters."

52. In another 360 degree review of an analyst, an investment banker stated: "we have probably pushed her into research on companies where maybe she shouldn't have been or we did not have the client firmly commit[ed] enough on business before she covered them."

53. In 2001 an investment banker attempted "to squeeze [an analyst] about accelerating the time frame for picking up [coverage on Time Warner Telecom]."

Analyst discussions about research

54. In March 2001, an analyst told her supervisor [Governali]: "I don't feel comfortable going on the call and pounding the table when I just can't come up with a way to justify the fact that [MFNX is] trading at 13 times 2001 revenue and I can't think of any catalysts except that it's fundamentally one of the best positioned companies out there and it's reaffirmed [its earnings] guidance." Governali responded to the analyst: "If you can't recommend it now, when it is trading at nearly all time lows, t]hen it should be pulled from the recommended list." The supervisor then listed multiple things the analyst could use to say good things about the issuer, concluding "while this stock may not soar in the next couple of months, it will probably bounce back a little, and over the next 12 months, significantly outperform. I'll call you in a bit." In the end, MFNX remained on Goldman Sachs's Recommended List until July - when the stock had dropped to \$1.60 a share.

55. On July 21, 2000, Goldman Sachs was preparing to begin research coverage on Storage Networks. The analyst preparing the report said: "The [Discounted Cash Flow] tab of [the financial model] shows these revenues applied, and I cannot by any stretch of a variable come up with a stock price much if at all above the current levels." He asked his supervisor: "What do we want to do? assign a share scarcity premium? . . . Or do we just pick it up without a price target and an M[arket] O[utperformer]?" Four days later, Goldman Sachs initiated coverage with a Market Outperformer rating.

56. In August 2000, James Golob, the co-head of global telecommunications services, wrote Frank Governali, the other co-head, about the "anomalous situation where our sector has been tanking for 3-4 months and we globally still have a majority of stocks as R[ecommended] L[ist]s as that is all the salesmen and clients care about". Golob suggested that Governali at least consider the approach he had taken: "In Europe, we have found that honour is preserved if we have a stock as an M[arket] O[utperformer] and the companies can't complain because [it's] better than an M[arket] P[erformer]." Governali agreed, saying he planned "to re-rate most of the CLECs, which is where the problem is most egregious. The ratings were a residual from [a departed analyst], and I never changed them, not wanting to disrupt things too much. But, its ridiculous. I've already met with the bankers, and plan to move most of the companies down to M[arket] O[utperformer], from R[ecommended] L[ist] before [another analyst] takes over completely in September. . . . I don't think I would end up leaving only 7.5% as R[ecommended] L[ist], but the present 68% is ridiculous."

57. An analyst asked Governali in April 2001 whether she should adjust the "rating and price target" for 360 Networks since "it is clear that TSIX is worth 0." Governali suggested that rather than change the rating, they might "eliminate the price target." He expressed concern that: "Changing the ratings now is probably not a good idea, because from an outsiders perspective, who doesn't know anything, it may look like a belated ratings change . . ." Governali was concerned that CNBC might "[make] fun of [the analyst] on the air."

58. In August 2000, the issuer Mpower was included in Goldman Sachs's Recommended List. At that time, Mpower's stock price was dropping rapidly. The analysts described the stock drop as "a death spiral." One analyst questioned whether the drop was due to investor concern over management at the company. The analyst covering Mpower, responded that the price drop was "just the stench of reality wafting through the air." The other analyst felt some vindication over the price drop, commenting that Goldman Sachs's investment bankers had maligned him "for lowering the [price] target from stupid heights to the merely absurd."

59. In May 2001, WorldCom had Goldman Sachs's highest rating. Governali told his counterpart in Europe that he "would have loved to have cut ratings long ago. Unfortunately, we can't cut [AT&T], because we're essentially restricted there. And without cutting [AT&T], there is no consistency in cutting WCOM."

60. Also in May 2001, Governali told his counterpart in Europe: "2001 estimates among sell side analysts, and company guidance, are still to[o] high for most companies, and long term growth rate assumptions are too high." He said: "As analyst and company expectations fall, we can get more positive again."

61. In May 2001, Governali apprised an investment banker that an analyst at another firm had just downgraded LVL [Level 3 Communications]. Governali said he "share[s] many of the same concerns that this analyst has." At this time, and for another six weeks afterwards, Goldman Sachs maintained LVL at its highest rating - Recommended List.

62. In a March 26, 2000, e-mail with the heading "GBLX [Global Crossing] - I think they are bullshitting us," an analyst stated that the company's revenue guidance "does not make any sense. . . . I think the answer is they wanted to obscure something sucking cash flow out of the company. . . . They are hiding behind the complexity of their accounting." The issuer remained on Goldman Sachs's Recommended List.

63. One analyst's self-evaluation in a 360 degree review stated: "Has subordinated personal preferences on recommendations [citing two examples] for 'commercial' reasons."

Research ratings

64. The percentage of issuers being assigned one of the top two investment ratings (Recommended List or Market Outperformer) ranged from 72% in the first quarter of 1999 to 50% in the last quarter of 2001. The percentage of companies assigned a Market Underperformer rating never rose above 1.1% during this time.

In some instances Goldman Sachs terminated research coverage on issuers without first having reduced its research ratings

65. The number of companies for which Goldman Sachs ceased providing research coverage increased from one in early 1999 to 280 at the end of 2001. Some of these companies may have declared bankruptcy or ceased to exist during this period, while others were dropped because the covering analyst left Goldman Sachs. In some cases, Goldman Sachs ceased covering the company without first having downgraded its rating. A Goldman Sachs analyst asked whether this was the "proper protocol with respect to a bankrupt company."

Comments to institutional investors, internal observations

66. Between July 1999 and July 2001, WorldCom had Goldman Sachs's highest investment rating - inclusion on the firm's "Recommended List." As noted above, the Recommended List rating means "expected to provide price gains of at least 10 percentage points greater than the market over the next 6-18 months." In April 2001, a hedge fund customer that had a short-term investment horizon asked Governali: "wcom . . . buy sell or hold here at [\$]20"? Governali responded saying: "sell." Three months later, Goldman Sachs downgraded the stock one-step to a Market Outperformer rating.

67. In February 2002, a Goldman Sachs analyst rated Time Warner Telecom as a Market Performer at a price of \$11.75. Again, this rating relates to a time outlook of 6-18 months. On February 21, 2002, the analyst was asked by another hedge fund that had a short-term investment horizon at what price he would then buy Time Warner Telecom, the analyst responded: "\$0.25," prompting a "wow" from the investor.

68. On June 21, 2001, the covering analyst downgraded the stock Exodus from a Recommended List rating to Market Outperformer. Both ratings have a time horizon of the next 6-18 months. Shortly before the downgrade, the analyst met with at least two institutional investors who e-mailed the analyst after their meetings:

- a. An institutional investor wrote the analyst on June 21, 2001: "I wanted to write a quick email to you to THANK you for your candor when you came into our offices and gave me your teach-in on the company. You gave me the unbiased view, told me the negatives I needed to know - - and basically gave me the ammo I needed to prevent my PM from buying the stock [Exodus]."
- b. Another institutional investor wrote the analyst the same day: "I really appreciate your straight forward comments on EXDS during our conversation last week. Looks like our worst concerns were realized yesterday. Fortunately, we were able to get out of our last piece at around \$5 and avoid the recent carnage in the shares. Still painful, but it could have been a lot worse. . . thanks"

69. A comment about one analyst in a sales force survey said: "His investment recommendations have been abysmal and while I understand he communicates what he really thinks to a sele[c]t few, his public ratings have been an embarrassment to the firm."

70. In the 2002 analyst review process, an investment banking vice president gave this evaluation of an analyst: "He also understands how to shade his comments to minimize the impact of negative comments." Another commenter said about this analyst: "highly commercial yet maintains research integrity."

Draft research reports and expected research ratings were shared by analysts with issuers and Goldman Sachs's investment bankers

71. Goldman Sachs's policy permitted management of covered companies to review draft research reports "as long as any response is limited to correction of factual inaccuracies or general indications as to the accuracy of projections." Analysts were instructed that "the analyst's recommendation paragraph, investment summary, as well as any references to other companies included in the report must be deleted prior to distribution to company management."

72. Goldman Sachs's policy further permitted analysts to give investment bankers and covered companies a "heads up" on the rating to be assigned to a company after the market closed the day before a report was to issue. "You may convey the conclusions of [pending research] to IBD/Companies outside trading hours. For example, you can alert bankers and companies just before the Morning Call that you are about to make a meaningful change."

73. In February 2000, an issuer whose securities were being underwritten by Goldman Sachs [Net 2000] was engaged in roadshow presentations to potential investors. During the roadshow period, an analyst sent Net2000 a draft financial model for the company. The issuer then complained to Goldman Sachs's investment bankers that the analyst "did not build a separate model for GS in support of our roadshow . . . [and n]ow our concern is that while GS's current estimates fit within our forecast, there is very little room for error. Specifically, I am requesting that GS estimate a \$60M negative EBITDA instead of the current \$57M. Our proposed estimate results in only a 10% cushion. I think this will ensure that everyone's interest and credibility is protected." The analyst changed the model to increase the negative EBITDA, but not as much as requested by the issuer.

74. In March 2001, one of Goldman Sachs's Hong Kong-based research analysts was preparing to issue a sector report on the global underwater communications lines industry - predicting price erosion for companies in that business. An investment banker suggested that the Research Division get input from certain issuers "BEFORE this piece is published." Governali responded: "we wouldn't think of publishing this without direct input from the company and their review of the report."

75. In September 2000, following news of a possible merger between two large telecommunications providers, Governali wrote a research report on one of the companies. Because that company was on a list of companies for which Goldman Sachs was then providing advisory services (which could raise regulatory and other issues), he first "had to talk to our bankers and [a]wyers before it went out."

76. Goldman Sachs initiated research coverage of Amazon.com on November 11, 1999. The previous day, an analyst sent to Amazon a "nearly final draft" of the initial research report. The draft did not include the rating to be assigned by Goldman Sachs, but did include the analyst's evaluative comments and his financial models about the company. Amazon responded with requests that the analyst change some phrases. Most of these comments were incorporated by the analyst before submitting the research report to the firm's compliance department.

77. Goldman Sachs initiated research coverage of Internet equipment provider Equinix on August 17, 2000. A draft of the research call note that omitted the price target and omitted the Market Outperformer rating in all places except one was sent to the company by the analyst on August 16 for comments before it was publicly released.

78. In an August 22, 2000, e-mail, copied to an analyst, an investment banker writes: "[analysts] had a meeting with [WebEx] yesterday (which I attended part of). We discussed initiation strategy and decided that likely to initiate (probably MO, no price target) shortly with a note to be followed with a report by end of next week (given additional info from yesterday's meeting and desire to iterate a bit with the company). [WebEx] was more than happy with that approach as felt be beneficial to stock price to stagger good news."

79. On January 19, 2001, WebEx management wrote to the analyst: "As discussed, I want NO mention of any funding issues in this written report. I told you if people called and asked why your plan shows a need for modest funding, you can verbally tell them that management believes they have adequate funding and it is probably because managem[en]t has a less conservative plan than you do." The analyst responded, with an attached revised report: "The webx [sic] funding issues is a key area of investor concern, as such will remove any mention from the top section of the note, but will address it in a manner this [sic] is consistent with your recommendation for verbal responses to client inquiries in a later section. To exclude it completely detracts from the intention of the note, which is to address key investor concerns upfront and then give them a reason to buy the stock." WebEx management responded: "Thank you. This is much better. The other note said the company has a funding problem, but we think it isn't very big. This says that the company believes it has enough funds, but there could be a problem; and if there is it will be minor. Thanks again for the change." The research report was issued on January 22, 2001.

80. In April 2001, an analyst sent a draft research report to Global Crossing Ltd. in advance of public release of the report. She received "extensive comments" from company officials. The analyst wrote Governali that she had "included [the issuer's] extensive comments. . . I also said we had slightly smoothed the negative edge (emphasis section up front and text) from when they saw the report." Moreover, the analyst said she "promised them I'd re-email the final report tonight so they could see our changes." Despite all this, the issuer's officers were still concerned and wanted to talk to Governali "so that 'such an important industry report which is going to have profound implications' will be to their liking."

Goldman Sachs's investment banking division had input into the hiring of Goldman Sachs's analysts

81. Recruitment of analysts involved input from investment banking among others.

82. In January 2000, an analyst and an investment banker stated that because Goldman Sachs's research resources were inadequate in a particular sector, they needed to "[h]elp prevent Goldman, Sachs & Co. from turning away substantial revenue business." They proposed that a European analyst be reassigned temporarily to cover the U.S. sector until a permanent analyst in the U.S. was hired.

83. In March 2000, Goldman Sachs was considering hiring an analyst from a competing firm. The day the candidate came to Goldman Sachs to interview, his first interview of the day was with an investment banker.

84. An undated Goldman Sachs chart listed analyst openings in each of the firm's research sectors. For each vacancy, the chart lists a corresponding "IBD Action Step." For the PC Hardware sector, research was ready to hire a candidate, but had to "[c]heck with IBD team . . . comfort level with proposed analyst experience." In the CommTech sector, there was "[c]oncern whether IBD will be comfortable with 'development time period' (i.e., bringing up to speed an internal hire and resulting suspension of coverage)." In Wireless Services, one offer had been extended but, because the offeree also wanted to bring with him to Goldman Sachs two associates and one assistant, "IBD approval [was] required for the junior team hire. Equities is OK." In the publishing sector, a targeted replacement had been identified, but "IBD approval required/confirm with [investment banker.]" For Taipei Head and CommTech, a written offer required "IBD approval."

B. GOLDMAN SACHS SUPERVISORY PROCEDURES

Some supervisory procedures were in place, but contacts between investment banking and research were not adequately monitored

85. Goldman Sachs's policy permitted analysts to "respond to generic requests for company or industry information from members of the Investment Banking Division. For all other requests, the analyst should ask the banker whether the request has been cleared by Research Management. If the request has not been cleared by Research Management, the analyst must wait until the banker has the appropriate clearance before responding to the request."

86. In general, during the Relevant Period, Goldman Sachs failed to adopt sufficient procedures and processes to ensure that the interaction between research analysts and investment bankers or covered companies did not expose analysts to pressures or influences from investment banking or covered companies.

87. While one role of research analysts was to produce objective research, Goldman Sachs also encouraged some analysts to participate in investment banking-related activities. As a result of their participation in investment banking-related activities, those analysts were subject to pressures or influences from investment banking and covered companies. Goldman Sachs had knowledge of these pressures or influences yet failed adequately to manage them to protect the objectivity of the firm's published research.

88. Goldman Sachs's policies during the Relevant Period prohibited "convey[ing] the conclusion of pending research to anyone who does not need to know" (including bankers and covered companies), required that analysts only "disseminate material research . . . via a written product through the regular channels," and proscribed discussing "'material' pending research" which "could include initiations of coverage and changes in ratings, estimates, or price targets" with anyone outside the firm or investment bankers. On certain occasions, these policies were not consistently followed by analysts at the firm.

Some supervisory procedures were not adequate

89. The procedures or mechanisms in place to monitor or supervise communications (including e-mails) between investment bankers and research analysts were not adequate. Similarly, the procedures or mechanisms to monitor or supervise communications between analysts and covered companies were not adequate. Additionally, there were inadequate procedures or mechanisms to restrict, monitor, or supervise e-mail communications sent by analysts from their home e-mail addresses.

C. SUMMARY

90. Goldman Sachs portrayed its research as objective.

91. At the same time, the reputation and involvement of its analysts in investment banking activities was, at times, a factor used to solicit investment banking business. Analysts assisted in evaluating and marketing certain investment banking business. Goldman Sachs implemented a variety of programs that resulted in close cooperation between research analysts and investment bankers in certain aspects of their work. These included the research alignment initiative, consideration of investment banking comments in performance evaluations of analysts, development of business plans, a firmwide award for cross-selling, and analyst-created lists of investment banking transactions in their sectors. At times, analysts assisted investment banking by identifying potential investment banking opportunities, assisted in pitching investment banking business, and assisted in marketing securities being underwritten by Goldman Sachs.

92. Goldman Sachs research was subject to pressures or influences by investment bankers. At times, bankers were allowed to review and comment on research reports and pressured analysts about the timing to initiate coverage on specific issuers. At least one analyst felt it was sometimes difficult to voice strong opinions. Some pitchbooks to issuers described how analysts assisted investment banking efforts of the firm in preparing for an underwriting and assisting in marketing IPO securities. Issuers sometimes were told which analysts would be assigned to cover their companies and a list of that analyst's ratings for other companies.

93. Investment bankers had input into decisions regarding the initiation and termination of research coverage on particular issuers. At times, Research sought approval from investment bankers before dropping coverage and investment bankers suggested certain issuers that Research should be covering. In some instances, analysts dropped coverage of issuers without first having downgraded the rating.

94. Draft research reports and expected ratings sometimes were shared by analysts with investment bankers and issuers. In some cases, analysts made changes to draft research reports after getting feedback from issuers. Investment bankers also had input into the hiring of Goldman Sachs analysts.

95. Goldman Sachs did not adequately monitor contacts between research and investment banking. In some cases, the supervisory procedures were not adequate. The procedures in place to monitor communications between analysts and investment bankers or covered companies were not adequate.

III.

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 Act proscribes the use of dishonest or unethical practices in the securities business. Broker-dealers are required pursuant to Securities Rule 21 VAC 5-20-280 E 12 to comply with NASD Conduct Rules. NASD Conduct Rule 2110 requires broker-dealers to observe high standards of commercial honor and just and equitable principles of trade. Broker-dealers also are required to supervise adequately the conduct of its employees and agents pursuant to Securities Rule 21 VAC 5-20-260.

3. Goldman Sachs failed to ensure that analysts who issued research were adequately insulated from pressures and influences from covered companies and investment banking. This conduct was a dishonest or unethical practice under Securities Rule 21 VAC 5-20-280 E 12.

4. Goldman Sachs failed reasonably to supervise its employees to ensure that its analysts who issued research were adequately insulated from pressures and influences from covered companies and investment banking as required by Securities Rule 21 VAC 5-20-260.

5. Nothing in this Order shall be construed as a finding or admission of fraud.

IV.

ORDER

On the basis of the Findings of Fact, Conclusions of Law, and Goldman Sachs's consent to the entry of this Order, for the sole purpose of settling this matter, prior to a hearing and without admitting or denying any of the Findings of Fact or Conclusions of Law,

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

IT IS HEREBY ORDERED:

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 the Act on behalf of the Commonwealth of Virginia as it relates to Goldman Sachs, relating to certain research or banking practices at Goldman Sachs.
2. Goldman Sachs will refrain from violating Securities Rules 21 VAC 5-20-280 E 12 and 21 VAC 5-20-260 pursuant to § 12.1-15 and will comply with the Act and the Regulations in connection with the research practices referenced in this Order and will comply with the undertakings of Addendum A, incorporated herein by reference.
3. If payment is not made by Goldman Sachs or if Goldman Sachs defaults in any of its obligations set forth in this Order, the Commission may vacate this Order, at its sole discretion, upon 10 days notice to Goldman Sachs and without opportunity for administrative hearing.
4. This Order is not intended by Commission to subject any Covered Person to any disqualification under the laws of any state, the District of Columbia or Puerto Rico (collectively, "State"), including, without limitation, any disqualification from relying upon the State registration exemptions or State safe-harbor provisions. "Covered Person" means Goldman Sachs, or any of its officers, directors, affiliates, current or former employees, or other persons that would otherwise be disqualified as a result of the Orders (as defined below).
5. It is further ordered that this Order constitutes and includes a waiver by the Commission of any and all limitations and disqualifications that may ensue from the entry of this Order that would otherwise affect, restrict or limit the business of Goldman Sachs and its predecessors, subsidiaries and affiliates or their ability to participate in offerings or avail themselves of exemption, including, without limitation, the Uniform Limited Offering Exemption, as and to the extent now or hereafter adopted by the Commission.
6. It is further ordered that this order is not intended to prohibit Goldman Sachs from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, transfer agent, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with purchase or sale of any security.
7. The SEC Final Judgment, the NYSE Stipulation and Consent, the NASD Letter of Acceptance, Waiver and Consent, this Order and the order of any other state in related proceedings against Goldman Sachs (collectively, the "Orders") shall not disqualify any Covered Person from any business that they otherwise are qualified, licensed or permitted to perform under the applicable law of Virginia and any disqualification from relying upon this state's registration exemptions or safe-harbor provisions that arise from the Orders are hereby waived.
8. For any person or entity not a party to this Order, this Order does not limit or create any private rights or remedies against Goldman Sachs including, without limitation, the use of any e-mails or other documents of Goldman Sachs or of others regarding research practices, limit or create liability of Goldman Sachs or limit or create defenses of Goldman Sachs to any claims.
9. Nothing herein shall preclude Commonwealth, 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 Goldman Sachs in connection with certain research and/or banking practices at Goldman Sachs.

V.

MONETARY SANCTIONS

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that:

1. As a result of the Findings of Fact and Conclusions of Law contained in this Order, Goldman Sachs shall pay a total amount of \$110,000,000.00. This amount shall be paid as specified in the SEC Final Judgment as follows:
 - a. Goldman Sachs shall pay the sum of \$25,000,000 to the states Goldman Sachs's offer to state securities regulators (50 states plus the District of Columbia and Puerto Rico, shall be referred to as the "state settlement offer"). Upon execution of this Order, Goldman Sachs shall pay the sum of \$545,408.00 to the Treasurer, Commonwealth of Virginia as a civil monetary penalty pursuant to § 13.1-521 of the Act. The total amount to be paid by Goldman Sachs to state securities regulators pursuant to the state settlement offer may be reduced due to the decision of any state securities regulator not to accept the state settlement offer. In the event another state securities regulator determines not to accept Goldman Sachs' state settlement offer, the total amount of the Virginia payment shall not be affected, and shall remain at \$545,408.00.
 - b. Goldman Sachs will pay \$25,000,000 as disgorgement of commissions, fees and other monies, as specified in the SEC Final Judgment.
 - c. Goldman Sachs will pay \$50,000,000, to be used for the procurement of independent research, as described in the SEC Final Judgment.
 - d. Goldman Sachs will pay \$10,000,000, to be used for investor education, as described in Addendum A, incorporated by reference herein.
2. Goldman Sachs agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to payment made pursuant to any insurance policy, with regard to all penalty amounts that Goldman Sachs shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. Goldman Sachs further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any penalty amounts that Goldman Sachs shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. Goldman Sachs understands and acknowledges that these provisions are not intended to imply that the Commission would agree that any other amounts Goldman Sachs shall pay pursuant to the SEC Final Judgment may be reimbursed or indemnified.

(whether pursuant to an insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit with regard to any state, federal or local tax.

NOTE: A copy of Addendum 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-2003-00017
DECEMBER 4, 2003**

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

v.

J.P. MORGAN SECURITIES, INC.,
Defendant

CONSENT ORDER

J. P. Morgan Securities, Inc. ("JPMSI") is a broker-dealer registered in the Commonwealth of Virginia; and

Coordinated investigations into JPMSI's activities in connection with certain of its equity research practices during the period of approximately July 1999 through June 2001, have been conducted by a multi-state task force and a joint task force of the U.S. Securities and Exchange Commission, the New York Stock Exchange ("NYSE"), and the NASD, Inc. ("NASD") (collectively, the "regulators"); and

JPMSI 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

JPMSI has advised regulators of its agreement to resolve the investigations relating to its research practices; and

JPMSI agrees to implement certain changes with respect to its research practices, and to make certain payments; and

JPMSI 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 (the "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 FACT

A. Background

1. This action concerns the period of July 1, 1999 to June 30, 2001 (the "relevant period"). During that time, several JPMSI predecessor entities engaged in both research and investment banking ("IB") activities.

2. JPMSI is a subsidiary of J. P. Morgan Chase & Co. ("JPMC"), a Delaware corporation with its principal place of business in New York, New York. Respondent JPMSI provides equity research, sales, and trading services; merger and acquisition advisory services; private banking services; and underwriting services.

3. Hambrecht & Quist LLC ("H&Q") engaged in research and IB activities until it was acquired by The Chase Manhattan Corporation ("Chase") in December 1999. H&Q was merged into Chase Securities Inc. ("CSI"), a subsidiary of Chase, and the merged entity engaged in research and IB activities under the name CSI and the trade name Chase H&Q. CSI did not publish equity research prior to the acquisition of H&Q by Chase.

4. In 1999, JPMSI engaged in both research and IB activities as a subsidiary of J. P. Morgan & Co. Incorporated ("JPM"). In December 2000, Chase acquired JPM, creating the combined entity JPMC. In May 2001, CSI and JPMSI merged, and CSI assumed the name JPMSI. Since then, JPMSI has engaged in equity research under the name JPMSI and the trade names J. P. Morgan and J. P. Morgan H&Q.

5. JPMSI is registered with the Securities and Exchange Commission ("Commission"), is a member of the New York Stock Exchange and NASD, and is licensed to conduct securities business on a nationwide basis.

6. For purposes of this Consent, the JPMSI predecessor entities that engaged in both research and investment banking activities—H&Q, CSI, and JPMSI—shall be referred to, collectively, individually, or in any combination, as the "Firm."

B. Overview

1. During the relevant period, the Firm sought to do and did IB business with many companies covered by its Research Department. Research analysts were encouraged to participate in IB activities, and this participation was a factor used by the Firm to evaluate analysts and determine their compensation. In addition, the decision to initiate and maintain research coverage on certain companies was coordinated with the IB Department and influenced by IB interests.

2. As a result of the foregoing, certain research analysts were subject to IB influences and conflicts of interest between supporting the Firm's IB business and publishing objective research.

3. The Firm had knowledge of these IB influences and conflicts of interest yet failed to establish and maintain adequate policies, systems, and procedures reasonably designed to detect and prevent the influences or manage the conflicts.

C. Research Analyst Participation in Investment Banking Activities

1. Research analysts were responsible for providing analyses of the financial outlook of particular companies in the context of the business sectors in which those companies operated and the securities market as a whole.

2. Research analysts evaluated companies by, among other things, examining financial and other information contained in public filings; questioning company management; investigating customer and supplier relationships; evaluating companies' business plans and the products or services offered; building financial models; and analyzing competitive trends.

3. After synthesizing and analyzing this information, research analysts drafted research reports and more abbreviated "notes" that typically contained a recommendation, a price target, and a summary and analysis of the factors upon which the analyst relied in issuing the price target and recommendation.

4. The Firm published research on publicly traded companies, and this research was distributed to the Firm's institutional and private equity customers. Published research was made available through mailing lists, the Firm's website, and subscription services provided by First Call. In addition, the research was made available to some retail customers of another broker dealer and offered via websites offering brokerage and investment services.

5. In addition to performing these research functions, certain research analysts participated in IB activities.

6. These IB activities included identifying and/or vetting companies as prospects for IB services, participating in pitches of IB services to companies, participating in "roadshows" associated with underwriting transactions, and speaking to investors to generate interest in underwriting transactions.¹ These IB activities also included participating in commitment committee and due diligence activities in connection with underwriting transactions and assisting the IB Department in providing merger and acquisition ("M&A") and other advisory services to companies.²

7. The Firm encouraged all research analysts to support its businesses, including the Firm's IB business, and in some cases, research analysts were expected to participate in the foregoing IB activities. The level of analyst participation in these IB activities was sometimes significant.

8. For example, in an e-mail dated May 23, 2000, and sent by a research analyst to the Head of Research at RESPONDENT JPMSI, the analyst requested approval to hire another junior analyst. The analyst stated: "**I'd like to get yet another junior.** The deals are really dragging me down, and I'm not spending nearly enough time with buy-side clients. Even though the market is crap, we continue to process deals in hopes of market recovery. I am trying to remove myself from the day-to-day production of research. I actually like doing it, but it's not what you pay me for." (Emphasis in the original.)

9. IB business was an important source of revenue for the Firm. In 2000, the combined operating revenues for JPM and Chase totaled \$32.793 billion, and the combined revenues for the Equity Capital Markets ("ECM") and the M&A Departments at JPM and Chase totaled \$1.687 billion.

D. Participation in Investment Banking Activities Was a Factor in Evaluating and Compensating Research Analysts

1. The compensation system at the Firm provided an incentive for research analysts to participate in IB activities and to assist in generating IB business for the Firm.

2. The performance of research analysts was evaluated by the Head of Research through an annual review process and, where not set by contract in advance, the research analyst's bonus was determined through this process.

3. The Head of Research evaluated the research analysts' job performance through responses to self-evaluation forms; surveys of the sales force; input from the IB, Sales, and Trading departments; consideration of market factors and rankings by investor publications; and, in some cases, written "team reviews" submitted by individual investment bankers.

4. The self-evaluation forms contained questions on areas constituting the major allocations of research analysts' time, including questions relating to participation in IB activities.

5. In response to questions relating to participation in IB activities, research analysts reported one or more of the following: their IB activities, accomplishments, and goals; their participation in lead- and co-managed underwritings; and the fees associated with IB transactions on which the analyst worked.

6. For example, the "Investment Banking Activities" section of a 1999 self-evaluation form queried: "In what way have you assisted in discovering or executing banking transactions (i.e., due diligence sessions, pitches)? Be specific." In response, a research analyst stated: "Helped put together and develop pitch books for KV Pharma and King Pharmaceuticals;" "Helping to come up with creative ideas and contributing to brainstorming sessions with bankers – ad hoc and in biweekly Monday meetings;" "Have a good handle on which companies will need financing in the near future and

¹ A "roadshow" is a series of presentations made to potential investors in conjunction with the marketing of an upcoming underwriting.

² The "commitment committee" was responsible for, among other things, evaluating and then either approving or rejecting the Firm's participation in initial public offerings ("IPOs") and other IB transactions.

stepping up research efforts to ensure a place for H&Q on the cover;" and "Increasing responsibility in the office allows [another research analyst] to travel and be more active in pitching and winning deals with new companies."

7. In another example, a research analyst stated the following in response to IB questions contained in his year 2000 self-evaluation form: "Completed 21 investment banking deals, including 11 lead-managed deals. Biotechnology new issues have generated \$70 million in primary fees in fiscal year 2000 YTD. In 2000 we were ranked #1 in healthcare common equity offerings by U.S. Issuers, raising \$3.9 billion and capturing 21.9% market share." In addition, the analyst listed all deals on which he worked that were "Lead-Managed," "Co-managed," "Pitched," and "Pending."

8. The self-evaluation forms conveyed to research analysts some of the criteria used to evaluate their performance. As reflected in the IB questions contained in the forms, contribution to the Firm's IB business was an important part of the analyst's job.

9. In some circumstances, research analysts requested that individual investment bankers complete a written "team review" of the analyst, which was then submitted to the Head of Research. In these reviews, the investment banker described his or her contact with the analyst and the analyst's participation in IB activities, including pitch and underwriting activities.

10. For example, in a 1999 review of a research analyst by an investment banker, the banker stated the following: "I have worked extensively with [this research analyst] over the past year. I probably speak to her everyday [sic] on topics ranging from executing live transactions, evaluating potential business opportunities, drafting 'pitch' presentations, coordinating scheduling and marketing efforts across IB, and strategizing about the Internet practice. I consider [her] to be a partner in our building of the firm's Internet franchise and, as a result, probably work more closely with her than anyone in IB."

11. Research analysts sometimes provided reviews of investment bankers in conjunction with the banker's performance review. In these reviews, analysts described their contact with the banker and referenced participation in specific IB activities.

12. For example, in an e-mail dated Dec. 14, 2000, a research analyst provided a review of an investment banker. The analyst stated: "I've probably had more opportunity to work with [this investment banker] and observe him in action than anybody else in the bank. [The banker and I] have been in sync about where the quality banking prospects are so that I don't have to fend off garbage banking deals. • **Built semiconductor banking practice from nothing:** . . . [The banker and I] have built a profitable semiconductor banking practice, starting from literally zero four years ago. In 1999, we posted a couple of successes. With a touch more luck, we could have doubled the revenue potential this year. We are still banking the semiconductor sector pretty much the way we did three years ago, which means going after a dozen or so key prospects (split evenly between existing public companies and quality IPO candidates) and then doing everything else opportunistically rather than strategically. The message here is that we have not developed the semiconductor banking machine that our strongest dozen competitors have, and that makes it hard to gain market share." (Emphasis in the original.)

13. Based upon comments in the self-evaluations completed by research analysts and the reviews completed by both analysts and investment bankers, the two groups worked closely on IB transactions and shared a common goal of building the Firm's IB business.

14. The Head of Research reviewed the self-evaluations and team reviews and provided a verbal and/or written evaluation of the research analyst. The written evaluations provided feedback on the analyst's performance during the year and in certain cases highlighted the analyst's participation in IB activities, including the revenues generated by IB transactions on which the analyst worked.

15. For example, the Head of Research at JPMSI stated the following in the first paragraph of his year 2000 evaluation of a research analyst: "By every measure, [the research analyst] had an outstanding year in 2000. Most importantly, [he] led the charge in establishing J.P. Morgan as the #1 biotech shop with a resounding 21.9% share of the underwriting wallet in his sector. [He] supported 21 transactions this year, 11 of which were as the lead underwriter. The revenue attributable to these transactions is over \$70 mm." Later in the evaluation, the Head of Research stated that the analyst's contribution to the Firm's "corporate underwriting business" was "enormous."

16. Comments by the Head of Research conveyed to research analysts the performance areas that were important to research management and the Firm. Based upon these comments, certain analysts were encouraged to participate in IB activities, increase IB revenues, and enhance the reputation of the Firm's IB franchise.

17. Research analyst bonuses were determined by the Head of Research in his discretion after considering several factors that contributed to the analyst's market value.

18. The research analyst's contribution to and impact on the Firm's IB business, and the fees generated by IB transactions on which the analyst worked, were some of the factors used to determine the analyst's bonus. If the analyst did not disclose in the self-evaluation form the fees generated by the IB transactions on which he or she worked, the Head of Research requested this information from the ECM Department at the Firm.

E. Investment Banking Interests Influenced the Firm's Decision to Initiate and Maintain Research Coverage

1. In general, the Firm determined whether to initiate and maintain research coverage based upon institutional investors' interest in the company and/or based upon IB considerations, such as attracting companies to generate IB business or maintaining a positive relationship with existing IB clients.

2. Regarding companies for which the Firm lead- or co-managed an underwriting transaction, research coverage was typically initiated and maintained for a period of time beyond the transaction.

3. The Head of Research was responsible for approval of the determination to issue, maintain, and drop research coverage. The Head of Research solicited input from other departments, including the IB Department, to determine the coverage preferences of those departments. IB considerations sometimes played a role in the decision to initiate and maintain research coverage.

4. For example, after the merger of JPM and Chase, the Director of U.S. Equity Research at JPMSI sent an e-mail entitled: "U.S. Equity Research Organizational Announcement." Attached was an internal memorandum "outlining Investment Banking Coordination Responsibilities," which

stated: "One of the important duties of the Director of Research is to work closely with Investment Banking to ensure that research resources are appropriately aligned with identified investment banking opportunities."

5. In addition, the Head of Research requested that research analysts obtain from investment bankers lists of companies that the bankers wanted under coverage.

6. For example, an e-mail dated November 4, 1999, from the Head of Research to all equity research analysts, stated: "[T]alk to your counterparts in IB and prepare a list of the companies that they would like you to cover. Please be sure to have a conversation with the appropriate bankers before you submit your list."

7. Some research analysts and investment bankers actively coordinated the initiation and maintenance of research coverage based upon, among other things, IB considerations. This coordination consisted of meetings and communications by telephone and e-mail.

8. For example, a research analyst sent an e-mail, dated March 9, 2001, to the Director of U.S. Equity Research at JPMSI which stated: "[Another research analyst] and I have prioritized the coverage area in coordination with banking, and we are moving to a more **targeted** (no pun intended) investor marketing plan which leverages our combined coverage. We are clearly focused on building both the brokerage and banking businesses. We are actively discussing trimming a couple of the less relevant of these companies and replacing them with larger market capitalization firms which we can bank. In total, I would look to us to initiate on **two** non-deal related stocks this year, keeping the total names under coverage around the current level. In addition to two non-deal initiations, we have mapped out the year and have planned original theme pieces and other value-added activities for investors including non-deal related road shows. **Banking:** We already did KPMG, for which I believe we were paid **\$12.5 M**. And we have been mandated as a senior co-manager on Accenture, another large transaction. Beyond these, a likely opportunity later in the year is **Technology Partners International**, an outsourcing consultant. We are well positioned to lead this company's IPO. [An investment banker] leads the coordinated banking effort covering the sector, and we are working closely with [him] and the other coverage bankers to bank existing companies and to identify quality early stage firms." (Emphasis in the original.)

9. In another example, an investment banker sent an e-mail, dated May 17, 2001, to a group of biotechnology analysts and bankers to arrange a meeting to discuss "coverage strategy." The e-mail stated: "On the heels of [a research analyst and a banker] leaving, we probably need to discuss coverage strategy. Also would be a good time to talk about where we might shake loose some business. . . . M&A ideas to pitch, IPOs coming in next wave etc."

10. In another example, a research analyst sent an e-mail, dated March 1, 2001, to biotechnology analysts and the Head of U.S. Equity Research that contained the following subject line: "bankers wish list for biotech research." The e-mail stated: Attached is the culmination of the survey of bankers – as a reminder, I asked them for 3 groups of names. 1. Companies we 'owe' research to since they paid us in 2000 and are not covered by research today. Most of these are from analysts who have left (on the H&Q side) and we haven't even had research take a formal look at some of these, which is obviously the first step for deciding on what to do. 2. Public companies where bankers have a good relationship and think we can get banking business if research is on board. The goal here is to have research evaluate the story as soon as possible, so we can either go full bore on getting the business, or re-assign bankers elsewhere if research is negative. 3. Private companies that are focus names—we'll commit to have research spend time with these companies as much as possible before the IPO to put us in the best position possible to win the books. Also, research is going to add their own names if some of their favorites were not mentioned by any of the bankers."

11. The following e-mails reflect the IB influences in the initiation and maintenance of research coverage as perceived by an individual research analyst.

12. In an e-mail dated November 2, 2000, a research analyst provided a team review of an investment banker that stated the following: "I have worked with [the banker] on the International Rectifier (IRF) account since around mid-1998 and he lobbied me very actively to pick up coverage so that JPM could go after the banking business, especially equities but also potentially debt, M&A, etc. My attitude initially was that IRF is a low-grade semiconductor company that would be hard to sell to buy-side clients, but [he] kept pushing the banking potential. Finally, I picked up coverage in December 1998. Then, IRF threw sand in our eyes by giving the lead to Morgan Stanley. We picked up coverage when they needed us most at the bottom of the semiconductor cycle and supported the stock enormously. When the plum banking assignment came up that would pay us back for our support, IRF handed the deal to MS, which had zero history with the company."

13. In an e-mail dated August 8, 2000, the same research analyst stated: "Given how thoroughly we just got screwed on IRF, [the Head of Research of JPMSI] is not interested in hearing stories about how if we initiate coverage, then we will be **considered** for banking business. He wants to hear that the banking business is locked up. We've been screwed too many times. [O]ur not covering IFX [Infineon Technologies] is a direct result of being offered money-losing table scraps in the IPO. I guess I'm still in the same old place. Initiating coverage of IFX some time in the next six months is no problem, especially as [a research analyst] is going to have to cover it eventually anyway. It doesn't make sense to have a European semiconductor analyst that does not cover Infineon." (Emphasis in the original.)

14. In addition, consideration of "investment banking sensitivities" was included in a discussion of the Firm's "Long Term Buy" ("LTB") research rating.

15. An e-mail dated December 29, 2000, which was sent to all Chase H&Q research analysts, including the Head of Research at Chase H&Q, described the stock rating system to be used after the merger of JPM and Chase.

16. The e-mail's subject line stated: "Public dissemination of coverage and Re-Rating your stocks—IMPORTANT*****." The e-mail stated: **The guidelines for determining the rating are below. . . . Long-Term Buy: 0-10% outperformance of the relevant benchmark target within a twelve to eighteen month time frame. Shorter-term catalysts to explain the 'longer-term' nature of the recommendation, or in certain circumstances investment banking sensitivities, are appropriate for this designation.**" (Emphasis in the original.)

F. The Firm Provided Certain Companies With an Informal "Warranty" of Research Coverage in Conjunction With Investment Banking Transactions

1. The Firm typically initiated research coverage on companies that engaged the Firm in an IB transaction.

2. H&Q and Chase H&Q had an informal policy of providing certain companies with a "warranty" of research coverage in conjunction with IB transactions.

3. For example, in an e-mail dated November 22, 2000, and sent by the Head of eBusiness at Chase H&Q to the Head of Research at Chase H&Q and others, the Head of eBusiness stated the following: "I think that it is important to guaranty [sic] some level of consistent coverage for our fee paying IB clients. In terms of a 'warranty period,' I think that a period of 18 months would be a fair and appropriate coverage period, as well as a reasonable timeframe for a company to show progress and perhaps 'earn' an extension of coverage. During this transition period...we could offer more of a general, maintenance-only, 'no name' research coverage...[that] could be done by a 'team' of junior associates from both the IB and research side of the house as part of the 'pod' approach to a sector. This coverage would allow the pod to continue to maintain a relationship with the company, generating additional income from the account."

4. The Firm verbally promoted this warranty research coverage in conjunction with pitches of IB business to companies, and research coverage would be maintained on certain companies subject to the warranty.

5. For example, in an e-mail dated October 20, 1999, an investment banker sent an e-mail to senior executives at H&Q that contained the following subject line: "Follow Up on a Pitch Please." The e-mail stated: [Head of IB :] Please call...[the] Chairman of CCC Info. Services...Script: You know that [a team of investment bankers] presented to the board yesterday and that we are very excited about the prospect of serving as agent for a private round with financial and strategic parties and as lead manager on their IPO in early 00. Our pitch is...4. Best aftermarket 'warranty.'"

6. Also, in an e-mail dated December 19, 2000, from an investment banker to a member of the board of directors of Epicor Software Corporation ("Epicor"), the banker stated: "Just a heads up that the extended warranty provided for Epicor is running out." In an e-mail dated December 22, 2000, the board member replied: "not a surprise. thanks for sticking to the deal."

G. The Firm's Pitch Materials Contained Discussions of Research Coverage

1. During the relevant period, companies considered research coverage to be an important factor in selecting a firm for an underwriting transaction.

2. In certain pitch materials, the Research Department, and research analysts in particular, were described to implicitly suggest that the Firm would provide favorable research coverage after the IB transaction.³ The research analyst's reputation and industry ranking, statistics regarding the percentage of lead- and co-managed IPOs currently under coverage, and the Firm's "aftermarket support" were promoted in pitch materials. In addition, the Firm utilized "case studies" of companies under coverage that included charts comparing the dates of positive published research to the company's stock price. The case studies showed the stock price increases following the analyst's positive recommendation and/or placement on the analyst's or the Firm's "Focus Lists."

3. For example, in an e-mail dated February 23, 2000, an investment banker forwarded pitch materials to an employee of Participate.com to persuade the company to employ the Firm as an underwriter for an upcoming IPO and private offering. The pitch materials identified the research analyst who would cover the company after the IB transaction. In pages captioned "[Research analyst's name]: Authoritative Voice in the Marketplace," "case studies" were presented on the analyst's past coverage of two companies: Wireless Facilities and AppNet.

4. The case studies contained charts that showed the stock price increases following placement of the stocks on the analyst's and Firm's focus lists. The "Wireless Facilities Case Study" stated the following: "Chase H&Q adds WFI to Focus List: WFI gains 11.7% (1/27/00)." The "AppNet Case Study" stated the following: "Chase H&Q adds AppNet to Focus List: AppNet gains 7.5% (8/2/99)...While on [the research analyst's] Focus List, AppNet appreciates 309% (8/2/99-10/26/99)."

5. Also presented were excerpts of positive commentary by the research analyst that accompanied the Buy ratings and/or placement on the focus lists.

H. Research Analysts Were Visible on Stocks to Generate Investment Banking Business

1. Research analysts were encouraged to increase their visibility, or level of communication, on certain stocks to generate IB business.

2. Lists of stocks were distributed to various departments at the Firm, including the Research Department.

3. The "ECM [Equity Capital Markets] target list" contained stocks of companies from which the Firm was seeking IB business during the next eighteen (18) months.

4. The "trading focus list" contained stocks of companies from which the Firm was seeking IB or underwriting business during the next three months.

5. The Research Department and other departments were at times encouraged to increase the trading volume of the stocks on the lists for IB purposes.

6. The following e-mail, dated May 11, 2001, and sent from an investment banker to individuals on the "IB ebusiness" distribution list, explains the rationale for the two lists: "The criteria for being on the [ECM target] list is...potential equity business over the next 18 months where we would like to target the resources of the firm to win the books. Our objective is to make sure we are being as proactive as possible from an equity perspective, and focusing the equity resources of the firm on these targets to help you win the books for these transactions. The criteria for being placed on

³ "Pitch materials" are the written materials provided to the management of an issuer in conjunction with the Firm's pitch or presentation of its strengths and capabilities in conducting an upcoming IPO or other IB transaction.

the trading focus list is an investment banking event with [sic] the NEXT THREE MONTHS. This investment banking list could be an m&a event or an equity event. In cases where the investment banking event will occur far in advance, our first approach is to work with the traders, analysts and sales traders to increase our trading activity naturally, before we start spending the firm's capital." (Emphasis in the original.)

7. Trading rank was important to a company's choice of a firm for IB transactions, and the Firm's trading rank was often promoted in pitch materials provided to potential IB clients.

8. For example, pitch materials provided in conjunction with the AppNet IPO contained a section entitled, "Commitment to Corporate Clients Delivers Institutional Credibility and Trading Strength." There, H&Q's Autex trading rank is identified as "#1," "#2," "#3," and "#4" in the stocks of specific companies that engaged H&Q for an IPO.

9. Certain research analysts were encouraged to increase their visibility, or level of communication, on stocks contained in the lists.

10. For example, in an e-mail dated September 27, 2000, from an investment banker, to a research analyst and others, the banker forwarded September's focus list and stated: "The list is okay but we are falling way short on a few names. Vicinity we are not AT [sic] the goal, we are below the goal for the past two months. This is a problem. On Intertrust and Mypoints, we are not even close to our targets. Less critical, but we need to do a better job. Concord EFS paid us \$5 MM last year and we are the #18 trader of that stock. Also disappointing...[Y]ou [research analyst] need to get more visible on these names with the salespeople so that trading doesn't have that excuse to hide behind."

I. Payments for Research

1. During the relevant period, H&Q and Chase H&Q made seven payments totaling \$1,312,500 for research issued in conjunction with five underwriting transactions in which the Firm was a lead- or co-manager.

2. H&Q and Chase H&Q made these payments for research without disclosing or ensuring their disclosure in offering documents or elsewhere.

J. The Firm Failed to Adequately Supervise Its Research and Investment Banking Departments

1. While the role of research analysts was to produce objective research, the Firm also encouraged them to participate in IB activities.

2. In addition, the Research and IB Departments had a formal connection within the Firm's organizational structure. From February to December 2000 at JPMSI, the Head of Research had a dual reporting line to both the Head of Equities and the Head of Investment Banking.

3. Also, in 2000 at Chase H&Q, research analysts were organized and placed into "Analyst Sub-pods" for purposes of managing and monitoring their IB activities. Research analysts reported to "Sub-pod Managers," who were investment bankers and were responsible for the day-to-day coordination of the research analysts' IB activities.

4. The Analyst Sub-pod system for Chase H&Q "Internet Research and Banking" is explained in a May 2000 Chase H&Q interoffice memorandum which contained a "coordination chart." In the chart, the Analyst Sub-pods had a direct reporting line to the Sub-pod Managers. The memorandum stated the following: "The 'Analyst Sub-pod' is the organizational engine for all that we do." Sub-pod Managers, who were investment bankers, were responsible for the "pipeline management and...the day-to-day coordination of the particular analyst as it relates to investment banking activity. The Sub-pod Manager is not responsible for executing all of that particular analyst's transactions, but is responsible for ensuring that appropriate resources are allocated. As such, the Sub-pod Manager should expect to spend a majority of his time banking the Sub-pod Analyst with the balance of his time spent banking other analysts as the demands of the business require it." (Emphasis in the original.)

5. The Analyst Sub-pod system was created to provide "enhanced coordination between Banking and Research."

6. As a result of the foregoing, research analysts were subject to IB influences and conflicts of interest between supporting the Firm's IB business and publishing objective research. The Firm had knowledge of these IB influences and conflicts of interest yet failed to manage them adequately to protect the objectivity of published research.

7. The Firm failed to establish and maintain adequate policies, systems, and procedures reasonably designed to ensure the objectivity of its published research. Although the Firm had some policies governing research analysts' activities during the relevant period, these policies were inadequate and did not address the IB influences and conflicts of interest that existed.

II.

CONCLUSIONS OF LAW

1. The State Corporation Commission ("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 Commission finds that JPMSI failed to establish and enforce written supervisory procedures reasonably designed to ensure that analysts were not unduly influenced by investment banking concerns in violation of Securities Rule ("Rule") 21 VAC 5-20-260.

3. The Commission finds that JPMSI engaged in acts and practices that created or maintained inappropriate influence by the IB Department over research analysts, therefore imposing conflicts of interest on its research analysts, and failing to manage these conflicts in an adequate or appropriate manner in violation of Rule 21 VAC 5-20-280 E 12.

4. The Commission finds that JPMSI made payments for research to other broker-dealers not involved in an underwriting transaction when the Firm knew that these payments were made, at least in part, for research coverage, and by failing to disclose or cause to be disclosed in offering documents or elsewhere the fact of such payments constituted a violation of Rule 21 VAC 5-20-280 E 12.

5. 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 JPMSI's consent to the entry of this Order, for the sole purpose of settling this matter, prior to a hearing and without admitting the Findings of Facts or Conclusions of Law;

IT IS HEREBY ORDERED:

1. This Order concludes the investigation by the Commission's Division of Securities and Retail Franchising ("Division") and any other action that the Division could commence under applicable law on behalf of the Commonwealth of Virginia as it relates to JPMSI, relating to certain research practices at JPMSI.

2. JPMSI will refrain from violating Rule 21 VAC 5-20-260 and 21 VAC 5-20-280 E 12 in connection with the research practices referenced in this Order and will comply with Rule 21 VAC 5-20-260 and 21 VAC 5-20-280 E 12 in connection with the research practices referenced in this Order.

3. IT IS FURTHER ORDERED that:

As a result of the Findings of Fact and Conclusions of Law contained in this Order, JPMSI shall pay a total amount of \$80,000,000.00. This total amount shall be paid as specified in the SEC Final Judgment as follows:

\$25,000,000 to the states (50 states, plus the District of Columbia and Puerto Rico). Upon execution of this Order, JPMSI shall pay the sum of \$545,408.00 of this amount to the Treasurer of the Commonwealth as a civil monetary penalty pursuant to § 13.1-521 of the Act. The total amount to be paid by JPMSI to state securities regulators pursuant to the state settlement offer may be reduced due to the decision of any state securities regulator not to accept the state settlement offer. In the event another state securities regulator determines not to accept JPMSI's state settlement offer, the total amount of the Virginia payment shall not be affected, and shall remain at \$545,408.00;

\$25,000,000 as disgorgement of commissions, fees and other monies as specified in the SEC Final Judgment;

\$25,000,000, to be used for the procurement of independent research, as described in the SEC Final Judgment;

\$5,000,000, to be used for investor education, as described in Addendum A, incorporated by reference herein.

JPMSI agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to payment made pursuant to any insurance policy, with regard to all penalty amounts that JPMSI shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. JPMSI further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any penalty amounts that JPMSI shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. JPMSI understands and acknowledges that these provisions are not intended to imply that Virginia would agree that any other amounts JPMSI shall pay pursuant to the SEC Final Judgment may be reimbursed or indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit with regard to any state, federal or local tax.

JPMSI shall comply with the undertakings of Addendum A, incorporated herein by reference.

If payment is not made by JPMSI or if JPMSI defaults in any of its obligations set forth in this Order, the Commission may vacate this Order, at its sole discretion, upon 10 days written notice to JPMSI and without opportunity for administrative hearing.

4. This Order is not intended by the Commission to subject any Covered Person to any disqualifications under the laws of any state, the District of Columbia or Puerto Rico (collectively, "State"), including, without limitation, any disqualifications from relying upon the State registration exemptions or State safe harbor provisions. "Covered Person" means JPMSI, or any of its officers, directors, affiliates, current or former employees, or other persons that would otherwise be disqualified as a result of the Orders (as defined below).

5. This Order constitutes and includes a waiver by the Commission of any and all limitations and disqualifications that may ensue from the entry of this Order that would otherwise affect, restrict or limit the business of JPMSI and its predecessors, subsidiaries and affiliates or their ability to participate in offerings or avail themselves of exemptions, including, without limitation, the Uniform Limited Offering Exemption, as and to the extent now or hereafter adopted by the Commission.

6. This Order is not intended to prohibit JPMSI from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, transfer agent, or entity of person required to be registered under the Commodity Exchange Act, or as an affiliated person of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.

7. The SEC Final Judgment, the NYSE Stipulation and Consent, the NASD Letter of Acceptance, Waiver and Consent, this Order and the order of any other State in related proceedings against JPMSI (collectively, the "Orders") shall not disqualify any Covered Person from any business that they otherwise are qualified, licensed or permitted to perform under applicable law 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.

8. For any person or entity not a party to this Order, this Order does not limit or create any private rights or remedies against JPMSI including, without limitation, the use of any e-mails or other documents of JPMSI or of others regarding research practices, or limit or create liability of JPMSI or limit or create defenses of JPMSI to any claims.

9. 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, or administrative, civil, criminal, or injunctive relief, against JPMSI in connection with certain research practices at JPMSI.

NOTE: A copy of Addendum 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-2003-00018
DECEMBER 11, 2003**

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

v.
LEHMAN BROTHERS INC.,
Defendant

CONSENT ORDER

The State Corporation Commission ("Commission") and Lehman Brothers Inc. ("Lehman" or "Defendant") are desirous of settling this matter as hereafter set forth and agree to the entry of this Order for the purpose of settling this matter.

Defendant has voluntarily waived all rights to a hearing upon entry of this Order, and has consented to the entry of this Order, and

The Commission finds this Order necessary and appropriate in the public interest for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, and

The Commission, having the power to administer and provide for the enforcement of all provisions of the Act, upon due consideration of the subject matter hereof, and having confirmed information concerning or relating to offers for sale and/or sale of securities into, within or from the Commonwealth of Virginia, has determined as follows:

DEFENDANTS

1. Defendant has been a broker-dealer registered with the Commission's Division of Securities and Retail Franchising since October 1, 1964. It is a wholly owned subsidiary of Lehman Brothers Holdings Inc., a Delaware corporation. The firm is a member of all principal securities and commodity exchanges, as well as the NASD. Lehman's principal offices are located at 745 Seventh Avenue, New York, New York. Lehman provides the full range of services offered by a multi-purpose investment bank, including equity and fixed income sales, trading and research, investment banking, private equity and private client sales.

STATEMENT OF FACTS

I. BACKGROUND

A. The Investment Banking Function at Lehman

2. Lehman is a global investment bank providing financial advisory, capital markets, and underwriting services, among other services, to its clients. From at least July 1999, through at least June 2001, Lehman's investment banking department ("Investment Banking"), among other activities, engaged in securities offerings, including initial public offerings ("IPOs"), secondary offerings and debt financings, and provided merger and acquisition and other advisory services for its clients.

3. From at least July 1999 through at least June 2001, Lehman competed vigorously with other investment banks to be selected as the lead manager for securities offerings, in part because of the financial rewards associated with that role. In addition, Lehman hoped to gain ongoing transactional and advisory work from existing and potential clients, including secondary offerings and financial advisory arrangements. In 2001, Lehman served as lead manager for sixty-six equity deals, and earned approximately \$1.3 billion from underwriting services.

B. Lehman's Global Equity Research Department

4. During 1999 and 2000, Lehman's Equity Research Department ("Research") employed approximately 400 people and expanded to 600 employees in 2001, including approximately 100 senior research analysts and 200 junior research analysts. During 2001, Research covered approximately 80 industries and approximately 900 U.S. companies. Senior research analysts in the United States reported to the Director of U.S. Equity Research, who reported to the Managing Director of Global Equity Research.

5. Research analysts collect financial and other information about a company and its industry, analyze that information, and develop recommendations and ratings regarding a company's securities. In addition, research analysts also examine the financial condition of selected publicly traded companies that are believed to be of potential investment value. Lehman analysts also make evaluations of companies' expected earnings, revenue

and cash flow, operating and financial strengths and weaknesses, and long term viability and dividend potential. Lehman analysts produced written research materials including research reports and First Call notes regarding companies and industry sectors.

6. Lehman's research was distributed to both institutional clients and retail investors. Lehman distributed its research product directly to its own client base, comprised of institutional investors and high net worth individual retail investors. In June 1999, Lehman entered into a "strategic alliance" with Fidelity Investments. Among other things, the "strategic alliance" provided Fidelity's retail customers with access to Lehman's research, along with other independent research. Lehman also sold its research product to other broker-dealers that in turn provided the research to their retail customers. Lehman also made its research available to the public through services such as Thomson Financial/First Call and Multex.com, Inc. Ratings of Lehman's analysts were freely and publicly available to retail clients through a number of media outlets.

7. At the top of its research reports that were devoted to specific stocks, Lehman assigned to the stock a "rank" according to a 5-point scale reflecting how the analyst believed the stock would perform relative to the market generally. During the period June 1999, through December 2000, Research used the following ratings: 1-Buy (expected to outperform the market by 15 or more percentage points), 2-Outperform (expected to outperform the market by 5-15 percentage points), 3-Neutral (expected to perform in line with the market, plus or minus 5 percentage points), 4-Underperform (expected to underperform the market by 5 –15 percentage points), 5 – Sell (expected to underperform the market by 15 or more percentage points). In January 2001, Lehman changed the names of these ratings to 1-Strong Buy, 2-Buy, 3-Market Perform, 4-Market Underperform and -Sell. The definitions remained the same. The definitions for the ratings were provided to Lehman clients on a monthly basis. Commencing in March 2001, the definitions appeared on all of Lehman's research reports.

8. Although Lehman purported to rank stocks according to a 5-point scale, in fact, during the relevant period Lehman analysts never assigned a 5-Sell rating to a domestic company and almost never assigned a 4-Underperform to a stock.

9. Lehman's research reports also assigned to the stock a price target designed to reflect the price at which the analyst believed the stock would trade within a time period that was identified in some reports and unidentified in others. Commencing in March 2001, the relevant time period for the price target appeared in Lehman's research reports.

II. LEHMAN'S RESEARCH ANALYSTS WERE SUBJECTED TO CONFLICTS OF INTEREST ARISING FROM LEHMAN'S USE OF RESEARCH TO OBTAIN INVESTMENT BANKING BUSINESS

10. Lehman held out its research analysts as providing independent recommendations and analysis of companies and stocks upon which investors could rely in reaching investment decisions. Lehman promoted its research for the "quality and timeliness of its investment recommendations."

11. In fact, Lehman's research analysts were, at times, subjected to conflicts of interest arising from the close relationship between Research and Investment Banking. Such conflicts of interest, at times, adversely impacted the independence of Lehman's public stock recommendations.

A. Lehman Used Research To Obtain Investment Banking Business

12. Analysts worked closely with members of Investment Banking and other departments to generate business for Lehman. Analysts often worked with Investment Banking to identify corporate finance opportunities and to win corporate finance business for Lehman, including identifying private companies appropriate for an IPO, as well as identifying possible transactions, such as secondary offerings or debt financings, once a company had completed an IPO. To this end, analysts were expected to have yearly target and alignment meetings with their Investment Banking counterparts.

13. Lehman aligned its analysts with an Investment Banking team. Analysts' responsibilities included providing research to their Investment Banking counterparts so that the bankers could leverage the research product into a full service relationship with a company.

14. Recognizing the strategic importance of this alignment, on August 5, 1999, Lehman's Managing Director of Global Equity Research circulated a memorandum to Global Research Directors (the "August 5 Memorandum"), which detailed key areas of "strategic importance." The memorandum concluded that in order for Lehman to be more profitable, Investment Banking and Research should work together to increase Lehman's number of equity originations stating:

Investment Banking Partnership – This is a key challenge for not only research but the entire global equities business. Increasing our equity origination will be one of the most important accomplishments of the firm. One of the most significant ways we will increase the equity division's total revenue to more than \$2 billion is by substantially increasing origination.

15. The August 5 Memorandum also set forth a "new paradigm" for Lehman's investment banking relationships stating:

the analyst is THE key driver of the firm relationship with its corporate client base. Analysts need to accept responsibility and use it to expand the franchise and **DRIVE PROFITABILITY EVERY DAY BUT IN A WAY THAT IS CONSISTENT WITH BUILDING A LONG TERM FRANCHISE.** (Emphasis in original.)

16. The August 5 Memorandum emphasized the research analyst's role in identifying potential banking business for Lehman stating: "global research must drive the banking targeting efforts, consistent with the 'new paradigm.'" The August 5 Memorandum stated further: "to ensure we have proper recognition of analysts' impact on banking, we have to closely track every dollar of IBD revenue (equity, M&A, and debt) by analyst."

17. On September 14, 1999, the Managing Director of Global Equity Research again emphasized the importance of the Investment Banking/Research partnership in a memo directed to "Coverage Analysts." "Coverage Analysts" were provided with an attachment dated September 13, 1999, entitled "1 + 1 = \$" (the "September 13 Attachment") that advised them that the successful partnership of Research and Investment Banking was a key to Lehman's growth as a firm. The first page of the September 13 Attachment contained a chart reflecting that an "enhanced Banking/Research partnership" would strengthen brand perception, increase origination fee share and ultimately lead to a higher Lehman stock price.

18. The September 13 Attachment explained numerous ways in which Lehman Research and Investment Banking could be beneficial to each other and stated that "seamless Banking/Research coverage" was critical to all Investment Banking products. The attachment also contained a chart captioned "Secret to Success -- Lehman Wins Business When Banking And Research Are Aligned." The September 13 Attachment explained that the Research/Investment Banking partnership at Lehman would be institutionalized through executive committee support, targeting and alignment, full partnership accountability between bankers and research analysts, and reinforced through compensation.

19. The September 13 Attachment also instructed that bankers and research analysts would be required to complete performance reviews of their counterparts. Research analysts would be evaluated on, among other things, "the extent to which the analyst places origination as [a] priority," and "adds value in building banking business," and the analyst's "effectiveness in [the] pitching process."

20. Finally, the September 13 Attachment explained that Lehman would reinforce the partnership of Research and Banking through compensation. Analyst compensation would be "impacted by contribution to banking" and "reviewed with appropriate banking group heads." The primary criterion in evaluating analyst compensation would be Investment Banking Revenue.

21. As part of the relationship between Investment Banking and Research, analysts often communicated with their Investment Banking counterparts several times a week, or even daily. These communications included identifying banking opportunities for Lehman. For example, on July 7, 2000, one senior analyst wrote the following email to members of Investment Banking:

FYI, I have recently come across several great companies in the wireless data services industry, an incredibly hot sector for most technology investors. . . . In my view, we as a firm (tech & telecom) should get all over this sector . . . I think we should be very coordinated in attacking this banking windfall.

22. In another instance, on September 21, 2000, that same analyst wrote an email to a company to offer research coverage in exchange for naming Lehman as a co-manager on a deal stating:

since the announcement of the Chase/JPM merger, I'm sure you've come to the same realization that the merger would result in just one firm covering your stock . . . If . . . the loss of one analyst is of concern, was wondering if the opportunity is available to add a jnr (sic) co-manager to ensure same number of coverage analysts.

23. Investment bankers at times suggested that analysts issue positive research coverage on a company to help the bankers win business. Investment bankers would sometimes recommend potential banking clients to Lehman's research analysts. Lehman's investment bankers understood that if Lehman's research department would cover a potential banking client, this could strengthen Lehman's chances to obtain banking business from that client. For example, on October 4, 2000, a banker sent the following email to an analyst:

Spoke with [a Worlstor employee] over at Worlstor. Here's the scoop and what we need to do. They are meeting with other bankers over the next 4 days . . . They like [Salomon] because of their research report. Action plan for us includes: . . . We need to say [Lehman's analyst] is publishing a big storage ssp report and we would like to make Worlstor the feature of the report like Solly did MSI and StoraGenetworks. [Analyst] you need to call (the CEO) and the CFO at least 3 times between now and the Board meeting . . . The message is we luv you and have been waiting for you. [Analyst] your call and enthusiasm is key.

24. Another banker wrote the following email to investment bankers and analysts on June 29, 2000:

Our competition on the CPQ debt deal is likely the following . . . Given their stock price action after today's downgrade by [SSB], we are the highest equity recommendation. The bottom line is that they need a very strong story around their credit and we, with [analyst] are in the best position to deliver.

25. Investment bankers also routinely reviewed drafts of analysts' research reports before publication for several purposes including to insure that the reports were consistent with generating investment banking revenue from the covered company.

B. Lehman Gave Its Analysts Financial Incentives To Use Research To Generate Investment Banking Revenue

26. Lehman tied the compensation of senior research analysts to the amount of Investment Banking revenue the analyst helped to generate. Lehman analysts typically received relatively small base salaries and considerably larger bonuses. Bonuses were determined by, among other factors, the amount of Investment Banking revenue generated by companies the analysts covered. The bonuses Lehman paid to analysts dwarfed their base salaries and gave the analysts a strong personal financial incentive to obtain Investment Banking business. This compensation structure, which in part linked analyst compensation to Investment Banking business, created conflicts of interest.

1. Certain Analyst Employment Contracts Tied Bonuses Directly To Investment Banking Revenue

27. Six of Lehman's approximately 100 senior research analysts had employment contracts that linked their bonuses directly to Investment Banking revenue generated by companies they covered. Depending on the contract, the analyst's entire bonus or an additional Investment Banking Department ("IBD") bonus was paid based on the aggregate IBD net revenues and fees generated by companies covered by the analyst or by companies where the analyst significantly contributed to the Investment Banking business.

28. For example, one analyst's contract provided for an annual salary of \$200,000, and a minimum bonus of \$4.8 million. The minimum bonus could increase in \$1 million increments, based on the Aggregate IBD Net Revenues and Fees for the performance year as follows:

Minimum Bonus	Aggregate IBD Net Revenues and Fees
\$4.8 million	Less than \$50 million
\$5.8 million	At least \$50 million but less than \$75 million
\$6.8 million	At least \$75 million but less than \$100 million
\$7.8 million	At least \$100 million but less than \$125 million
\$8.8 million	\$125 million or more

Aggregate IBD Net Revenues and Fees were defined as revenues and fees booked or received by Lehman from companies covered by the analyst or from companies whose award of business to Lehman was attributable to the analyst's "significant contribution."

29. Another analyst's contract provided for the payment of a yearly salary of \$200,000, a minimum bonus of \$3.3 million and an additional bonus equal to 5% of Investment Banking revenues and fees generated by companies covered by the analyst or companies where the analyst substantially contributed to the award of Investment Banking business.

2. Lehman Compensated Other Analysts Based In Part On Their Contribution To Investment Banking Revenue

30. Analysts who did not have specific clauses in their contracts related to Investment Banking revenue were nevertheless compensated financially if companies they covered generated Investment Banking revenue.

31. The Director of U.S. Equity Research applauded analysts for generating Investment Banking business. In an email dated January 21, 2001, an analyst described that he had arranged a meeting between Lehman analysts and investment bankers and a large blue chip company. The analyst explained that his relationship with the company resulted in Investment Banking receiving ten potential projects for the company. The Director of U.S. Equity Research congratulated the analyst in an email dated January 22, 2001, stating "well done, we need senior bankers to see who (the analysts) have the real relationships with the big companies. This is how we justify big comp. packages."

32. Lehman also monitored the Investment Banking revenue that analysts generated. For example, Lehman maintained a document titled "Performance Review" that, among other information, kept track of the Investment Banking and trading revenue attributable to each senior analyst. Senior analysts were shown the Performance Review during their reviews.

33. For each analyst, Investment Banking also generated a spreadsheet known as a "Project Review" that identified Investment Banking projects with revenue booked for the year and projects expected to generate revenue in the next year. The Director of U.S. Equity Research used the Project Reviews in conducting both mid-year and year-end evaluations for senior analysts.

34. Senior analysts also frequently provided lists of the Investment Banking deals they had worked on during the year to the Director of U.S. Equity Research in connection with consideration of their year-end bonuses. For example, in December 1999, one senior analyst (who did not have an Investment Banking revenue clause in his contract) wrote in an email to the Director of U.S. Equity Research that his research accomplishments and banking revenue were relevant to his compensation. In describing his research accomplishments, the analyst noted that he had written frequently on a company and the company had raised \$430 million in equity and high yield financing through Lehman. The analyst also noted that he had written frequently about another company and, as a result, Lehman was going to appear "out of order" on the cover of a convertible deal and had a "good shot" at leading an upcoming equity deal. With respect to banking revenue, the analyst wrote:

I believe the revenues generated by my universe generated at least as much as other research universes, excluding the Delta Three IPO (which RSL's CEO will tell I (sic) was a key part of why LB won the books [Delta Three was covered by another analyst] and for which I believe I should get credit.

35. One Senior analyst sent an email on February 9, 2000, to Lehman's Managing Director of Global Research and the Director of U.S. Equity Research requesting a promotion to vice president. In support of this request, the analyst wrote, among other things, that the analyst's estimated Investment Banking revenue for the year 2000 was greater than \$5 million and added "1999 Banking Revenue \$1.2M solely due to research relationship."

36. In addition, senior analysts were required to complete business plans each year. The business plans included an entire section devoted to banking and asked analysts to identify the transactions they are working on or foresee for the coming year. The business plans asked senior analysts to report:

- their plan to add stocks to coverage for either sales and trading and/or banking;
- whether Research/Banking target and alignment discussions were reflected in the business plan; and
- whether analysts had completed the selection of "franchise and super league clients" with their bankers.

37. Investment bankers participated in analyst evaluations by providing written comments on a form titled "Year End Performance Review for Analysts (to be completed by Bankers)" to the heads of Research. Bankers were asked to evaluate:

- Whether the analyst places origination as a priority;
- The analyst's contribution toward building relationships with clients in the sector;
- The analyst's effectiveness in the pitching process;

- The quality of the analyst's reputation with banking clients; and
- The analyst's level of initiative in providing the banker with value-added ideas for banking clients.

38. The bankers' comments were relayed to analysts during their reviews. For example, one senior analyst's review stated the analyst "cares a great deal about competing for business and winning." Another senior analyst's review stated "strong originator/rainmaker," "strong pitchman" and "very supportive of banking effort; coordinate with banking team on targeting major clients."

39. Analysts were also criticized, at times, if they failed to work closely with Investment Banking. For example, in one instance, a senior analyst was encouraged to have more frequent contact with her Investment Banking counterpart.

40. One analyst sent a memorandum dated December 22, 1999, to the Managing Director of Global Equity Research and the Director of U.S. Equity Research stating that he was "surprised" by the review he received from an investment banker (the "December 22 Memorandum"). As a result, the analyst met with the Investment Banker in order to receive feedback and "improve the relationship between research and Investment Banking."

41. The analyst described his meeting with the banker in the December 22 Memorandum stating:

[banker] has concluded, after seeing me for 2-3 months (based on two pitches and other feedback) that I may not have the capabilities to be a "banking analyst"; i.e., telling companies what they want to hear and not what I think!" . . .

Both parties acknowledge that the Ansell pitch was ineffectual. I should not have been there to start with – despite the potential fee! I was told that the bankers working on the pitch were "upset" that I would not present their material . . . Ansell had an inherent growth rate of 0-2% as compared to Merrill's forecast of 10% per annum. A major fee was "lost."

42. The analyst also commented that the bankers told him "that the analysts need to be available at extremely short notice to assist in pitch meetings." The analyst defended himself, in part, by commenting that he spent an "inordinate" amount of time on other banking prospects.

43. Finally, the analyst listed several steps for the future to improve his relationship with Investment Banking and stated:

during my one year tenure at [another bank], we tripled our M&A business. I created a fundamental research 'halo effect' for 'banking-oriented' analysts. I believe banking could further leverage our sector research into the VC community (and elsewhere).

C. Lehman Used The Promise Of Future Research Coverage To Obtain Investment Banking Business

44. Lehman used the promise of future research coverage to obtain Investment Banking business. Implicit in Lehman's marketing efforts was the assurance that Lehman's research would be favorable and that Lehman research would raise the price of the issuer's stock.

45. Lehman competed with other investment banks for selection as lead underwriter for securities offerings, including IPOs, secondary offerings and debt offerings. As part of this competition, Lehman met with companies to present its qualifications. Research analysts sometimes attended these meetings, often referred to as "pitch" meetings, with members of Investment Banking in an effort to win Investment Banking business for Lehman. Lehman research analysts typically advised companies how best to position and market the company's story to investors.

46. At such meetings, Lehman often presented companies with marketing materials known as pitchbooks that touted Lehman's underwriting qualifications. The pitchbooks typically featured the Lehman analyst who would be covering the company after a banking transaction and stated that the analyst would issue research on the company as soon as the "quiet period"(a period of time after an offering during which the underwriting firms cannot publish research) ended. The pitchbooks on occasion provided examples of how coverage by the analyst had been viewed favorably by the market and had a positive impact on a company's stock price.

47. For example, a pitchbook for the Zymogenetics potential IPO promised that the analyst would issue a comprehensive report on the company twenty-five days after pricing (at the end of the quiet period), would regularly educate investors on the company's story and would publish reports and notes on the company on a timely basis. The pitchbook also promised that Lehman would provide "pricing, trading and aftermarket support" by, among other things, providing on-going research coverage. Under the heading "Preliminary Terms and Marketing Conditions," the pitchbook stated that the analyst would provide "high quality research support critical to a strong aftermarket."

48. A pitchbook for a Dyax PIPE offering described Lehman's prior research support of the company following its IPO, noting that Lehman had issued "8 notes and one extremely comprehensive report on [company], as compared to 5 notes and 1 report by [co-manager], and 2 notes and 1 report by [co-manager]." The pitchbook also noted that "Lehman's Equity Analysts . . . have been strong supporters of the stock," adding that since the analysts published their research report the stock had increased twenty percent.

49. The pitchbooks often noted the analyst's role in marketing the offering. Some pitchbooks listed research as a term of the underwriting and stated that the "[analyst] will lead a powerful marketing campaign." The Zymogenetics pitchbook described the analyst as the "preeminent force" in the biotechnology sector and stated that the analyst has "outsold other analysts in previous equity offerings," and "outsold the other co-managers." Other pitchbooks described the analyst as the "axe" in the industry and provided numerous examples of how the analyst's positive coverage had positively impacted a company's stock price.

50. For example, a pitchbook for Yadayada dated November 10, 2000, contained a section entitled "[Analyst] Moves Markets" and contained graphs for two companies, Triton and Alamosa, covered by the analyst. The graph subtitled "[Analyst] Moves Triton" demonstrated a decrease in stock price following the analyst's downgrade of Triton and an increase in the stock price following an upgrade by the analyst. Similarly, the graph subtitled

"[Analyst] Upgrades Alamosa" shows an increase in Alamosa's stock price following a voicemail blast by the analyst to clients reiterating the analyst's buy recommendation.

51. Similarly, a pitchbook for Texas Instruments dated June 2000, included a graph of Micron Technology's stock price demonstrating that the stock price increased after the analyst re-initiated coverage and rose again when the analyst raised earnings per share ("EPS") targets. The pitchbook also contained a graph of Intel's stock reflecting price increases after the analyst re-initiated coverage and again when the analyst raised the EPS target. Other pitchbooks contained similar statements about the manner in which the market received Lehman's research.

52. The decision whether Lehman would initiate research coverage of a company was often tied to the opportunity for Lehman to earn Investment Banking fees from the covered company. For example, in February 2000, Lehman bankers questioned a delay in Lehman initiating research on Curagen Corporation following Lehman's participation in a convertible bond offering by Curagen. The analyst had explained he needed more time and more meetings with the company before issuing a report. The bankers then questioned the delay in an email to the Director of U.S. Equity Research who responded that the analyst was doing a great job given his many responsibilities, and asked the bankers:

[W]hen did we decide to promise equity research for a small convertible bond deal. What were the economics & how much did we make.

One of the bankers responded to the question stating:

We made \$1.5m in banking and Lehman made \$12m as of last Thursday. The real question is could we just put a note out that would satisfy the company and get us in the next deal.

53. On another occasion, the Director of U.S. Equity Research received inquiries from Lehman employees on behalf of officers of public companies seeking to have Lehman initiate research coverage of their company. The Director of U.S. Equity Research responded by directing such inquiries to Investment Banking. For example, in February 2000, the Director of U.S. Equity Research advised a Lehman employee in an email:

the proper process is to introduce the principals to someone in investment banking. If we have the resources and there appears to be significant revenue potential, banking will request research.

54. Similarly, in October 1999, the Director of U.S. Equity Research advised another Lehman employee in an email:

doing business is not enough, we need to do a lot of business to commit resources. Finally, you should find a contact in banking to channel these requests as well.

55. In another email in March 2000, an analyst explained to his product manager his reason for initiating coverage on a stock listed only in Mexico that will be of "little interest to our US institutional salesforce." The analyst wrote:

The reason for coverage is there is a potential banking deal (big \$\$\$) we're trying to get later this year. The bankers just want the report out. They don't care about promoting the stock and realize it is of little interest to my client base.

III. CONFLICTS OF INTEREST, AT TIMES, RESULTED IN THE PUBLICATION OF EXAGGERATED OR UNWARRANTED RESEARCH

56. The relationship between Investment Banking and Research as alleged herein at times created conflicts of interest for Lehman's research analysts. At times, the financial incentives and pressure on analysts to assist in obtaining investment banking deals and to maintain banking relationships adversely affected the integrity of the analysts' ratings, price targets, and research reports. As the following examples demonstrate, these conflicts of interest caused analysts, at times, to issue more positive research reports or ratings, and to avoid downgrades or negative reports regarding companies that were investment banking clients.

A. Razorfish, Inc.

57. Lehman co-managed the IPO for Razorfish, Inc. ("Razorfish") in April 1999. The Razorfish IPO was priced on April 26, 1999, at \$16 per share and opened for trading on April 27, 1999, at \$56 per share but ended the day at \$35 per share. On May 3, 1999, with Razorfish trading at \$37 per share, the Lehman analyst confided to an institutional investor in emails that he was not sure of the rating and price to assign to the company when he initiated coverage. The institutional investor replied:

unless you anticipate Lehman getting I-business from them, I would rate them neutral with a price target of \$20 (especially if you read the last half of the WSJ article on them last week, which pointed out that their business lacks any real depth)

The analyst responded:

Well, I they are a banking client so I expect a 2 rating with a price target just a shade above the trading price

58. The institutional investor and the analyst discussed the effect of the conflict of interest on the analyst's research in the following exchange:

Institutional Investor: I understand – business is business. But I feel bad for those naïve investors who assume that sell-side analysts are objective! I wish some buy-side institutions would get together to establish an independent equity research consortium with analysts paid for on a subscription basis or something . . .

Analyst: well, ratings and price targets are fairly meaningless anyway, buy-side generally ignores, commentary is what matters and I'll be a 3-Neutral in my comments . . . but, yes, the "little guy" who isn't smart about the nuances may get misled, such is the nature of my business.

59. On May 24, 1999, with Razorfish trading at \$36, Lehman initiated coverage of Razorfish with a 2-Buy rating and a price target of \$48.

B. RSL Communications, Inc.

60. Lehman had a substantial Investment Banking relationship with RSL Communications, Inc. ("RSL"). Lehman was a joint lead underwriter in a high yield note placement by RSL in December 1998, provided advisory services in October 1999, was the lead underwriter when RSL spun off Delta Three Communications, Inc. in an IPO in November 1999, and co-managed two debt offerings for RSL in February 2000. On at least three occasions during 1999-2000, the Lehman analyst covering RSL was "held off" from downgrading his analysis of RSL for "banking reasons." One of these instances occurred in February 2000.

61. On November 1, 1999, with RSL trading at \$21 5/16, the Lehman analyst covering RSL had rated RSL a 1-Buy with a price target of \$40. In February 2000, with RSL trading at \$17, the analyst drafted a new report in which he lowered his revenue projections for RSL and lowered the price target to \$35. The first sentence of the text of the draft report read "we are revising our Revenue and EBITDA estimates for RSL to reflect declining revenue from U.S. prepaid and wholesale and a more moderate ramp in European retail revenue." Based on his prior experience, the analyst knew that his attempt to express his more negative view of RSL would be resisted by Investment Banking within Lehman. On February 24, 2000, the analyst sent an email to his supervisor captioned "RSL Note – Bankers are going to resist" in which he enclosed his draft report and stated:

Below is a draft of a note lowering our numbers on RSL (maintaining our 1 rating) Recall we were a co. in their recent convert deal. I've wanted to lower numbers for several months now, but have held back as 1) we led the DeltaThree IPO (was owned by RSL) and more recently were on the cover of the convert. . . . I've given our coverage banker the courtesy of seeing this and preparing the company. **I know they are going to resist.** I've been quiet on this too long, and I plan on going ahead anyway. [Emphasis in original]

62. The Lehman investment banker for RSL prevailed on the analyst not to issue the report and instead to meet with RSL management and to reconsider his analysis. As a result, on March 2, 2000, the analyst issued a report that maintained the \$40 price target. The first sentence of the text of the report touted that "RSL's European unit posted strong sequential revenue growth in Q4 . . ." The analyst issued additional reports on RSL on March 9 and March 10, 2000, in which he raised the price target to \$50.

63. On March 16, 2000, the investment banker for RSL sent an email to the analyst's supervisor praising the analyst's "open-mindedness" and crediting the analyst with raising RSL's stock price stating:

I just wanted to drop you a note to let you know of [analyst's] recent helpfulness in a touchy situation with RSL Communications. RSL is a telecom company . . . and is the parent company of Delta 3 for which we recently led an IPO. Following RSL's recent convertible notes issue (for which we were a co), [analyst] was inclined negatively toward the Company's prospects; however, he agreed to hold off on a downgrade (which would have harmed an important banking relationship) at the request of banking until he could hear out management. [Analyst] met with the Company's CEO and was convinced positively, he issued a positive report and was the axe behind significant positive momentum to the stock. The CEO praised [analyst's] open-mindedness and has indicated we will be included in the underwritings of their coming spin-offs. Thus, [analyst] has helped our banking relationship with the client significantly.

The supervisor forwarded the email to the analyst and wrote "good job & congratulations."

64. In May 2000, the analyst issued another report reiterating the 1-Buy rating on the stock and retaining the \$50 price target despite the fact that the stock price had declined to \$15.50 per share and the company had missed its revenue estimates.

65. By August 14, 2000, RSL's stock price had declined to approximately \$4. In an August 14, 2000, email, the analyst candidly complained to his supervisor about the influence Investment Banking had exerted over his research during the preceding year:

Enough is enough. It's hard enough to be right about stocks, it's even harder to build customer relationships when all your companies blow up, you knew they were going to, and you couldn't say anything. Every single one of my companies has blown up in some fashion (or will – GBLX) and with the exception of PGEX, I haven't been able to speak my mind. I think I've been a team player, and I believe it is now imperative for the franchise that I be able to take action on bad situations

66. The analyst voiced particular concerns about RSL stating "for the record, I have attempted to downgrade RSLC THREE times over the last year, but have been held off for banking reasons each time." (Emphasis in original)

67. Even after this complaint, the analyst did not downgrade RSL but rather simply was permitted to drop coverage in September 2000, devoting a few short sentences to the company in a sector report.

C. DDi Corporation

68. A pitchbook for the DDi Corporation ("DDi") IPO offering described Lehman's highly regarded research team, listed the analysts' combined years of experience and strong research qualifications and promised research coverage for DDi after the IPO.

69. The pitchbook contained an example of the mock research report that the two Lehman analysts who covered DDi's industry sector would write for DDi, including a graphic of the research report's cover page with a 1-Buy rating.

70. DDi opened for trading on April 10, 2000. On June 28, 2000, the analyst whose name appeared on the mock research report sent an email to the Director of U.S. Equity Research stating that Lehman was a "co" on the DDi IPO and that the analyst should have initiated coverage when the company went public in April but did not due to other demands on his time including the need to cover two banking deals where Lehman was the lead. The analyst complained that both DDi and Lehman bankers were pushing the analyst to initiate coverage with a 1-Buy rating. The analyst wrote:

Now company DDi and parent (Bain Capital), and bankers are obviously pushing for coverage and unhappy. Problem is that the shares IPOed at \$14 are at \$28 today. Bankers want a 1-Buy and are pushing hard. I am concerned that given the current expectations, the shares could sell off after the quarter is reported in July and could easily drop to \$20. I am ready with initiation a FC [First Call] note and could go out this week, but am not sure how best to deal with this situation. Bankers are not really satisfied with a 2.

71. Despite his misgivings, the analyst initiated coverage of DDi on June 30, 2000, with a 1-Buy rating and a price target of \$36. DDi closed on June 30, 2000, at \$28 1/2. On July 31, 2000, DDi closed at \$22.

D. RealNetworks, Inc.

72. In June 1999, Lehman served as a co-managing underwriter for a secondary offering of common stock by RealNetworks, Inc. Lehman maintained a 1-Strong Buy rating on the stock from July 1999 through June 2001, despite the fact that the stock lost approximately 90% of its value, falling from a high of \$78.59 per share in February 2000, to a low of \$7.06 in April 2001.

73. In the first few days of July 2000, RealNetworks' stock price dropped from \$52 per share on July 3, 2000, to \$38 per share on July 11, 2000. Lehman issued a research report on July 11, 2000, responding to what the report described as a weakness in the stock price caused by investor concern over RealNetworks' exposure to online advertising revenue. The report sought to calm investors' fears by stating that online advertising figures would have "minimal" impact on RealNetworks overall revenue. The report reiterated the 1-Buy rating assigned to the stock and maintained the \$150 price target. The report further advised investors that the price weakness presented a buying opportunity and that Lehman remained "bullish" on the stock.

74. By July 18, 2000, the stock price had climbed to \$56 per share. The analyst issued another research report that again advised investors to ignore concerns about RealNetworks' exposure to online advertising revenue stating "we believe recent articles about reductions in online spending is (sic) completely over-hyped – in terms of its overall impact on RealNetworks." The report also reiterated the 1-Buy rating assigned to the stock and maintained the \$150 price target for the stock.

75. On July 19, 2000, the analyst issued a third report commenting on RealNetworks' second quarter earnings release. The report described the second quarter results as "stellar" and reiterated the 1-Buy rating assigned to the stock and maintained the \$150 price target for the stock.

76. Despite the analyst's support for RealNetworks, on July 18, 2000, the analyst advised an institutional investor to short the stock stating "RNWK has to be a short big time." The next morning the institutional investor emailed the analyst "nice call on rnwk . . . I mean all the upside from crappy ad business . . . why aren't people jumping up and down and saying this sucked??? . . . nice call on your part anyhow."

77. The analyst replied: "we bank these guys so I always have to cut the benefit of the doubt."

78. RealNetworks' stock price continued to fall throughout July 2000 and its price continued to drop through the end of 2000. By December 2000, RealNetworks had fallen to approximately \$12 per share having fallen from its February 2000, high of \$78 per share.

79. In January 2001, that same analyst wrote to an institutional investor "if it's in my group it's a short" despite the fact that the analyst maintained 1-Strong Buy ratings on all of his stocks.

E. Broadwing, Inc.

80. In January 2001, an analyst was about to initiate coverage of Broadwing, Inc. ("Broadwing"). On January 24, 2001, an investment banker sent an email to the analyst asking him if Broadwing's numbers were good. The analyst responded that the numbers were "very much in line." The banker asked the analyst to raise the price target. When the analyst questioned the rationale, the banker explained that the increase was necessary to help Lehman win investment banking business.

Banker: any chance of nudging up that price target?

Analyst: isn't it better for your cause to start conservative, and move up targets, rather than start high and use up dry powder?

Banker: if they are doing a financing and a few points on a price target puts us in line with our competition and, hopefully, helps us get into a financing, it may be worth considering

Analyst: I'm already at \$40, I can add a buck or two.

Banker: that would be great – MSDW is at 44, CSFB at 46, Mer at 50.

Analyst: Done.

The next day the analyst issued a research report initiating coverage of Broadwing with a \$42 price target.

IV. LEHMAN FAILED TO ADEQUATELY SUPERVISE RESEARCH ANALYSTS OR ESTABLISH POLICIES AND PROCEDURES TO ENSURE THEIR PROPER CONDUCT

81. Lehman failed to supervise sufficiently research analysts or establish adequate policies and procedures to ensure their proper conduct at all times. Lehman had insufficient written procedures to protect the independence of its research analysts and failed to fully enforce the written procedures it did have.

82. Research did not review the propriety of the ratings issued by analysts. For example, Lehman purportedly vetted most of the written research produced by analysts through the Investment Policy Committee ("IPC") comprised of six people including the Director of U.S. Equity Research. Written procedures required that an IPC meeting be held to review initiation of coverage or change of a rating. In fact, at times reports were reviewed by a single IPC member, who received reports shortly before a meeting.

83. Lehman also had inadequate procedures to protect analysts from the pressures and conflicts of interest resulting from the interaction between research analysts and investment bankers. As alleged above, Lehman permitted pre-publication review of draft research reports by Investment Banking and by the companies covered in the reports. The Chairman of the IPC and other senior managers in Research also encouraged analysts to check with banking before changing ratings, downgrading or dropping coverage of a stock.

V. CONCLUSIONS OF LAW

84. Defendant, during the period from July 1999, through June 2001, failed to exercise diligent supervision over all the securities activities of its associated persons and failed to establish, maintain or enforce written procedures, a copy of which should be kept in each business office, which set forth the procedures adopted by the dealer, issuer or investment adviser to comply with the listed duties imposed in violation of Securities Rule ("Rule") 21 VAC 5-20-260.

85. Defendant, during the period from July 1999, through June 2001, engaged in acts or practices that created or maintained inappropriate influences by Investment Banking over Research Analysts, imposed conflicts of interest on its Research Analysts, and failed to manage these conflicts in an adequate or appropriate manner in violation of just and equitable principles of trade and in violation of Rule 21 VAC 5-20-280(E)(12).

The NASD and NYSE have both established rules governing ethical practices and conduct. The standards established by the NASD and the NYSE are recognized by the Commission as minimum standards of ethical conduct for the purposes of Rule 21 VAC 5-20-280(E)(12), relating generally to dishonest or unethical practices in the securities business. During the relevant period, Lehman engaged in acts and practices violative of:

- (a) NASD Conduct Rule 2110 requiring members to observe high standards of commercial honor and just and equitable principles of trade;
- (b) NYSE Rule 401 requiring that broker dealers shall at all times adhere to the principles of good business practice and the conduct of his or its business affairs;
- (c) NYSE Rule 476(a)6 prohibiting the engagement in practices of conduct inconsistent with just and equitable principles of trade;
- (d) NASD Conduct Rule 2210(d)1 and 2210(d)2 prohibiting exaggerated or unwarranted claims in public communications and requiring a reasonable basis for all recommendations made in advertisements and sales literature; and
- (e) NYSE Rule 472 prohibiting the issuance of communications that contain exaggerated or unwarranted claims or opinions that lack a reasonable basis. By engaging in the acts and practices described above that created and/or maintained inappropriate influence by Investment Banking over Research Analysts and therefore imposed conflicts of interest on its Research Analysts, Lehman failed to manage these conflicts in an adequate or appropriate manner, in violation of Rule 21 VAC 5-20-280(E)(12).

86. Defendant, during the period from July 1999 through June 2001, issued research reports, including those for Razorfish, Inc., RSL Communications, Inc., DDI Corp., RealNetworks, Inc., and Broadwing, Inc., that were not based on principles of fair dealing and good faith, did not provide sound basis for evaluating facts, were not properly balanced, and/or contained exaggerated or unwarranted claims and opinions of which there was no reasonable basis, in violation of Rule 21 VAC 5-20-280(E)(12).

On the basis of the Findings of Fact, Conclusions of Law, and Lehman Brothers Inc.'s consent to the entry of this Order, for the sole purpose of settling this matter, prior to a hearing and without admitting or denying any of the allegations, Findings of Fact or Conclusions of Law.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. This Order concludes the investigation by the Commission and any other action that the Commission could commence under applicable state law on behalf of the Commonwealth of Virginia as it relates to Lehman Brothers Inc., relating to certain research or banking practices at Lehman Brothers Inc.
2. Pursuant to § 12.1-15 of the Code of Virginia, Lehman Brothers Inc. will refrain from violating 21 VAC 5-20-280(E)(12) and 21 VAC 5-20-260 in connection with the research practices referenced in this Order and will comply with the Act and Regulations in connection with the research practices referenced in this Order and will comply with the undertakings of Addendum A, incorporated herein by reference.
3. If payment is not made by Lehman Brothers Inc. or if Lehman Brothers Inc. defaults in any of its obligations set forth in this Order, the Commission may vacate this Order, at its sole discretion, upon 10 days notice to Lehman Brothers Inc. and without opportunity for administrative hearing.
4. This Order is not intended by the Commission's Division of Securities and Retail Franchising ("Division") to subject any Covered Person to any disqualifications under the laws of any state, District of Columbia, or Puerto Rico (collectively, "State") including without limitation, any disqualifications from relying upon the registration exemptions or safe harbor provisions. "Covered Person" means Lehman Brothers Inc., or any of its officers, directors, affiliates, current or former employees, or other persons that would otherwise be disqualified as a result of the Orders (as defined below).
5. It is further ordered that this Order constitutes and includes a waiver by the Commission of any and all limitations and disqualifications that may ensue from the entry of this Order or the SEC Orders that would otherwise affect, restrict or limit the business of Lehman Brothers Inc. and its predecessors, subsidiaries and affiliates or their ability to participate in offerings or avail themselves of exemptions, including, without limitation, the Uniform Limited Offering Exemption, as and to the extent now or hereafter adopted by the Commission.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

6. It is further ordered that this Order is not intended to prohibit Lehman Brothers Inc. from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, transfer agent, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.
7. The SEC Final Judgment, the NYSE Stipulation and Consent, the NASD Letter of Acceptance, Waiver and Consent, this Order and the order of any other State in related proceedings against Lehman Brothers Inc. (collectively, the "Orders") shall not disqualify any Covered Person from any business that they otherwise are qualified, licensed or permitted to perform under applicable law of the Commonwealth 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.
8. For any person or entity not a party to this Order, this Order does not limit or create any private rights or remedies against Lehman Brothers Inc. including, without limitation, the use of any emails or other documents of Lehman Brothers Inc. or of others regarding research practices, or limit or create liability of Lehman Brothers Inc. or limit or create defenses of Lehman Brothers Inc. to any claims.
9. Nothing herein shall preclude the Commonwealth of Virginia, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the State Corporation 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 Lehman Brothers Inc. in connection with certain research and/or banking practices at Lehman Brothers Inc.

As a result of the Findings of Fact and Conclusions of Law contained in this Order, Lehman Brothers Inc. shall pay a total amount of \$80,000,000. This total amount shall be paid as specified in the SEC Final Judgment as follows:

\$25,000,000 to the states (50 states, plus the District of Columbia and Puerto Rico) (Lehman Brothers Inc.'s offer to the state securities regulators hereinafter shall be called the "state settlement offer"). Upon execution of this Order, Lehman Brothers Inc. shall pay the sum of \$545,408 of this amount to the Treasurer, Commonwealth of Virginia as a civil monetary penalty pursuant to § 13.1-521 of the Act. The total amount to be paid by Lehman Brothers Inc. to state securities regulators pursuant to the state settlement offer may be reduced due to the decision of any state securities regulator not to accept the state settlement offer. In the event another state securities regulator determines not to accept Lehman Brothers Inc.'s state settlement offer, the total amount of the Virginia payment shall not be affected, and shall remain at \$545,408;

\$25,000,000 as disgorgement of commissions, fees and other monies as specified in the SEC Final Judgment;

\$25,000,000, to be used for the procurement of independent research, as described in the SEC Final Judgment;

\$5,000,000, to be used for investor education, as described in Addendum A, incorporated by reference herein.

Lehman Brothers Inc. agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to payment made pursuant to any insurance policy, with regard to all penalty amounts that Lehman Brothers Inc. shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. Lehman Brothers Inc. further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any penalty amounts that Lehman Brothers Inc. shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. Lehman Brothers Inc. understands and acknowledges that these provisions are not intended to imply that Virginia would agree that any other amounts Lehman Brothers Inc. shall pay pursuant to the SEC Final Judgment may be reimbursed or indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit with regard to any state, federal or local tax.

NOTE: A copy of Addendum 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-2003-00019
DECEMBER 18, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

MORGAN STANLEY & CO. INCORPORATED,
Defendant

CONSENT ORDER

Morgan Stanley & Co. Incorporated ("Morgan Stanley") is a broker-dealer registered in the Commonwealth of Virginia; and

Coordinated investigations into Morgan Stanley's practices, procedures and conduct respecting the preparation and issuance by Morgan Stanley's U.S. equity research analysts ("research analysts") of research, analysis, ratings, recommendations and communications concerning common stocks of publicly traded companies covered by such analysts ("research coverage"), during the period 1999 through 2001, including without limitation,

commencement and discontinuance of research coverage, actual or potential conflicts of interests affecting research coverage, research analysts or termination of research analysts, and statements, opinions, representations or non-disclosure of material facts in research coverage (the "investigations") have been conducted by a multi-state task force and a joint task force of the U.S. Securities and Exchange Commission, the New York Stock Exchange, and the National Association of Securities Dealers (collectively, the "regulators"); and

Morgan Stanley 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

Morgan Stanley has advised regulators of its agreement to resolve the investigations; and

Morgan Stanley agrees to implement certain changes with respect to its research practices and stock allocation, and to make certain payments; and

Morgan Stanley 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 (the "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.

Morgan Stanley 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.

FINDINGS OF FACT

1. Morgan Stanley is, and was at all relevant times, a Delaware corporation and a registered broker-dealer with its principal place of business located at 1585 Broadway, New York, New York 10036. Morgan Stanley is, and has been at all relevant times, an international financial services firm that provides investment banking services to businesses, engages in retail and institutional sales to its customers, and publishes research reports and ratings on stocks. In mid-2002, Morgan Stanley had about 58,000 employees with 700 offices in twenty-eight countries. It had approximately \$450 billion in assets under management as of May 31, 2002.

2. The Commission has jurisdiction over this matter pursuant to the Act.

3. From at least July 1999 through 2001, Morgan Stanley engaged in acts and practices that created conflicts of interest for its research analysts with respect to investment banking activities and considerations. Morgan Stanley failed to manage those conflicts in an adequate or appropriate manner. Some conflicts resulted from the fact that Morgan Stanley compensated its research analysts, in part, based on the degree to which they helped generate investment banking business for Morgan Stanley. Morgan Stanley also offered research coverage by its analysts as a marketing tool to gain investment banking business. As a result, Morgan Stanley research analysts were faced with a conflict of interest between helping generate investment banking business for Morgan Stanley and their responsibilities to publish objective research reports that, if unfavorable to actual or potential banking clients, could prevent Morgan Stanley from winning that banking business.

4. As lead underwriter in various stock offerings, Morgan Stanley also complied with the issuers' directives to pay portions of the underwriting fees to other broker-dealers that served as underwriters or syndicate members to publish research reports on the issuer. Morgan Stanley did not take steps to ensure that these broker-dealers disclosed these payments in their research reports. Further, Morgan Stanley did not cause the payments to be disclosed in the offering documents or elsewhere as being for research.

5. Morgan Stanley also failed to reasonably supervise its analysts regarding the content of their research reports.

I. 1. **BACKGROUND**

A. **The Investment Banking Function at Morgan Stanley**

6. The investment banking division at Morgan Stanley advised corporate clients and helped them execute various financial transactions, including the issuance of stock and other securities. Morgan Stanley frequently served as the lead underwriter in initial public offerings ("IPOs") -- the first public issuance of stock of a company that has not previously been publicly traded -- and follow-on offerings of securities.

7. During the relevant period, investment banking was an important source of revenues and profits for Morgan Stanley. In 2000, investment banking generated more than \$4.8 billion in revenues, or approximately twenty-four percent of Morgan Stanley's total net revenues.

B. **The Role of Research Analysts at Morgan Stanley**

8. Research analysts at Morgan Stanley covered a broad range of industry sectors and published periodic reports on certain companies within those sectors. Analysts typically reviewed the performance of their covered companies, evaluated their business prospects, and provided analysis and projections concerning whether they presented good investment opportunities. Through 2001, Morgan Stanley's equity research department had a system calling for rating covered companies, from most to least positive, as "Strong Buy," "Outperform," "Neutral," or "Underperform." Analyst reports were disseminated to Morgan Stanley clients by mail and facsimile and by financial advisors. Certain research reports were made available to retail clients who set up accounts on Morgan Stanley's web site and, similarly, institutional clients were able to access Morgan Stanley's research reports via accounts on Morgan Stanley's web site. In addition, certain industry reports were available on Morgan Stanley's public web site. Certain institutional clients of Morgan Stanley could also access research reports through the First Call subscription service. The financial news media on occasion also reported Morgan Stanley analysts' ratings.

9. Morgan Stanley analysts also played an important role in assessing potential investment banking transactions, in particular IPOs. Morgan Stanley's stated objective was to "take public" as lead underwriter the leading companies in their respective industry sectors and to have its research analysts serve as gatekeepers to the IPO process by investigating whether companies were appropriate IPO candidates. Research analysts who endorsed an IPO candidate typically participated in the competition to obtain the investment banking business and, if Morgan Stanley was selected as lead underwriter, helped market the IPO to institutional investors, explained the IPO to the firm's institutional and retail sales forces, and then issued research on the company.

10. Senior analysts at Morgan Stanley published individual research reports without pre-publication review by research department supervisors. While reports were reviewed for grammatical errors and for compliance with certain legal requirements, there was no system for reviewing the recommendations or price targets included in the reports of senior analysts prior to their publication.

I. 2. THE RELATIONSHIP BETWEEN INVESTMENT BANKING AND RESEARCH CREATED CONFLICTS OF INTEREST FOR MORGAN STANLEY RESEARCH ANALYSTS

11. Certain practices at Morgan Stanley created or maintained conflicts of interest for the firm's research analysts with respect to investment banking considerations. These conflicts arose from the inherent tension between the analysts' involvement in helping to win investment banking business for Morgan Stanley and their responsibilities to publish objective research that, if negative as to prospective banking clients, could prevent the firm from winning the banking business.

A. Morgan Stanley Marketed Research Coverage, Including, at Times, Implicitly Favorable Coverage, in Competing for Investment Banking Business

12. Morgan Stanley typically competed with other investment banks for selection as the lead underwriter, or "bookrunner," for securities offerings, including IPOs and follow-on offerings. Significant financial rewards were at stake in these competitions. Sole or joint bookrunners generally received the largest portion of underwriting fees, which were typically divided among the participating investment banks. The bookrunner also established the allocation of shares in an offering and typically retained the greatest number of shares for itself. The typical IPO generated millions of dollars in investment banking fees for the bookrunner.

13. The process of selecting the lead underwriter typically culminated in a series of presentations by competing investment banks called a "bakeoff," in which investment banks competing for the business in a particular offering met with the issuer to present their qualifications and offer investment banking and other services. As part of these presentations, investment banks often provided issuers with a "pitchbook," which typically described the investment bank's credentials and services. In selecting the lead underwriters, issuers assessed a host of factors, including the strength and quality of the bankers' research coverage. Issuers sought research coverage of their stocks, believing such coverage would enhance the credibility of their businesses, potentially lead to higher stock prices, and increase their exposure to the investing public.

14. Between 1999 and 2001, as part of the package of services it offered to issuers to win investment banking business from certain issuers, Morgan Stanley typically committed that its analysts would initiate (or continue) research coverage of the issuer if Morgan Stanley won the banking competition. In so doing, Morgan Stanley used its analysts as a marketing tool to help secure banking business. The promise of future research coverage was often a critical selling point that enabled Morgan Stanley to obtain millions of dollars in investment banking fees. Research coverage was part of a package of services for which Morgan Stanley was compensated in those investment banking deals.

15. Analysts played an important role in Morgan Stanley's pitches for banking business. Along with investment bankers and others, analysts were typically presented as part of the Morgan Stanley "team" that would consummate the transaction. The pitchbooks typically identified the analysts on the team and dedicated several pages to the analysts' experience, credentials, and specific role in the contemplated transaction. Analysts drafted portions of the pitchbook and almost always attended the presentations for IPO business. The pitchbooks typically compared Morgan Stanley analysts favorably to their counterparts at competing firms, citing their rankings in analyst polls and other measures.

16. Morgan Stanley typically identified its analysts as a favorable factor that issuers should consider in selecting Morgan Stanley for investment banking business. For example, in describing one reason Loudcloud, Inc., should name Morgan Stanley as bookrunner for its 1999 IPO, the pitchbook referred to two senior analysts as a "dream team" who would "articulate Loudcloud's story to investors in a way that no other investment bank can match." Another pitchbook described two senior analysts as "the most powerful combination in the extended enterprise space . . . ever."

17. In its pitches to obtain investment banking business, Morgan Stanley typically promised future research coverage as among the package of services it would provide. For example, in a pitchbook provided to iBeam Broadcasting Corp. to obtain its IPO business, Morgan Stanley said it would "provide ongoing research coverage and aftermarket trading" and, in another instance, said "coverage would be initiated immediately after the quiet period. Additional research reports will follow on a regular basis thereafter." Morgan Stanley won the iBeam IPO business and received investment banking fees of approximately \$3.8 million. Another pitchbook, in a chronology of how the IPO would unfold, stated: "Research coverage initiated on day 26," which was the day research coverage could be initiated by an underwriter following an IPO. Morgan Stanley made comparable commitments to other prospective banking clients. Another Morgan Stanley pitchbook, provided to Transmeta Corp. in July 2000 in connection with its IPO, said "we view research as an ongoing commitment," and offered to "continue regular publication of research reports." Morgan Stanley won the Transmeta IPO business and received investment banking fees of approximately \$9.5 million. In other pitchbooks, Morgan Stanley emphasized its "aftermarket support" services, which it expressly described as including future research coverage. For example, a pitchbook presented to AT&T Latin America said Morgan Stanley "is committed to bolstering an IPO's performance in the aftermarket through extensive equity research and active market-making." (Emphasis added.) Morgan Stanley pitchbooks often identified the specific number of reports its analysts published on other companies, giving implicit guidance on how many reports issuers could expect to receive if they selected Morgan Stanley as lead banker.

18. Further, Morgan Stanley at times implicitly suggested that analysts would provide favorable research coverage, pending completion of due diligence, by noting analysts' past favorable coverage and/or emphasizing its enthusiastic support for the issuer. For example, when Morgan Stanley sought investment banking business from Convergys Corp., the company already had been covered for two years by a senior Morgan Stanley analyst who, as the pitchbook mentioned four times, considered Convergys to have been the analyst's "#1 stock pick" over those years. (During that time period, the stock price had appreciated 98%.) The May 2001 pitchbook then described the analyst as the "voice of the issuing company," who would work "in tandem" with Convergys management to position its story to investors. In the following month, June 2001, the senior analyst downgraded Convergys from Strong Buy to Outperform, still a favorable rating, then later upgraded Convergys back to Strong Buy in December 2001.

19. In other instances, Morgan Stanley pitchbooks identified a particular analyst's history of issuing Strong Buy or Outperform ratings on other companies. Some pitchbooks also identified instances in which other stocks covered by Morgan Stanley analysts increased in price following their IPOs. For example, the Morgan Stanley pitchbook provided to Transmeta Corp. in July 2000 emphasized how one analyst's "support" of eight semiconductor IPOs since 1997 had "resulted in unparalleled performance in the public market," and included a line graph showing a dramatic increase in the stocks' price from 1998 through March 2000.

20. In another instance, after Loudcloud management informed Morgan Stanley in 1999 that research coverage was a key factor in its selection of the bookrunner for its IPO, Morgan Stanley's head of worldwide investment banking informed the issuer in an e-mail that the firm had "developed a successful model which combines the best of technology and telecom research at Morgan Stanley to properly position Loudcloud in the capital markets; specifically, enthusiastic sponsorship" by two research analysts who covered Loudcloud's sector. He added: "I commit to putting the entire franchise behind Loudcloud to achieve the best valuation and after market performance, as well as unmatched strategic advice post-IPO." Morgan Stanley won the Loudcloud IPO business and received investment banking fees of approximately \$4.7 million.

21. In addition to pitchbooks, Morgan Stanley occasionally provided draft or "mock" research reports to issuers to provide an example of how analysts might describe the issuer to investors. The draft or mock reports described the issuers in favorable terms without including ratings or price targets.

22. Morgan Stanley's commitments to provide research coverage were not limited to pitches for IPO business. Morgan Stanley obtained investment banking business for follow-on offerings of companies that its analysts did not cover in part by promising to initiate future coverage.

23. Morgan Stanley consistently honored its commitments to provide research coverage, initiating or maintaining coverage when it won the investment banking business.

24. In Morgan Stanley's annual performance evaluation process, some analysts and bankers noted their success in obtaining banking fees by promising future research coverage. For example, in a November 3, 1999 e-mail, an investment banker listed several banking transactions that he said Morgan Stanley had won because it committed that a particular highly-rated analyst would initiate research coverage. Specifically, the banker wrote that Morgan Stanley had won two transactions totaling \$13.4 million in fees from Veritas Software Corp. "just for promising that [the senior analyst] would pick up coverage after the deals." The banker observed that this had "enraged" competing firms, which said it was "unprecedented" to give an underwriter with no previous research coverage such a high share of the fees. The banker added: "The response from the CEO to those firms -- 'you don't have [the senior analyst].'" Other analyst evaluations as well as other internal Morgan Stanley documents identified additional instances in which it was stated that Morgan Stanley won investment banking business in large part because its analysts committed to initiate coverage.

B. Investment Banking Concerns Influenced Morgan Stanley's Decisions Whether to Initiate or Continue Research Coverage

25. The decision to initiate or continue research coverage of certain companies was influenced, at least in part, by whether those companies were actual or prospective investment banking clients of Morgan Stanley.

26. In one instance, in May 2001, the liaison between the research and investment banking divisions was advised that a poultry company, Pilgrim's Pride, was seeking equity research coverage in connection with a prospective high-yield offering. The liaison made clear that Morgan Stanley should not commit to providing coverage until it received a certain amount of investment banking fees from the company:

Be careful with this one. Under no circumstances should we commit unless we get the books and at least \$3-5mm in fees, with the money in the bank before we pick up coverage. We can tell them it will go in the queue and we cannot promise them a rating. It costs about \$1 mm to pick up coverage of a stock and there are also meaningful ongoing expenses to maintain.

27. Morgan Stanley analysts on occasion also declined to cover some companies that refused to award investment banking business to Morgan Stanley. One senior analyst wrote in a 2000 self-evaluation that the analyst had declined Sabre Group's requests for research coverage for four years and that the analyst had "insisted that we first be mandated on a large investment banking transaction." Generally, analysts select which of the many companies in a sector they will cover. This senior analyst did not consider Sabre to be one the analyst needed to cover, unless Morgan Stanley were to be mandated on an investment banking transaction. When Sabre provided Morgan Stanley with banking business in connection with its spin-off from AMR Corp., the analyst initiated coverage of Sabre with an Outperform rating in March 2000.

28. Morgan Stanley also declined to initiate coverage of Concord/EFS, Inc. Concord initially retained Morgan Stanley as bookrunner for a 1999 secondary offering, but then hired a different bank as bookrunner after Morgan Stanley declined Concord's request that it commit to initiating coverage with a "Strong Buy" rating. Though Concord continued to offer part of that investment banking business to Morgan Stanley, Morgan Stanley withdrew, and it did not initiate research coverage of Concord at that time. In the fall of 2000, Morgan Stanley sought investment banking business from Concord in connection with another secondary offering. Concord's management told Morgan Stanley's senior analyst that it wanted an advance view of the analyst's initial rating. After completing two to three months of preliminary due diligence, the analyst told Concord that, if coverage were to be initiated at that time, the analyst tentatively would issue a "Strong Buy" up to a certain valuation level. Morgan Stanley also provided Concord with a draft research report, which, according to an e-mail written by an investment banker, was part of Morgan Stanley's "marketing efforts." When Morgan Stanley was not awarded the 2000 investment banking business, its analyst did not initiate coverage at that time, despite the analyst's initial view that Concord had emerged as a leader in its industry that preliminarily merited a "Strong Buy."

29. Morgan Stanley also initiated coverage of eBay, Inc., in part with the hope of obtaining investment banking business. After Morgan Stanley initially lost the IPO business for eBay in 1998, a senior Morgan Stanley analyst met with eBay's chief executive officer and provided a draft research report on the company. After Morgan Stanley nevertheless lost the IPO business, the analyst initiated coverage on eBay on its first day of trading with an Outperform rating. The analyst was the only one covering eBay, since firms in the underwriting syndicate were prohibited from initiating coverage until after the 25-day "quiet period" had expired. It is the only time that the senior analyst initiated coverage of a company on its first day of trading. Later, in 1999 and again in 2001, eBay awarded two banking transactions to Morgan Stanley, with total fees of approximately \$1.2 million. In the senior analyst's self-evaluation for 2000, the analyst stated, as part of the analyst's "philosophy" for Morgan Stanley's "Internet banking efforts," that "when we miss a

winning IPO, we should work like crazy (with tons of ideas) to secure a spot as M&A advisor (USWeb/CKS) or book running manager on follow-on offerings (eBay)."

C. Morgan Stanley Research Analysts Performed Investment Banking Functions

30. Morgan Stanley research analysts performed a number of investment banking-related functions. They identified potential IPO and merger and acquisition transaction candidates for the investment banking department, participated in soliciting investment banking business for the firm, and participated in road shows and other efforts to sell Morgan Stanley-underwritten IPOs and secondary offerings to institutional investors. At times, analysts also had discussions about business strategy with investment banking clients directly, and one senior analyst was described as a relationship manager with certain investment banking clients.

31. Morgan Stanley kept a record of each analyst's contribution to investment banking revenues. Each year, a "Revenue Share Analysis" was prepared that listed every investment banking transaction in which each analyst had participated, the revenues from each transaction, a rating on a scale of 1 to 5 (5 being "critical" to the deal) of the analyst's contribution to the transaction, and a calculation of the analyst's "share" of the credit for the revenues secured from the transaction. The Revenue Share Analysis also recorded investment gains on Morgan Stanley investments in companies covered by the analyst.

32. One senior analyst's involvement in investment banking activities was such that several investment bankers at the firm regarded the analyst as tantamount to an investment banker. One banker wrote that the analyst was the most committed and focused banker with whom he had ever worked. Another wrote that the analyst was a "commercial animal" who would do anything appropriate to win underwriting mandates. The analyst's supervisor wrote in 1999 that the analyst's focus was primarily on banking and that, notwithstanding the growing demand for the analyst's time on investment banking matters, the analyst needed to devote more attention to institutional investors and the firm's institutional sales force.

33. The analyst's own self-evaluation prominently mentioned the analyst's assistance to investment banking in selecting and generating investment banking business and large fees, stating: "Bottom line, my highest and best use is to help MSDW win the best Internet IPO mandates (and to ensure that we have the appropriate analysts and bankers to serve the companies well). . . ." (emphasis in original). It also prominently listed the deals and revenues from the analyst's investment-banking connected efforts:

Internet Investment Banking, a Record Year with \$205MM+ YTD Revenue, [20+] Pending Financings, Co-Coverage (Leverage) in 85% of Cases, 6 of 6 Tech IBD Revenue Generating Clients, Internet Category was #1 Revenue Generator in Tech IBD (\$505MM YTD Tech Revenue). . . . (Emphasis in original.)

OK, the numbers (see Attachment A): Forty investment banking transactions (\$143MM in fees) . . .

It's notable that 96% of the \$205MM in revenue was derived from clients new to the firm since 1995! Exceptions were America Online, Compaq, Hearst and Sotheby's. And I have been very involved in this business. (Emphasis added.)

D. Investment Banking Was an Important Factor in Determining Research Analysts' Compensation

34. From 1999 through 2001, participation in investment banking activities was a factor in determining the total compensation awarded to Morgan Stanley research analysts. These analysts thus faced a conflict of interest between helping win investment banking business for Morgan Stanley and publishing negative research that could prevent Morgan Stanley from winning that banking business.

35. The annual salaries paid to senior Morgan Stanley analysts and other senior Morgan Stanley personnel typically were comparatively small components of their total annual compensation. The majority of their total annual compensation was paid in the form of a bonus. In 2000, one senior analyst received a year-end bonus that was 90 times greater than the analyst's base salary.

36. The total compensation paid to analysts was based in part on Morgan Stanley's total revenues for a particular year, including the investment banking fees that Morgan Stanley received. Thus, the success or failure of the investment banking division determined, in part, the total amount of funds available to pay employee compensation in any given year, including analyst compensation.

1. Analysts Rated Their Contributions to Investment Banking

37. The level of contribution to investment banking transactions was an important factor in the annual evaluations of Morgan Stanley's analysts and compensation decisions.

38. As part of the annual performance evaluation process, analysts were asked to submit self-evaluations that, among other things, discussed their contributions to Morgan Stanley. Analysts often included in their self-evaluations a discussion of their involvement in investment banking, including a description of specific transactions, the fees generated, and the role the analyst played in each deal. For example, one-quarter of the 1999 self-evaluation of one analyst was dedicated to the analyst's role in investment banking activities, and identified forty transactions that year that had generated a total of \$143 million in fees.

39. As part of the evaluation process, the analysts also provided a rating of their contributions to specific banking transactions. Analysts were instructed to complete a Transaction Summary Worksheet ("TSW") in which they graded their roles in specific deals on a scale of 1-5. Instructions provided to each analyst described the rating system as follows:

5 = critical to deal
4 = important to development and execution
3 = solid contribution

- 2 = limited contribution
1 = contribution limited to providing research coverage

40. Analysts were also instructed to comment on important aspects of any transaction, including, for example, whether the "promise of coverage was critical to winning" the mandate. The instructions informed analysts that supplying the information called for in the TSWs was an "important part" of their annual evaluation process.

2. Investment Bankers Evaluated Analysts' Performance

41. Morgan Stanley also solicited and received the investment bankers' assessment of the analysts' performance on the same transactions. Morgan Stanley's liaison between the research and investment banking divisions compiled and summarized the bankers' evaluations of the analysts' role in each deal and then prepared a final TSW listing for each transaction that provided a joint evaluation of the analysts' contributions to each deal.

42. Finally, as part of Morgan Stanley's "360 degree" review process, in which employees confidentially reviewed one another, investment bankers submitted written opinions of analysts with whom they worked.

43. Investment bankers thus played a role in the annual evaluation of research analysts by providing substantive information that was considered in the year-end evaluation process and input into the determination of the analysts' compensation for that year. The investment bankers' role in the evaluation process created a conflict of interest for analysts, who hoped for positive evaluations from investment bankers at the same time that they were charged with issuing objective research reports that, if negative, could have impeded Morgan Stanley's ability to win future investment banking business from the covered companies.

3. Investment Banking Was the Factor Accorded the Greatest Weight by Management in Reviewing Management's Initial Determination of Proposed Analysts' Compensation

44. In 1999 and 2000, analyst compensation was set primarily by a managing director in the equity research division. The managing director made an initial determination of proposed compensation for all analysts and ranked the analysts based on that determination. The managing director then ranked the analysts based on their composite scores in nine categories. The managing director then compared the two rankings before forwarding the compensation recommendations to superiors.

45. The nine categories used to rank the analysts included the amount of investment banking revenues attributed to analysts based on their involvement in transactions (relative weight of 33%) and eight other categories related to core research activities, including: (1) poll rankings from the *Institutional Investor* and other sources (19%); (2) poll ranking from institutional equity division sales (12%); (3) firm activities and ability to be a team player (11%); (4) the "hit ratio" in vote gathering from institutional clients (7%); (5) rank in vote gathering from institutional clients (7%); (6) stock picking (active portfolio vs. passive portfolio) (6%); (7) stock picking (active portfolio vs. index portfolio) (3%); and (8) poll ranking from retail sales (2%). Thus, the managing director assigned a one-third weight to investment banking revenues -- the highest weight given to any single category.

46. The impact that an analyst's contribution to investment banking revenues could have on the determination of the analyst's compensation is shown by the compensation of one Morgan Stanley senior analyst in 1999 and 2000. In 1999, the analyst who received the highest compensation among Morgan Stanley research analysts had a composite score that ranked only 11th overall, but ranked first in investment banking revenues.

47. In 2000, the same analyst continued to rank first in investment banking revenues: the total investment banking revenues that the analyst helped Morgan Stanley obtain more than doubled. In most other categories, however, the analyst's performance declined from 1999, and the analyst's composite score dropped to 19th overall. In 2000, the analyst ranked only 70th out of 111 analysts in stock picking, and the analyst's self-evaluation conceded that 2000 had been the analyst's worst stock-picking year in fifteen years. Nevertheless, this analyst's total salary and bonus for 2000 increased by approximately \$8.7 million as compared to 1999, again ranking first among all Morgan Stanley analysts.

I. 3. MORGAN STANLEY DID NOT DISCLOSE THAT IT PAID \$2.7 MILLION OF UNDERWRITING FEES AT ISSUERS' DIRECTION TO OTHER INVESTMENT BANKS TO PROVIDE RESEARCH COVERAGE

48. In at least twelve stock offerings in which it was selected as lead underwriter from 1999 through 2001, Morgan Stanley paid \$2.7 million of the underwriting fees to approximately twenty-five investment banks. Internal Morgan Stanley documents described these payments as "research guarantees" or "guaranteed economics for research." Other internal Morgan Stanley documents noted instances in which the bank receiving the payment "will write." Morgan Stanley made these payments from the offering proceeds at the direction of the issuers.

49. These "research guarantee" payments included more than \$670,000 paid to three investment banks in connection with an offering by Veritas Software Corp. in December 1999; more than \$816,000 paid to seven banks in connection with an Agile Software Corp. offering in December 1999; and more than \$440,000 paid to five banks in connection with an offering by Atmel Corp. in February 2000. The individual disbursements ranged from two payments of just over \$6,000 each to three payments of more than \$225,000 each.

50. The issuers' registration statements and other offering documents identified the other banks as part of the underwriting syndicates and as receiving payments, but did not specifically disclose the payments as being for research. Morgan Stanley did not take steps to ensure that these banks disclosed these payments in their research reports. Morgan Stanley also did not cause the payments to be disclosed in offering documents or elsewhere as having been for research.

I. 4. MORGAN STANLEY FAILED REASONABLY TO SUPERVISE ITS SENIOR RESEARCH ANALYSTS

A. Morgan Stanley Had No System for Reviewing the Ratings Issued by Its Senior Analysts

51. Morgan Stanley failed reasonably to supervise its senior research analysts. The firm required only non-officer-level analysts to submit their initial ratings and proposed changes in ratings for review by the Stock Selection Committee. Senior analysts -- principals and managing directors -- were not

subject to this requirement. In addition, Morgan Stanley had no effective system in place for reviewing the ratings of its senior analysts against changed conditions.

52. Morgan Stanley's lack of an effective review system allowed some principal and managing director analysts to maintain Outperform ratings unchanged on declining stocks without any review by management. For example, in 2000 and 2001, four senior analysts maintained Outperform ratings unchanged on 13 stocks as the prices of the stocks declined by over 74 percent. The names of the stocks, their percentage declines, and the number of months without a change in the Outperform rating are shown on the following chart:

Company	Percent Price Drop While Rated Outperform	Months Without Change in Outperform Rating
Chemdex (Ventro)	96.2	8.5
Drugstore.com	95.4	30
Priceline.com	92.0	30
Ask Jeeves	90.9	16
Marimba	88.9	8.5
Homestore.com	88.7	10
Vignette	87.1	7.5
VeriSign	83.3	19.5
Akamai	82.8	10
Women.com	80.3	8.5
CNET	77.7	16.5
Inktomi	76.9	15
FreeMarkets	74.3	23

53. Not until late 2001, after complaints from Institutional Sales persons made as part of the year-end evaluation process, did management state to one of the analysts: "Don't let your ratings get stale; change them ahead of expected price action."

B. Morgan Stanley's Analysts Virtually Never Used the Lowest Rating in the Firm's Stock Rating System

54. From 1995 to March 2002, Morgan Stanley publicly stated that it had a four-category rating system: Strong Buy; Outperform; Neutral; and Underperform. "Underperform" was defined as follows: "Given the current price, these securities are not expected to perform as well as other stocks in the universe covered by the analyst." Although Morgan Stanley stated that it had a four-category system, its analysts virtually never used the "Underperform" rating and, in effect, used a three-category system. From 1999 through 2001, the firm published research on approximately 1,000 North American company stocks. No more than three of the 1033 stocks covered over the course of 1999 were given an Underperform rating; no more than five of the 1058 stocks covered over the course of 2000 received that rating; and no more than six of the 1030 stocks covered over the course of 2001 were rated Underperform. Morgan Stanley management was aware that analysts were not using the "Underperform" rating, but did not correct the problem until March 2002, when a new rating system was instituted.

II.

CONCLUSIONS OF LAW

1. The State Corporation Commission ("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 Commission finds that Morgan Stanley violated Securities Rule 21 VAC 5-20-280 E 12 and 21 VAC 5-20-260 in that:
 - a) The relationship between investment banking and research created conflicts of interest for Morgan Stanley research analysts;
 - b) Morgan Stanley did not disclose that it paid \$2.7 million of underwriting fees at issuers' direction to other investment banks to provide research coverage; and
 - c) Morgan Stanley failed reasonably to supervise its senior research analysts.
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 Morgan Stanley's consent to the entry of this Order, for the sole purpose of settling this matter, prior to a hearing and without admitting or denying any of the Findings of Fact or Conclusions of Law,

IT IS HEREBY ORDERED:

1. This Order concludes the investigation by the Commission's Division of Securities and Retail Franchising ("Division") and any other action that the Division could commence under applicable law on behalf of the Commonwealth of Virginia as it relates to Morgan Stanley relating to the subject of the investigations, provided however, that excluded from and not covered by this paragraph 1 are any claims by the Division arising from or relating to the "Order" provisions herein.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

2. Pursuant to § 12.1-15 of the Code of Virginia, Morgan Stanley will refrain from violating 21 VAC 5-20-280 E 12 and 21 VAC 5-20-260 in connection with the research practices referenced in this Order and will comply with 21 VAC 5-20-280 E 12 and 21 VAC 5-20-260 in connection with the research practices referenced in this Order and will comply with the undertakings of Addendum A, incorporated herein by reference.
3. As a result of the Findings of Fact and Conclusions of Law contained in this Order, Morgan Stanley shall pay a total amount of \$125,000,000.00. This total amount shall be paid as specified in the SEC Final Judgment as follows:
- a. \$25,000,000 to the states (50 states, plus the District of Columbia and Puerto Rico) (Morgan Stanley's offer to the state securities regulators hereinafter shall be called the "state settlement offer"). Upon execution of this Order, Morgan Stanley shall pay the sum of \$545,408 of this amount to the Treasurer, Commonwealth of Virginia as a civil monetary penalty pursuant to § 13.1-521 of the Act. The total amount to be paid by Morgan Stanley to state securities regulators pursuant to the state settlement offer may be reduced due to the decision of any state securities regulator not to accept the state settlement offer. In the event another state securities regulator determines not to accept Morgan Stanley's state settlement offer, the total amount of the Virginia payment shall not be affected, and shall remain at \$545,408;
 - b. \$25,000,000 as disgorgement of commissions, fees and other monies as specified in the SEC Final Judgment;
 - c. \$75,000,000, to be used for the procurement of independent research, as described in the SEC Final Judgment;
4. If payment is not made by Morgan Stanley or if Morgan Stanley defaults in any of its obligations set forth in this Order, the Commission may vacate this Order, at its sole discretion, upon 10 days notice to Morgan Stanley and without opportunity for administrative hearing.
5. Morgan Stanley agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including but not limited to payment made pursuant to any insurance policy, with regard to all penalty amounts that Morgan Stanley shall pay pursuant to this Order or section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. Morgan Stanley further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any penalty amounts that Morgan Stanley shall pay pursuant to this Order or section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. Morgan Stanley understands and acknowledges that these provisions are not intended to imply that the Commission would agree that any other amounts Morgan Stanley shall pay pursuant to the SEC Final Judgment may be reimbursed or indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit with regard to any state, federal or local tax.
6. This Order is not intended by the Commission to subject any Covered Person to any disqualifications under the laws of any state, the District of Columbia or Puerto Rico (collectively, "State"), including, without limitation, any disqualifications from relying upon the State registration exemptions or State safe harbor provisions. "Covered Person" means Morgan Stanley, or any of its officers, directors, affiliates, current or former employees, or other persons that would otherwise be disqualified as a result of the Orders (as defined below).
7. This Order constitutes and includes a waiver by the Commission of any and all limitations and disqualifications that may ensue from the entry of this Order that would otherwise affect, restrict or limit the business of Morgan Stanley and its predecessors, subsidiaries and affiliates or their ability to participate in offerings or avail themselves of exemptions, including, without limitation, the Uniform Limited Offering Exemption, as and to the extent now or hereafter adopted by the Commission.
8. This Order is not intended to prohibit Morgan Stanley from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, transfer agent, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.
9. The SEC Final Judgment, the NYSE Stipulation and Consent, the NASD Letter of Acceptance, Waiver and Consent, this Order and the order of any other State in related proceedings against Morgan Stanley (collectively, the "Orders") shall not disqualify any Covered Person from any business that they otherwise are qualified, licensed or permitted to perform under the applicable law of the Commonwealth 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.
10. The Orders shall not disqualify any Covered Person from any business that they otherwise are qualified, licensed or permitted to perform under applicable state law.
11. For any person or entity not a party to this Order, this Order does not limit or create any private rights or remedies against Morgan Stanley including, without limitation, the use of any e-mails or other documents of Morgan Stanley or of others regarding research practices, or limit or create liability of Morgan Stanley, or limit or create defenses of Morgan Stanley to any claims.
12. 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 Morgan Stanley in connection with certain research practices at Morgan Stanley.

NOTE: A copy of Addendum 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-2003-00020
NOVEMBER 25, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

CITIGROUP GLOBAL MARKETS, INC. (formerly known as Salomon Smith Barney, Inc.),
Defendant

CONSENT ORDER

SSB now known as Citigroup Global Markets, Inc. is a broker-dealer registered in the state of Commonwealth of Virginia; and

An investigation into the practices, procedures and conduct of Salomon Smith Barney, Inc. ("SSB")¹ respecting: (a) the preparation and issuance by SSB's U.S. equity research analysts ("Research Analysts") of research, analysis, ratings, recommendations and communications concerning common stocks of publicly traded companies covered by such analysts ("Research Coverage"), during the period 1999 through June 2002, including without limitation, commencement and discontinuance of Research Coverage, actual or potential conflicts of interests affecting Research Coverage, Research Analysts or termination of Research Analysts, and misleading statements, opinions, representations or non-disclosure of material facts in Research Coverage; (b) the allocation by SSB and its predecessor Salomon Brothers, Inc. of stock from initial public offerings that traded at a premium in the secondary market when trading in the secondary market begins and spinning by SSB (i.e., allocating such offerings as preferential treatment to officers and directors of companies having or potentially having investment banking business with SSB), during the period 1996 through 2001 ("IPO Allocations") and; (c) any other conduct referred to in the Findings of Fact set forth below in paragraphs 3 through 153 has been conducted by a multi-state task force of which Virginia was a part (the "Investigation").

The Investigation was conducted in connection with a joint task force of the U. S. Securities and Exchange Commission, the New York Stock Exchange, and the National Association of Securities Dealers (together, with the multi-state task force referred to above, the "regulators"); and

The New York AG and Citigroup Global have previously entered into an Assurance of Discontinuance, dated April 24, 2003 (the "New York Assurance of Discontinuance"), a copy of which has been provided to the State Corporation Commission concerning the practices, policies and procedures of SSB which were the subject of the Investigation; and

SSB 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

Citigroup Global has advised regulators of its agreement to resolve the investigations; and

Citigroup Global agrees to implement certain changes with respect to research and stock allocation practices, and to make certain payments; and

Citigroup Global 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 (the "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 FACT

A. Summary and Jurisdiction

1. Citigroup Global is, and under its former name SSB was, at all relevant times, a registered broker-dealer with its principal place of business located at 388 Greenwich Street, New York, New York 10013. SSB has engaged and Citigroup Global continues to be engaged, in a full-service securities business, including institutional and retail sales, investment banking services, trading and research.

2. The Commission has jurisdiction over this matter pursuant to the Act.

3. In 1999, 2000, and 2001 (the "relevant period"), as described below, SSB issued research reports on two telecommunications ("telecom") companies that were fraudulent and issued research reports on several telecom companies that were misleading.

4. During the relevant period, SSB employed business practices that required research analysts to promote SSB's investment banking efforts. Research alone did not generate substantial profits for SSB; investment banking did, and it needed the services of research analysts to do so. Research analysts were expected to vet prospective investment banking deals, promote SSB's investment banking business to issuers during pitches, and market investment banking deals to SSB's customers. When SSB secured investment-banking business, research analysts were expected to provide favorable coverage of SSB's investment banking clients. Important factors in evaluating an analyst's performance and determining an analyst's compensation at SSB were investment banker evaluations and investment banking revenues generated in an analyst's sector. These business practices created a culture in which investment bankers could and did pressure research analysts to maintain coverage or favorable ratings for investment banking clients and created the

¹ On or about April 7, 2003, SSB changed its name to Citigroup Global Markets, Inc. ("Citigroup Global"). The U.S. Equity Research of SSB continues as part of Citigroup Global. Since the matters which were the subject of the Investigations occurred prior to the name change, the Findings of Fact herein generally refer to SSB.

incentive for analysts to use research to obtain, retain and increase revenue from investment banking deals. SSB failed to manage the conflicts created by its practices.

5. Jack Grubman was the linchpin for SSB's investment banking efforts in the telecom sector. He was the preeminent telecom analyst in the industry, and telecom was of critical importance to SSB. His approval and favorable view were important for SSB to obtain investment-banking business from telecom companies in his sector. In total, SSB earned more than \$790 million in investment banking revenue during the relevant period from telecom companies Grubman covered. Given Grubman's key role in SSB's investment banking success in the telecom sector, SSB compensated him handsomely. During the relevant period, Grubman was one of the most highly paid research analysts at SSB and on Wall Street. Between 1999 and August 2002, when he left the firm, Grubman's total compensation exceeded \$67.5 million, including his multi-million dollar severance package.

6. During the relevant period, SSB and Grubman published fraudulent research reports on Focal Communications and Metromedia Fiber Networks, as set forth below. These reports were contrary to the true views Grubman and another analyst on his team privately expressed, presented an optimistic picture that overlooked and minimized the risk of investing in these companies, predicted substantial growth in the companies' revenues and earnings without a reasonable basis, did not disclose material facts about these companies, and contained material misstatements about the companies.

7. Moreover, SSB and Grubman also published certain research reports that were misleading. In April 2001, Grubman expressed a need to downgrade six telecom companies (Level 3 Communications, Williams Communications Group, XO Communications, Focal, Adelphia Business Solutions, and RCN Communications). Investment bankers pressured Grubman not to downgrade these companies and Grubman did not. He continued to advise investors to buy these stocks, and did not disclose the influence of investment bankers on his ratings. In addition, a research report on Williams Communications lacked a reasonable basis because it did not disclose the true views Grubman and others on his team privately expressed at the same time about the company and certain research reports on Focal failed to disclose facts as described below.

8. In November 1999, Grubman upgraded AT&T from a Neutral (3) – his longtime rating on the stock -- to a Buy (1). SSB and Grubman did not disclose in the report that Grubman had a conflict of interest relating to his evaluation of AT&T. Prior to the upgrade, Sanford I. Weill ("Weill"), the co-CEO and Chairman of Citigroup (and a member of the AT&T board of directors), had asked Grubman to take a "fresh look" at AT&T, and Grubman had asked Weill for assistance in gaining admission for his children to the selective 92nd Street Y preschool in New York City at the same time Grubman was conducting his "fresh look" at the company. Subsequently, Grubman stated privately that he had upgraded AT&T to help his children get into the 92nd Street Y preschool. After Grubman upgraded AT&T and his children were admitted to the preschool, Weill arranged a pledge of \$1 million payable in equal amounts over five years from Citigroup to the 92nd Street Y.

9. Grubman's upgrade of AT&T also helped SSB gain investment banking business from AT&T. In late fall 1999, AT&T determined to make an initial public offering ("IPO") of a tracking stock for its wireless unit – the largest equity offering in the United States. In February 2000, AT&T named SSB as one of the lead underwriters and joint book-runners for the IPO, in large part because of Grubman's "strong buy" rating of, and "strong support" for, AT&T. SSB earned \$63 million in investment banking fees from this engagement.

10. During the period 1996 through 2000, SSB engaged in improper spinning practices by allocating hot IPO shares² to executives of current or potential investment banking clients and providing special treatment for these executives. The executives profited significantly from selling IPO stock allocated to them. The investment banking business generated by the firms for which these executives worked represented a substantial portion of SSB's revenues during this period.

11. Additionally, SSB failed to maintain books and records sufficient to determine whether or not the distribution of IPO shares had been completed prior to the initiation of secondary market trading. Further, SSB failed to administer Issuer Directed Share Programs appropriately and failed to establish and maintain written supervisory procedures for the appropriate management of such programs.

B. SSB Failed to Manage Conflicts of Interest Between Research and Investment Banking

12. SSB's business practices intertwined research with investment banking, thus creating the vehicle for investment banking to exert inappropriate influence over research analysts. SSB failed to manage the resulting conflicts of interest in an adequate or appropriate manner.

1. SSB's Business Practices Required Research Analysts to Support Investment Bankers

13. Companies paid SSB's investment bankers to assist them with (a) capital raising activities such as IPOs, "follow on" offerings (subsequent offerings of stock to the public), and private placements of stock, and (b) other corporate transactions, such as mergers and acquisitions. During the relevant period, investment banking was an important source of revenue for SSB; revenues from investment banking grew from approximately \$3.0 billion in 1999, to approximately \$3.6 billion in 2000, and to approximately \$3.9 billion in 2001. Investment banking fees comprised over 21% of SSB's revenue in 1999, over 22% in 2000, and over 25% in 2001.

14. SSB's equity research analysts provided SSB's investing clients and the public with research reports on certain public companies. SSB held out its research analysts as providing independent, objective and unbiased information, reports, ratings, and recommendations upon which investors could rely in reaching investment decisions. SSB distributed its analysts' reports to its clients directly and by placing the reports on its website.

15. At SSB, research was a cost center. In contrast, investment banking generated substantial profits for SSB. To leverage its research, SSB required research analysts to serve, among others, investment banking. Accordingly,

- SSB expected research analysts to prepare business plans each year that, among other things, highlighted what the research analysts had done and would do to help SSB's investment bankers;
- SSB's research analysts were encouraged to develop investment banking business from issuers and private companies in their sectors;

² A "hot IPO" is one that trades at a premium in the secondary market whenever trading in the secondary market begins.

- SSB's research analysts were expected to support investment banking by pitching business to prospective clients and marketing investment banking deals to institutional customers through roadshows;
- Investment banking concerns sometimes affected research analysts' decisions to initiate coverage, rate companies, and drop coverage. SSB's research analysts were generally expected to initiate coverage of SSB's investment banking clients with favorable ratings;
- Investment bankers reviewed the performance of the principal research analysts in their sector as part of the analysts' annual review; and
- Investment banking revenue generated in an analyst's sector and attributable to an analyst was an important factor SSB used to evaluate an analyst's performance and determine an analyst's compensation.

16. This integration of research analysts with investment banking was an SSB objective. In a January 1998 presentation to senior management at Travelers Corporation, then the parent of SSB, the head of SSB wrote: "There is a continuing shift in the realization that an analyst is the key element in banking success." Underscoring the same theme two years later, on December 8, 2000, the head of SSB's Global Equity Research wrote to the CEO of SSB that one of his goals since becoming global head of research was "to better integrate our research product with the business development plans of our constituencies, particularly investment banking"

17. In reviewing his performance for 2000, the head of SSB's Global Equity Research stated:

We have become much more closely linked to investment banking this year as a result of participating in their much-improved franchise review process this year. There has been a yearend [sic] cross review of senior analysts and bankers particularly in the U. S. and Europe and with the development of the Platinum Program in the investment bank, the analyst's understanding of the relative importance of clients for IB [investment banking] and GRB [global relationship bank] is much improved.

18. In January 2000, SSB held a "Best Practices Seminar" for research analysts that was hosted by the head of U. S. Equity Research Management. At that seminar, a senior member of Research Management stated:

[W]hen you look at the market share gap between us and the three competitors who are trying to close. When I just eyeballed it, it looked like to me there is something like roughly a billion dollars of, maybe not Equity Capital Markets but Investment Banking revenues, on the table for this firm. And that's a lot of money. And its clear...that Research is driving a lot of this increasingly. And therefore, as a [research] department our goal has to be, to be a really effective partner in terms of helping drive initiation, execution and everything else. Because there is a lot of money on the table for this company. And we'll all benefit from it.

2. SSB Analysts Helped Investment Bankers Identify and Obtain Business

19. Research analysts at SSB helped investment banking by identifying prospective clients and mandates and by participating in sales "pitches" for investment banking business. SSB bankers would not pitch for investment banking business unless they knew the SSB analyst who would cover the company was going to support the proposed deal.

20. SSB's pitchbooks to potential investment banking clients routinely highlighted the experience and qualifications of the lead analyst in the company's sector and how the analyst would help market the proposed deal. During the "pitch" process, SSB conveyed that its research analysts would cover the company if the company gave it investment banking business, and analysts frequently attended the "pitch" sessions. Once a company selected SSB as the underwriter, SSB analysts worked together with investment bankers to (among other things) perform due diligence on the deal and take the company executives out on "roadshows" to market the potential transaction to institutional investors.

21. During the relevant period, all parties involved – the analyst, the firm, and the issuer – understood that the analyst would initiate coverage of the company if SSB was given investment banking business and would initially rate the company favorably.

3. SSB's Research Analysts Supported Investment Banking Through Their Ratings and Coverage

22. SSB encouraged analysts to support SSB's investment banking business through their ratings. Each research report SSB issued included an investment rating that purportedly reflected the analyst's objective opinion of the relative attractiveness of the company to the investors.

23. During the relevant time period, SSB advised its customers that it utilized the following five-point investment rating system:

- 1 - Buy
- 2 - Outperform
- 3 - Neutral
- 4 - Underperform
- 5 - Sell

24. In addition, SSB during the relevant period included in each research report a risk rating of L (low risk), M (moderate risk), H (high risk), S (Speculative), or V (Venture). Each of the research reports and call notes discussed below, other than those on AT&T, rated the company S (Speculative).

25. In practice during the relevant period, SSB's research analysts rarely rated companies a 4 (Underperform) and never a 5 (Sell) in part to avoid antagonizing issuers in a way that would harm SSB's investment banking business. As a Director who provided Research Management Support stated in a March 30, 2001 e-mail:

[W]e in U. S. Research currently have no "4" (Underperform) or "5" (Sell) ratings. We use neutral rating as a statement that we are not at all enthusiastic about a stock. That effectively conveys the message that customers should not be in the stock. If we were to use 4 or 5 ratings that approach would be perceived as highly antagonistic to buy side accounts . . . [and] company management teams.

26. In a later e-mail, the same person suggested that the common terms SSB used to rate stocks did not mean what they said: "various people in research and media relations are very easy targets for irate phone calls from clients, reporters, etc. who make a very literal reading of the rating . . . [I]f someone wants to read the ratings system for exactly what it says they have a perfect right to do that."

27. The head of SSB's Global Equity Research raised the issue of research integrity directly with the head of SSB in a memorandum entitled "2000 Performance Review," when he expressed a "legitimate concern about the objectivity of our analysts which we must allay in 2001." The head of Global Equity Research also addressed the nature of the research ratings at an SSB equities management meeting. He made a presentation regarding the SSB "Stock Recommendations as of 1/29/01," which showed that, out of a total of 1179 stock ratings, there were no Sell ratings and only one Underperform rating. In handwritten notes attached to this presentation, he described these ratings in the U. S. as the "worst" and "ridiculous on face." He observed that there was a "rising issue of research integrity" and a "basic inherent conflict between IB [investment banking], equities and retail." In a February 22, 2001 memo, the head of Global Equity Research told the managing directors in the U. S. equity research division that the global head of SSB's private client (i.e., retail) division said SSB's "research was basically worthless" and threatened to terminate his division's contribution to the research budget.

28. SSB did not change its rating system, however, and the *de facto* three-category rating system remained in place throughout 2001. As of the end of 2001, SSB covered over 1000 U.S. stocks but had no Sell ratings and only 15 Underperform ratings (1.4%).

4. Investment Banking Influenced SSB's Evaluation and Compensation of Research Analysts

29. SSB established a compensation structure that linked research analysts with investment banking. Research analysts were requested to draft business plans that discussed, among other things, their steps to support investment-banking business in the past year and their plans to support investment banking in the upcoming year.

30. In addition, investment bankers among others evaluated the performance of research analysts. Bonuses for research analysts – comprising most of their compensation – were tied to several factors, one of the most important of which was the investment banking revenue SSB attributed to the research analyst.

C. Grubman Supported SSB's Investment-Banking Business in the Telecom Sector

31. During the relevant period, Grubman was one of the most prominent analysts on Wall Street. He was a Managing Director of SSB, and the preeminent research analyst at SSB. He managed a team of analysts who issued research reports ("Reports") and call notes ("Notes") on telecom companies. Grubman was principally responsible for each Report and Note SSB issued on these companies.

1. Grubman Helped Obtain Investment Banking Clients for SSB

32. Grubman helped to obtain and maintain business for SSB's investment bankers from telecom companies in his sector. Grubman also vetted proposed transactions involving telecom companies and vetoed those he could not view favorably. Once he determined he could support a proposed transaction, he and other telecom analysts who reported to him often participated in pitching the potential client to award SSB investment banking business and in roadshows that marketed offerings to investors.

2. Grubman's Ratings Assisted SSB's Investment Banking Business

33. During the relevant period, SSB was the lead underwriter on 6 IPOs for telecom companies. For each company, Grubman initiated coverage with a 1 (Buy) recommendation. In virtually every instance, Grubman also issued favorable research reports on telecom companies for which SSB acted as lead or co-manager of a secondary offering of equity stock offering. In fact, Grubman and his group, with only one exception, did not rate a stock a 4 during the relevant period and never rated a stock a 5. Rather, he and the research personnel who reported to him would drop coverage altogether rather than rate a stock at less than a Neutral.

3. Grubman Helped Generate Substantial Revenue for SSB's Investment Banking Department and Was Highly Compensated

34. Grubman's efforts contributed to the telecom sector generating substantial investment banking revenue for SSB. During the relevant period, as reflected in documents prepared in connection with Grubman's evaluation and compensation, SSB earned more than \$790 million in total gross investment banking fees from telecom companies covered by Grubman: approximately \$359 million in 1999, \$331 million in 2000, and \$101 million in 2001.

35. Grubman was well paid for his efforts. During the relevant period, he was one of the most highly compensated research analysts at SSB. His total compensation (including deferred compensation) from 1999-2001 exceeded \$48 million: over \$22 million in 1999, over \$20.2 million in 2000, and over \$6.5 million in 2001. In light of the importance investment banking played in SSB's annual evaluations, Grubman and two of his assistants in their 2001 performance evaluation highlighted the investment banking deals for which they had been responsible.

36. As was true of other research analysts, Grubman was evaluated by investment bankers, institutional sales, and retail sales. Grubman received high scores and evaluations from investment bankers in 2000 and 2001 that reflected his importance to investment banking. Investment bankers rated analysts on a scale from 1 (lowest) to 5 (highest). For 2000, Grubman received a 5 rating overall from investment bankers, who ranked him first among all analysts. His ratings and rankings in specific investment banking categories, such as pre-marketing, marketing, and follow-up were also at the top

levels. For 2001, Grubman's average score (the only score presented that year) from investment bankers was 4.382, ranking him 23rd among the 98 analysts reviewed.

37. SSB's institutional sales force rated Grubman 16th out of 113 analysts in 2000 and 46th out of 115 analysts in 2001.

38. Retail brokers ranked analysts on a scale from -1 (lowest) to 2 (highest). For 1999, the retail sales force gave Grubman an average score of 1.59, ranking him 4th out of 159 analysts evaluated. In contrast, for 2000 and 2001, Grubman's evaluations from retail were dramatically lower and well below his scores from investment bankers and the institutional sales force in both years. In 2000, retail ranked Grubman last among all analysts with a score of -0.64. The same was true for 2001 -- the retail force ranked Grubman last among all analysts reviewed, and his score fell to -0.906.

39. Moreover, Grubman received scathing written evaluations from the retail sales force in 2000 and 2001. Hundreds of retail sales people sent negative written evaluations of Grubman in both years.

- Many claimed Grubman had a conflict of interest between his role as an analyst and his role assisting investment banking:
 - "poster child for conspicuous conflicts of interest";
 - "I hope Smith Barney enjoyed the investment banking fees he generated, because they come at the expense of the retail clients";
 - "Let him be a banker, not a research analyst";
 - "His opinions are completely tainted by 'investment banking' relationships (padding his business)";
 - "Investment banker, or research analyst? He should be fired";
 - "Grubman has made a fortune for himself personally and for the investment banking division. However, his investment recommendations have impoverished the portfolio of my clients and I have had to spend endless hours with my clients discussing the losses Grubman has caused them."
- Many criticized his support of companies that were SSB investment banking clients:
 - "Grubman's analysis and recommendations to buy (I Ranking) WCOM [Worldcom], GX [Global Crossing], Q [Qwest] is/was careless";
 - "His ridiculously bullish calls on WCOM and GX cost our clients a lot of money";
 - "How can an analyst be so wrong and still keep his job? RTHM [Rhythm NetConnections], WCOM, etc., etc.";
 - "Downgrading a stock at \$1/sh is useless to us.";
 - "How many bombs do we tolerate before we totally lose credibility with clients?"

40. The evaluations and comments from retail did not appear to affect Grubman. In a January 2001 e-mail, he stated:

I never much worry about review. For example, this year I was rated last by retail (actually had a negative score) thanks to T [T&T] and carnage in new names. As the global head of research was haranguing me about this I asked him if he thought Sandy [Weill] liked \$300 million in trading commission and \$400 million (only my direct credit not counting things like NTT [Nippon Telecom] or KPN [KPN Qwest] our total telecom was over \$600 million) in banking revenues. So, grin and bear it. . . .

41. When Grubman left SSB in August 2002, he signed a separation agreement that included compensation worth approximately \$19.5 million plus approximately \$13 million in deferred compensation previously accrued in 1999, 2000, and 2001.

D. Investment Bankers Successfully Pressured Grubman to Maintain Positive Ratings on Stocks

42. Investment bankers pressured Grubman to maintain positive ratings on companies in part to avoid angering the covered companies and causing them to take their investment banking business elsewhere.

43. On April 18, 2001, one of the companies Grubman covered, Winstar Communications, Inc. (a Competitive Local Exchange Carrier or CLEC), declared bankruptcy. In the aftermath of the Winstar bankruptcy, an SSB investment banker suggested that SSB's telecom investment bankers and research analysts have a conference call followed by a meeting to consider the prospects of other CLECs and similar telecom companies. Grubman agreed, but made clear that the Winstar bankruptcy had convinced him of the need to downgrade other CLECs and telecom companies, all of which he rated a Buy (1) at the time:

Also to be blunt we in research have to downgrade stocks lest our retail force (which Sandy cares about a lot which I know to [sic] well) end up having buy rated stocks that go under. So part of this call will be our view that LVL [Level 3], WCG [Williams Communication Group], XOXO [XO Communications], FCOM [Focal], ABIZ [Adelphia Business Solutions], RCN [RCN Communications] must not remain buys.

44. Thereafter, the then-head of investment banking for SSB and the head of telecom investment banking called Grubman separately. The head of investment banking told him not to downgrade the stocks because doing so would anger these companies and hurt SSB's investment banking business. The head of telecom investment banking told him that they should discuss his proposed downgrades because some of the names were more

sensitive than others. SSB and Grubman did not downgrade these stocks until months thereafter, continued to advise investors to buy these stocks and, in the weeks and months following, merely lowered the target prices for each of these companies.

45. Grubman acknowledged that investment banking influenced his publicly expressed views about the companies he covered. He stated in a May 2001 e-mail to an analyst who reported to him:

... If anything the record shows we support our banking clients too well and for too long.

46. The analyst agreed and stated that Grubman had helped SSB's investment banking business by using his influence to sell securities for questionable companies:

... I told [an investment banker] that you get the good and the bad with you [Grubman] and to look at all the bad deals we sold for them in the past. He agreed.

47. On May 31, 2001, Merrill Lynch downgraded XO, one of the stocks Grubman had wanted to downgrade in April. Merrill's actions caused Grubman to consider again whether he should have downgraded XO:

Another one. *I hope we were not wrong in not downgrading.* Try to talk to folks to see what they think of these downgrades. *Maybe we should have done like I wanted to. Now it's too late.* (Emphasis added.)

48. A research analyst who reported to Grubman responded to this e-mail by reiterating a negative view of XO and Level 3:

... XOXO is a lost cause, its [sic] never too late to do the call, we could downgrade XO, LVLTL, etc.

49. Later the same day, the same analyst e-mailed Grubman, warning him that an institutional investor thought downgrading XO would:

definitely get the Lame-O award on CNBC & wouldn't help anyone out, it would just call attention to our negligence on not downgrading sooner.

50. A few weeks later, Grubman was invited to a dinner with the head of U. S. Equity Research and two senior investment bankers. Grubman anticipated discussing banking's displeasure with his commentary on telecom stocks. Grubman e-mailed one of his research colleagues:

... I have dinner with [a senior investment banker and the head of U. S. Equity Research] I bet to discuss banking's displeasure with our commentary on some names. *Screw [the investment bankers]. We should have put a Sell on everything a year ago.* (Emphasis added.)

51. The next day, Grubman e-mailed the head of U. S. Equity Research, stating that the pressure from investment banking had caused him not to downgrade stocks he covered:

See you at dinner. If [a senior investment banker] starts up I will lace into him. ... most of our banking clients are going to zero and you know I wanted to downgrade them months ago but got huge pushback from banking.

52. SSB and Grubman maintained Buy ratings on Level 3, WCG, XO, RCN, Adelphia, and Focal for months after April 2001. SSB and Grubman did not downgrade Level 3 until June 18, 2001; RCN until August 2, 2001; Focal and Adelphia until August 13, 2001; and WCG and XO until November 1, 2001. In each instance, SSB downgraded these stocks to a 3 (Neutral). None of the Notes published between April 18 and the date of each downgrade disclosed the pressure investment bankers had exerted on Grubman and Grubman's yielding to such pressure. These Notes were inconsistent with the views Grubman had expressed, as reflected in the emails above, concerning these stocks.

E. SSB and Grubman Published Fraudulent Research That Promoted Focal Communications and Metromedia Fiber, Two of SSB's Investment Banking Clients

53. SSB and Grubman published certain fraudulent research reports on Focal Communications and Metromedia Fiber, two investment banking clients of SSB. As described below, certain research reports on these companies were contrary to Grubman's private views and those of his team. Moreover, certain research reports on these two companies presented an optimistic picture that overlooked or minimized the risk of investing in these companies and predicted substantial growth in the companies' revenues and earnings without a reasonable basis.

1. SSB and Grubman Published Fraudulent Research Reports on Focal

54. Focal was a CLEC – a broadband telecommunications provider of limited reach. As of December 31, 1999 it operated in 16 locations nationwide and as of December 31, 2000 it operated in 20 locations nationwide. Focal was never profitable. Focal's net loss was approximately \$500,000 in 1996, \$3 million in 1997, \$8 million in 1998, \$22 million in 1999, and \$105 million in 2000.

55. Focal was an investment-banking client for SSB. SSB underwrote Focal's initial public offering in July 1999. It also assisted the company in other investment banking transactions. In total, SSB earned approximately \$11.8 million in investment banking fees from Focal.

56. Shortly after SSB underwrote Focal's initial public offering, it initiated coverage with a Buy (1) rating and maintained that rating until August 12, 2001. Grubman was responsible for SSB's Reports and Notes on the company.

57. SSB and Grubman published two Notes on Focal that were fraudulent – one issued on February 21, 2001 and one issued on April 30, 2001. The February 21 Note "reiterated" a Buy recommendation. It left the target price unchanged from \$30 (approximately twice the stock price of \$15.50). The Note reported overall results that were "in line" with expectations, and a revenue mix that "continues to improve." It also reported that Focal "continues to gain a stronger foothold in the large business market and continues to grow sales of existing customers with existing and new products and also into multiple

markets." The February 21 Note reported EBITDA (earnings before interest, taxes, depreciation, and amortization) that improved over the previous quarter and was in line with estimates; it advised investors that Focal expected to be EBITDA breakeven sometime in 2001. Finally, the Note thought the company could continue to perform well and grow and, if it did, the target price and estimates would be increased:

The quarter's results were in line with our expectations. The revenue and line mix is improving but the fact remains that FCOM still has exposure to recip comp and exposure to ISPs, which are areas of concern for investors. While FCOM is collecting recip comp and is good at reviewing its customer credit profiles with ISPs, which are areas of concern for investors, we believe it is prudent to see a few more quarters of good execution and growth before we change numbers. We continue to remain prudent and thus, we don't think we should raise our price target to above \$30 when the stock is only trading at \$15. But, as we stated in our 3 Q note, if [Focal] management continues to execute and also delivers on its data strategy, we believe this will be reflected in its stock price, and thus, we will be in a better position to raise numbers.

58. The same day as the February 21 Note, however, Grubman stated that he believed Focal should be rated an Underperform (4) rather than a Buy (1), that "every single smart buysider" believed its stock price was going to zero, and that the company was a "pig." Focal apparently complained about the February 21 Note. When Grubman heard of the complaint, he e-mailed two investment bankers:

I hear company complained about our note. I did too. I screamed at [the analyst] for saying "reiterate buy." If I so much as hear one more fucking peep out of them we will put the proper rating (ie 4 not even 3) on this stock which every single smart buysider feels is going to zero. We lose credibility on MCLD and XO because we support pigs like Focal.

59. Also on February 21, an institutional investor e-mailed a research analyst who worked for Grubman, "Meld [McLeod USA, Inc.] and Focal are pigs aren't they?" and asked whether Focal was "a short." The analyst responded to the e-mail: "Focal definitely"

60. Grubman continued to express his true view of Focal in a subsequent communication. As described in Section D above, he stated on April 18, 2001 that the company needed to be downgraded in the aftermath of the Winstar bankruptcy.

61. Contrary to these negative views of Grubman and his colleague, the April 30 Note on Focal again advised investors to buy Focal. By April 30, the stock price had fallen to \$6.48. Although the April 30 Note lowered the target price to \$15, calling the previous target price of \$30 "stale," the new target price was still more than twice the stock price. The April 30 Note stated that the company had reported quarterly results in line with estimates, repeated that Focal's "revenue mix is improving towards telecom," and noted the "line mix" continued to improve.

62. Neither the February 21 Note nor the April 30 Note disclosed the actual views of Grubman and his colleague about Focal. Indeed, both Notes contradicted such views. Neither Note described the company as a "pig" or a "short," disclosed that "smart buysiders" were predicting that Focal's stock price was going to zero, or indicated that the proper rating for Focal was an Underperform (4). The February 21 Note and the April 30 Note did not provide any other reason the stock should be downgraded. To the contrary, both Notes advised investors to buy the stock, predicted that the company's stock price could at least double over the next 12 to 18 months, and indicated that the company's numbers were "in line" and in some respects improving. Accordingly, the Notes issued on February 21, 2001 and April 30, 2001 were fraudulent.

2. SSB and Grubman Issued Fraudulent Research Reports on Metromedia Fiber

63. Metromedia Fiber built and operated fiber optic systems nationally and in Europe. It intended to provide telecom services to CLECs and large telecom companies, cable companies, internet service providers, and Fortune 500 companies in large metropolitan areas. As of the end of 2000, Metromedia Fiber was increasingly unprofitable, spent substantial amounts of cash to construct its fiber optic systems and required even more capital to complete its planned network.

64. Metromedia Fiber was an investment-banking client for SSB. SSB underwrote Metromedia Fiber's IPO in 1997 and a secondary offering in November 1999. In addition, SSB engaged in other investment banking transactions for the company. In total, SSB earned approximately \$49 million in investment banking fees in Metromedia Fiber deals. After Metromedia Fiber's IPO, SSB and Grubman initiated coverage of the company with a Buy (1) rating and maintained that rating until July 25, 2001.

65. In 2001, the company entered into an agreement with Citicorp USA, Inc. (an SSB affiliate) to provide it with a credit facility that it needed to fund its operations. The deadline for closing on the facility was extended twice and, in the end, the facility was completed for less than half its full amount. The Notes on Metromedia Fiber issued between April 2001 and July 2001 did not adequately disclose the red flags concerning the credit facility or Grubman's view that the company might not get the funding. Moreover, in June 2001, a research analyst working for Grubman told him that while the company had funds through the end of 2001, thereafter the company's fundamentals would deteriorate. This contradicted the ratings and price targets SSB and Grubman published on the stock in a Note dated June 28, 2001. For these reasons, the Notes dated April 30, 2001, June 6, 2001, and June 28, 2001 were fraudulent and misleading.

66. Metromedia Fiber announced on January 8, 2001 that it had "obtained a commitment for a fully underwritten credit facility for \$350 million from Citicorp USA, Inc., which it expects will fully fund its current business plan of building 3.6 million fiber miles . . . by the end of 2004."

67. As of March 2001, Metromedia Fiber faced a risk of not obtaining financing for its operations, had sufficient funds for its operations through the end of 2001, and may not have had sources for additional capital to finance its operations after the end of 2001. In particular, the company stated at the time that it may not be able to close on the pending \$350 million credit facility from Citicorp USA.

68. In an April 18, 2001 e-mail to a senior investment banker, Grubman indicated he was aware that Metromedia Fiber might not close the credit facility and would downgrade the company should it not obtain the additional funding: "If MFNX [Metromedia Fiber] does not get credit facility they too get downgraded [from a buy]."

69. Nevertheless, on April 30, 2001, SSB and Grubman issued a Note that reiterated a Buy (1) rating for Metromedia Fiber, stating: "We want to make it very clear that [Metromedia Fiber] remains one of our favorite names." Regarding funding for the company, the Note stated:

As noted in our previous note, MFN has obtained a commitment for a fully underwritten credit facility for \$350 million from Citicorp USA, Inc., which it expects will fully fund its current business plan....

70. The April 30 Note failed to disclose that the company believed it might not consummate the credit facility and that Grubman had expressed doubt that the company might get funding.

71. Metromedia Fiber subsequently announced that the deadline for closing on the credit facility had been extended from May 15 to June 30, 2001.

72. In a June 6, 2001 Note, SSB and Grubman continued to state that the stock was "exceptionally inexpensive" and opined that the company had "good visibility in its core fiber business." Grubman began and ended the Note with: "We strongly reiterate our Buy . . . and we would be aggressive at current prices." Regarding the funding for the company, Grubman wrote:

We continue to believe the \$350 million bank loan, which will bring MFNX to fully-funded status, will close by the end of June.

* * *

The lack of available capital for MFNX - lookalikes only strengthens MFNX's position. Most recently private companies, such as OnFiber and other metro builders, have failed in getting private financing and other companies in the metro space have an extremely difficult time.

* * *

MFNX has a business plan that is fully funded and many "would-be" competitors are never getting to the market.

73. The Note did not disclose that (a) the deadline for consummating the bank loan had been extended from May 15 to the end of June; or (b) after announcing the funding commitment, the company had determined that it may not be able to successfully consummate the senior credit facilities. The Note also did not reflect Grubman's opinion that Metromedia Fiber might not secure the financing. As described above, the Note emphasized and recognized the importance of Metromedia Fiber's fully-funded position.

74. In its June 28, 2001 Note, two days before the expiration of the funding commitment, SSB and Grubman disclosed that Metromedia Fiber had not consummated the bank loan and that the deadline had been extended from May 15 to June 30. SSB and Grubman minimized the funding problem by advising investors that the company had other options for financing, but added that they "can only guess on the nature or terms of the alternative financing [Metromedia Fiber] would agree to." Nevertheless, the Note analyzed the company's financing needs assuming the company could secure the \$350 million in additional funds under the loan or by other means and therefore would be fully funded through 2003. The Note continued to project a positive EBITDA for 2003 and reiterated its Buy (1) rating.

75. The Notes published from April to July 2001 on Metromedia Fiber minimized the risks facing the company, assumed the company was going to be fully funded, and estimated that the company would enjoy explosive growth in revenues and earnings. The \$25 price target issued on April 30, 2001 assumed that the company would have estimated revenue in 2010 of \$10.6 billion and EBITDA of \$4.4 billion. The June 6, 2001 target price of \$15 assumed the company would have \$8.7 billion in revenue nine years out and EBITDA of \$3.2 billion. The June 28, 2001 target price of \$10 maintained the estimate of future revenue and EBITDA.

76. These reports, and the ratings and price targets included in them, reflected SSB's and Grubman's publicly expressed opinion that the company's future was secure. This view was contrary to the actual views of SSB's analysts, which were expressed privately and not disclosed. On June 21, 2001, a research analyst who reported to Grubman discounted the prospects of the company, telling Grubman in an e-mail that while the company had funding through the end of 2001, its fundamentals would deteriorate thereafter:

I have received over 50 calls today on MFNX (its down \$0.20 again to \$1.51). . . . Most people have written off this stock saying that it will go bankrupt, even if they could get an equity infusion here it would be massively dilutive. At lease [sic] they have some cash through the end of the year but I doubt the fundamentals recover which is actually the important thing. I think downgrading right now is not advisable since everyone would say "gee thanks." I think we need an excuse [sic] from the company, we should have done it the day they lowered guidance but of course we were restricted.

77. SSB did not downgrade Metromedia Fiber until July 25, 2001 and even then only downgraded the stock to a Neutral (3) rating. By then, the company's stock price had sunk to 98 cents, more than a 33 percent drop from its price on June 21, 2001, when the analyst who reported to Grubman disparaged the company's future.

F. SSB Issued Misleading Research Reports on Level 3, Focal, RCN, Adelphia, WCG, and XO

78. Research reports must not contain misleading statements, analysts must have a reasonable basis for their recommendations, and reports must present a fair, balanced picture of the risks and benefits of investing in the covered companies and avoid exaggerated or unwarranted claims regarding the covered companies. As described below, certain research reports issued on Level 3, Focal, RCN, Adelphia, WCG, and XO violated these requirements.

1. SSB Issued Misleading Research on Focal

79. As stated above, on February 21, 2001 and April 30, 2001, SSB and Grubman published fraudulent research reports on Focal. In addition to those reports, SSB and Grubman published four misleading research reports on Focal, dated April 10, 2000, April 18, 2000, April 26, 2000, and July 31, 2000.

80. In April 2000, Focal selected SSB to be the joint book runner for a secondary offering of its stock. Focal also announced a major expansion of its business plan. At the time, the company had significant capital expenditures and required additional capital to complete its new business plan. It faced the risks that it could not raise such capital and could not complete its new plan, and that, because of its capital expenditures, it would potentially have substantial negative operating cash flow and substantial net operating losses for the foreseeable future, including through 2000 and 2001. Nevertheless, the Notes SSB and Grubman published on April 10, 2000, April 18, 2000, April 26, 2000, and July 31, 2000 either did not disclose these risks or did not fully address them. In addition, these Notes published a target price that did not have a reasonable basis.

81. On April 10, 2000 SSB and Grubman issued a Note that reiterated a Buy (1) recommendation on Focal and increased the target price for Focal from \$60 to \$110. The Note discussed Focal's planned expansion, describing it as "sexy" and "providing the sizzle in this story." Based on Focal's expanded business plan, SSB and Grubman predicted that the company's revenue within 10 years would increase to \$6 billion and EBITDA would increase to \$2.4 billion. The Note described Focal management as "stellar." The Note did not disclose the additional capital expenditures that would be necessary to fund Focal's expanded business plan or the risk the company may not be able to obtain such capital. It did not disclose the likelihood that the expanded business plan would increase the company's substantial negative operating cash flow and substantial net operating losses.

82. On April 18, 2000, SSB and Grubman issued a Note reiterating the \$110 price target and Buy rating. The April 18 Note stated that "[Focal] is expanding its business plan to 24 markets and aggressively pursuing data opportunities . . . The name of the game in value creation is to drive geographic footprint & service capabilities. Focal is dramatically increasing the latter w/its data initiative while increasing its geographic footprint by 15-20% . . . We reiterate our Buy rating & \$110 target & would be aggressive buyers." The April 18, 2000 Note did not disclose the additional capital expenditures that would be necessary to fund Focal's expanded business plan or the risk the company may not be able to obtain such capital. It did not disclose the likelihood that the expanded business plan would increase the substantial negative operating cash flow and substantial net operating losses the company faced in the foreseeable future.

83. On April 26, 2000, SSB and Grubman issued a Note that reiterated a Buy recommendation, the \$110 target price, and Grubman's predictions of substantial growth in the company's revenues and EBITDA. By this time, Focal's share price had dropped to \$34.00. The Note repeated Grubman's earlier comments that Focal's new data initiative "is the real sizzle in this story . . . we believe that [Focal's] recent geographic & data expansion will enable [Focal] to become one of the critical path points in what is the next evolution in the Internet." The Note stated:

From a liquidity standpoint, no matter what happens with the capital markets, between the money [Focal] has on hand and its bank facilities commitments, we believe that [Focal] will be fully funded through mid- to late-2001. During the first quarter, [Focal] completed a \$275 million offering of 11 7/8% senior notes due 2010 through a private placement.

84. The Note concluded with another recommendation for investors to buy the stock: "We continue to be very bullish on [Focal] and believe the stock is undervalued at current levels." The Note did not disclose the additional capital expenditures that would be necessary to fund Focal's expanded business plan or the risk the company may not be able to obtain such capital. It did not disclose the likelihood that the expanded business plan would increase the substantial negative operating cash flow and substantial net operating losses the company faced in the foreseeable future.

85. The Note SSB and Grubman published on July 31, 2000 left the rating and target price unchanged. The Note extolled the virtues of Focal's management, stating that the reported strong earnings for second quarter 2000 "highlights the execution abilities of FCOM management . . ." It repeated earlier advice to investors that "the stock is undervalued at current levels." The July 31 Note stated:

From a liquidity standpoint, [Focal] received a commitment for \$300 million of senior secured credit facilities during the quarter. Capital expenditures totaled \$77 million this quarter and we still expect [Focal] to spend \$300 million and \$305 million in 2001. We estimate that with the cash on hand of \$342 million and the available credit, [Focal] will be fully funded through 2001.

86. Missing from the July 31 Note, however, were sufficient risk disclosures adequate to warn investors of the funding needs facing Focal. The Note did not disclose the additional capital expenditures that would be necessary to fund Focal's expanded business plan or the risk that the company may not be able to obtain such capital. It did not disclose the likelihood that the expanded business plan would increase the substantial negative operating cash flow and substantial net operating losses the company faced in the foreseeable future.

87. By October 17, 2000, Focal's stock price had plummeted to \$18. That day, SSB and Grubman issued a Report on Focal and other CLECs entitled "CLECs: Clean Up of Ratings, Price Targets & DCFs." In this Report, SSB and Grubman maintained a Buy (1) rating on Focal, but lowered Focal's target price from \$110 to \$30, noting that the previous target price was "a clearly stale number." Despite advising investors for months prior to October that Focal's new business strategy was "sexy" and "the sizzle to the story" and would raise Focal's stock price by \$50, Grubman decreased Focal's price target in part by substantially reducing the revenue expected from the new business strategy.

2. Level 3, Focal, RCN, Adelphia, WCG and XO

88. As described above in Section D, in April 2001 Grubman expressed the need to downgrade Level 3, Focal, RCN, Adelphia, WCG, and XO in the aftermath of the Winstar bankruptcy. Investment bankers pressured Grubman not to change the Buy ratings on these stocks and he did not downgrade them until months later.

89. None of the following Notes for these companies issued between April 18, 2001 and the date the stocks were downgraded disclosed the pressure the investment bankers had exerted on Grubman or the fact that he had acceded to it; these Notes were inconsistent with the views Grubman had expressed, as reflected in the e-mails described in Section D. above, concerning these stocks:³

³ For the additional reasons set forth in Section E, the Note on Focal for April 30, 2001 was fraudulent.

- Level 3: Report issued on April 18, 2001.
- WCG: Reports issued on May 1, 2001, August 1, 2001, and September 21, 2001.
- XO: Reports issued on April 26, 2001, and July 25, 2001.
- Adelphia: Report issued on May 14, 2001.
- RCN: Report issued on May 3, 2001.

3. WCG

90. The May 1, 2001 Note on WCG lacked a reasonable basis because it did not disclose the contrary private views of Grubman and a member of his team. On May 1, 2001, SSB and Grubman issued a Note that failed adequately to disclose the views of Grubman and another analyst of the funding risks facing WCG. Before the issuance of that Note, Grubman and the analyst commented privately that the company "need[s] money." These funding concerns were so acute that the analyst warned an institutional investor to "be careful with WCG." Similarly, Grubman explained to a SSB retail broker who complained about Grubman's target price for WCG that WCG was a "tough one. They still need money. I think business is ok . . ."

91. The May 1 Note, however, reiterated a Buy recommendation on the stock. It noted that "visibility on funding better vs. 6 mos. ago." It reassured investors that WCG had adequate funds "into 2003." The Note stated that the company had reduced capital expenditures and "has made steps to improve its funding situation since the beginning of the year and have [sic] raised additional liquidity of more than \$2 billion." While predicting that the company may need \$1 billion to fund its operations in 2003, the Note stated "frankly, if the second tranche of the bank facility gets fully syndicated out, and WCG does perform as it expects . . . then our funding gap will be cut dramatically."

92. The May 1 Note failed to accurately describe the negative view of Grubman and the analyst who reported to him of the company's funding concerns. Rather than informing investors that WCG's business was merely "ok" or a "tough one," the May 2001 Note advised investors to "be more aggressive on [WCG]." The Note did not warn investors to "be careful" with WCG and did not fully reflect the analysts' views on the company's funding needs.

G. Undisclosed Conflicts of Interest Pervaded Grubman's Upgrade of AT&T in November 1999

1. AT&T Complained About Grubman's Views of the Company

93. From 1995 through November 1999, Grubman maintained a Neutral (3) rating on AT&T. Though at times he offered qualified approval of AT&T's strategy, he also repeatedly disparaged the company in his research and his public comments.

94. Beginning in July 1998 and continuing through the relevant period, Sanford Weill, then co- CEO and Chairman of Citigroup, was a member of the AT&T Board of Directors. Prior to November 1999, AT&T management complained to Weill and other SSB representatives about the tone of Grubman's comments. In particular, the AT&T CEO told Weill that Grubman's unprofessional tone and comments about AT&T made it difficult for AT&T to do business with SSB.

95. At an October 1998 industry trade show, Grubman failed to mention AT&T as one of the important telecommunications companies of the future. AT&T complained to Weill, and Weill relayed the complaint to senior SSB investment bankers. As a result, Grubman wrote a letter of apology dated October 9, 1998 to Weill and the heads of SSB's investment banking and equities departments. Before it was finalized, the letter was reviewed and approved by Weill and several members of senior management. Grubman's apology stated, in part:

It has come to my attention that a speech I made offended AT&T. I want to make it perfectly clear that the last thing I want to do is embarrass the firm or myself or for that matter have AT&T put in an awkward position in dealing with Salomon Smith Barney. To the extent I have done so, I apologize to you and to the firm. I will also find the appropriate time and place to apologize directly to AT&T.

Despite our current investment stance on AT&T, I view AT&T as one of the most significant companies in this industry, a company that I hope we can build a long and valued relationship with and one where I truly am open-minded about changes in investment views.

96. In his cover memo to the head of SSB investment banking, and the SSB investment banker covering AT&T, Grubman indicated that his letter was suitable to send to AT&T. On October 12, Weill and the investment banker covering AT&T traveled to AT&T's Basking Ridge, NJ headquarters and met with AT&T's CEO.

2. Weill Asked Grubman to "Take a Fresh Look" at AT&T

97. A few months later, in late 1998 or early 1999, Weill asked Grubman to "take a fresh look" at AT&T in the hope that Grubman might change his opinion of the company. Weill had a positive view of the CEO of AT&T whom Weill had known personally for years. AT&T's CEO was a member of Citigroup's Board of Directors during the relevant period and, prior to the merger of Citicorp and Travelers Corporation (SSB's corporate parent), had been a member of the Travelers' Board of Directors since 1993.

98. Thereafter, on April 5, 1999, Grubman sent AT&T a seven-page questionnaire seeking further information about its business. On June 11, 1999 Grubman sent Weill a memorandum noting that AT&T had not responded to his questionnaire. Weill apparently then spoke to AT&T's CEO about the questionnaire. AT&T asked Grubman to re-send the questionnaire, and Grubman wrote Weill: "Maybe this time we can actually make some progress in closing the deal with [AT&T's CEO]." On July 19, 1999, AT&T sent an eleven-page response to Grubman.

99. On August 5, 1999 Grubman and Weill traveled to AT&T's headquarters for a meeting with AT&T's CEO that Weill had arranged. On August 19, 1999, Grubman wrote to AT&T's CEO:

I am writing to follow up on our meeting with Sandy. . . . I thought it was important to write to you directly to lay-out what I think we agreed to in order to get this process going. . . . I need to get to a level of specificity well beyond what's on the street today and I will need your help getting to the right people. . . . Wall Street is lacking analysis that comes remotely close to answering the detailed economic, technical, and operational questions that investors are demanding answers to regarding the roll-out of the bundled service platform using the cable plant When my analysis is complete and if the results are in line with what you and I are both anticipating, once I'm on board there will be no better supporter than I. . . . As I indicated to you at our meeting, I would welcome the role of being a "kitchen cabinet" member to you.

100. Grubman sent a copy of his August 19, 1999 letter to Weill, SSB's head of investment banking, and the SSB investment banker covering AT&T.

3. Grubman Requested Weill's Assistance to Get His Children Accepted to the 92nd St. Y Preschool and AT&T Considered Issuing a Tracking Stock for Its Wireless Unit

101. In September 1999, Grubman began his efforts to get his children admitted to the prestigious and competitive preschool at the 92nd Street Y in New York City.

102. On October 20, 1999, the AT&T Board of Directors began discussing whether to issue a tracking stock for its wireless unit. That day, Weill attended an all-day meeting of the AT&T Board, at which AT&T's management presented a number of strategic alternatives, including issuing a tracking stock for AT&T's wireless business.

103. On October 29, 1999, Weill and Grubman had a 14 minute telephone conversation during which they discussed the status of Grubman's "fresh look" at AT&T. In that conversation or one shortly thereafter, they also discussed Grubman's desire to send his children to the 92nd Street Y preschool in New York City.

104. By November 2, AT&T had taken its first steps towards issuing a tracker stock for its wireless unit. That day, an investment banking firm advising AT&T on financial strategies met with AT&T's outside counsel to discuss a proxy statement for AT&T shareholder approval of the wireless tracker.

105. On November 5, 1999, Grubman sent a memo to Weill entitled "AT&T and 92nd Street Y." In it, Grubman updated Weill on his progress in "taking a fresh look" at AT&T and outlined the future steps he would take to reexamine the company. He referred to his earlier meeting with AT&T's CEO and to his scheduled meetings in Denver with the head of AT&T's cable operations and in Basking Ridge with AT&T's network operations personnel. Grubman also sought Weill's assistance in getting his children admitted to the 92nd Street Y preschool. Noting the difficulty in getting into the school, Grubman stated that "there are no bounds for what you do for your children. . . . it comes down to 'who you know.'" In the last paragraph of his memo, Grubman concluded: "Anyway, anything you could do Sandy would be greatly appreciated. As I mentioned, I will keep you posted on the progress with AT&T which I think is going well."

4. Grubman Kept Weill Apprised of His Reevaluation of AT&T in November 1999; AT&T Management Recommended That AT&T Issue a Tracking Stock

106. During November 1999, Grubman intensified his "fresh look" at AT&T. He met and spoke by telephone with AT&T's CEO and traveled to AT&T's Denver and New Jersey offices to meet with company officials and view AT&T's operations. Grubman reported on his efforts to Weill during an unprecedented number of telephone calls on November 3, 11, 17, 22, 24 and 30.

107. On the morning of November 17, Weill attended an AT&T board meeting at which senior AT&T management recommended that the board approve the issuance of a tracking stock for the wireless business. Grubman called Weill from Milan, Italy late that night and the two discussed the status of Grubman's "fresh look" at AT&T. During a call on November 22 or November 24, Grubman informed Weill that he soon would be issuing a report upgrading AT&T.

5. Grubman Upgraded AT&T and Subsequently Stated He Did So to Get His Children Into the 92nd St. Y Preschool

108. Grubman announced on November 29, 1999 that he was upgrading AT&T from a Neutral (3) to a Buy (1) rating. The same day, Grubman sent an e-mail to the SSB publications department, with a copy to Research Management, stating:

The AT&T Report must be edited and mailed out to the printers today so that it can be distributed in time to meet Sandy Weill's deadline (before the AT&T meeting.)

109. The next day, Grubman issued a 36-page Report setting forth his new rating and rationale. In his November 30 Report, Grubman wrote that his upgrade rested largely on two points: (1) the "real economics" of AT&T's cable strategy and (2) AT&T's ability to upgrade its cable technology to deliver a range of different services to consumers' homes. Grubman commented positively in his report about the widely-reported wireless tracking stock but denied upgrading because of the possible IPO.

110. After issuing the report, Grubman told an analyst who reported to him and an institutional investor, in separate conversations, that he upgraded AT&T to help get his children into the 92nd St. Y preschool.

111. Roughly a year after the upgrade, on January 13, 2001, in an e-mail to a friend, Grubman stated:

You know everyone thinks I upgraded T [AT&T] to get lead for AWE [AT&T Wireless tracker]. Nope. I used Sandy to get my kids into 92nd St Y pre-school (which is harder than Harvard) and Sandy needed [the AT&T's CEO's] vote on our board to nuke [John] Reed in showdown. Once coast was clear for both of us (ie Sandy clear victor and my kids confirmed) I went back to my normal negative self on T. [AT&T's CEO] never knew that we both (Sandy and I) played him like a fiddle.

112. The following day, Grubman e-mailed the same friend: "I always viewed T [AT&T] as a business deal between me and Sandy."

6. After the AT&T Upgrade, Weill Helped Facilitate the Admission of Grubman's Children to the 92nd St. Y Preschool

113. After Grubman issued his November 1999 report on AT&T, Weill helped gain admission for Grubman's children to the 92nd St. Y preschool. On or about December 17, 1999, Weill called a member of the 92nd St. Y board and told her he would be "very appreciative" if she would help Grubman, a "valued employee" at Citigroup. Weill did not explicitly offer a donation to the Y during this phone call. By indicating that he would be "very appreciative," he understood that he was implicitly offering such assistance.

114. In March 2000, Grubman's children were admitted to the Y preschool. Subsequently, the board member called Weill, suggested a donation be made to the Y, and may have suggested the amount. Weill agreed. Weill was one of three corporate officers who approved charitable donations from Citigroup or the Citigroup Foundation. During a subsequent conversation with the president of the Citigroup Foundation, Weill indicated that the Foundation should make a \$1 million donation to the Y and instructed the Foundation president to work with the Y to develop a suitable program with the donation. The program that was subsequently developed consisted of a series of 10 events per year that had cultural, artistic, and educational aims. Weill, the president of the Foundation, and another Citigroup corporate officer approved the donation on July 24, 2000⁴ and the first installment of the donation (\$200,000) was sent to the Y in September 2000. The president of the Foundation understood the donation was a "thank you" for the admission of the Grubman children to the preschool at the 92nd St. Y.

7. After Grubman's Upgrade of AT&T, AT&T Selected SSB as a Lead Underwriter in the AT&T Wireless IPO

115. Grubman's upgrade of AT&T assisted SSB in being selected as a lead underwriter and joint book-runner for the IPO of a tracking stock for AT&T's wireless subsidiary.

116. The AT&T Board approved the IPO during its December 5, 1999 Board meeting. AT&T announced its plans at a meeting with analysts the following day.

117. In January 2000, SSB competed to be named a lead underwriter and book-runner for the offering. In its pitch book, it highlighted the experience, prominence, and support for AT&T of Grubman and the SSB wireless analyst. Among other things, SSB's pitch book contained numerous statements about Grubman's views regarding the positive impact the wireless tracking stock would have on AT&T's shares, as well as promises about the role he would play in marketing the deal to investors.

118. In evaluating the various proposals from SSB and other investment banks, AT&T assigned significant weight (55%) to its views of each investment bank's wireline and wireless telecommunications analysts. Because Grubman was a highly rated and highly respected analyst, had a "strong buy" on AT&T stock, and was a "strong supporter" of the company, AT&T gave him the highest possible score in the internal matrix it used to rank the competing investment banks. In February 2000, based in large part on this positive evaluation of Grubman, AT&T named SSB as one of three joint book-runners for the AT&T Wireless IPO. The IPO occurred on April 27, 2000. It was the largest equity offering ever in the United States, and SSB earned \$63 million in fees as lead underwriter for the offering.

8. Grubman Downgraded AT&T

119. On May 17, 2000, three weeks after the IPO, two months after his children were admitted to the 92nd St. Y preschool, and after AT&T announced disappointing earnings, Grubman issued a research report in which he compared AT&T with WorldCom. While Grubman did not change his Buy ratings on the two companies, he lowered his target price for AT&T from \$75 to \$65 per share and made a number of negative comments about AT&T.

120. Institutional investors viewed Grubman's report as a "virtual downgrade" because of his unfavorable comparisons of AT&T to WorldCom. An internal AT&T document also reported that Grubman was privately making comments to investors that were considerably more critical than those in his written reports.

121. Grubman subsequently downgraded AT&T twice in October 2000: on October 6 he downgraded the stock to an Outperform (2) and on October 25 he downgraded it to a Neutral (3), citing what he described as negative news from the company.

9. SSB's Policies Were Not Reasonably Designed To Prevent The Potential Misuse Of Material, Non-Public Information

122. During the relevant period, SSB had general policies in place requiring its employees to obtain approval before becoming a director of another company and to keep non-public information about that company confidential. SSB did not, however, have adequate policies and procedures in place to ensure that communications between a person associated with SSB who served as a director of another company and the SSB research analyst who covered that company would not result in the misuse of material, non-public information by the research analyst. For example, one such step SSB could have taken would have been to require that a company be placed on its watch list if a person associated with SSB served as a director of that

⁴ Because of certain tax considerations, and in light of benefits Citigroup employees received from the program supported by the donation, Citigroup, not Citigroup Foundation, made the donation to the Y. The \$1 million donation was payable in equal amounts over five years.

company. Such a procedure would have helped SSB to monitor whether a research analyst, before publishing research on a company, had received material non-public information on it from a person associated with SSB who also served as one of the company's outside directors.

H. SSB Failed to Supervise Adequately the Activities of Its Research Analysts

1. SSB Failed to Respond Adequately to Red Flags Regarding Research

123. Members of research management received copies of research reports and call notes when they were issued and routinely reviewed research. Based on this review, complaints from SSB employees and customers, and otherwise, SSB was aware of problems with its research. Indeed, as described in Section B above, members of research management themselves expressed reservations about SSB's research. Nevertheless, SSB did not take steps to supervise the activities of research analysts adequately.

124. By early 2001, one of Grubman's supervisors believed that Grubman's ratings were inconsistent with the performance and prospects of the some of the companies he covered.

125. Moreover, on July 2, 2001, a Director who provided Research Management Support sent an e-mail to all research personnel, and others, warning that the models SSB analysts, including Grubman, used to predict future revenues and earnings and generate target prices "**must make sense**" (emphasis in original) and must be "smell tested." He criticized these models for using "aggressive inputs to arrive at a predetermined valuation/outcome." He concluded by noting that, "**Clearly, projected long-term growth rates for many of our companies are too high and would benefit from a thoughtful reappraisal.**" (Emphasis in original.) At least one recipient of this e-mail thought he was referring to Grubman ("Amen! You should have cc'd this to Grubman just to make sure.") The author of the e-mail did not disabuse the recipient of this assumption: "No comment on that, at least not in writing."

126. The same person specifically criticized Grubman's research in a later e-mail to a senior member of research management, implying that the research had been compromised by investment banking concerns and acknowledging that SSB's lax supervision of Grubman was at least partly to blame. He focused in particular on Grubman's coverage of Metromedia Fiber and the June 6, 2001 Note (discussed above). He stated:

Explaining this isn't easy. My candid opinion is that, until quite recently, Jack Grubman's team had not yet come to terms with the debacle in this sector. While share prices plummeted, they remained convinced of the longer-term potential of their group and were unwilling to cut ratings and adopt a more cautious stance. *When you add the heavy layer of banking involvement into the mix this very problematic situation gets easier to understand.* (Emphasis added.)

127. He criticized Grubman's coverage of Metromedia Fiber in particular. He noted that Grubman's

[e]xcessive optimism led to unattainable target prices that should have been brought down much more quickly and earlier, than they had been. . . . [T]he target prices were cut again and again, but never enough to bring them into a more rational alignment with the share price. The 6/6/01 note talks about reducing projected 2010 revenue and EBITDA to \$8.7BB and \$3.2BB from \$10.68BB and \$4.4BB respectively. *How anyone could think those levels could be attained I cannot explain.* This only underscores the absurd assumptions pervading many [discounted cash flow] models. (Emphasis added.)

128. He concluded by acknowledging that SSB's supervision of Grubman had been inadequate:

What could have prevented this? . . . Even with all notes going through an SA [supervising analyst] and many being scrutinized by research legal as well, we clearly rely on senior analysts to do careful work, disclose all important data and denote all material risks. In the case of MFNX, and in other telecom situations that I could name, our approach was inadequate. There was a failure of analysis and, it pains me to confess, *a failure of management.* This is the only explanation I can offer. (Emphasis added.)

2. SSB Knew SSB Investment Bankers Pressured Research Analysts

129. SSB knew that its business practices, which intertwined research and investment banking, created a conflict of interest between investment banking and research, that investment banking pressured research analysts, and that investment banking concerns had the potential to affect, and, as described above with respect to Grubman, did affect, the decisions of research analysts on ratings and coverage. Nevertheless, SSB failed to take adequate steps to prevent such pressure or ensure that SSB's research was independent and objective.

130. SSB was aware that investment bankers pressured Grubman to maintain positive ratings or change negative ratings on companies. Moreover, on November 17, 2000, shortly after SSB was named in a private securities action relating to the AT&T Wireless IPO, Grubman e-mailed the head of Global Equity Research:

I think all legal stuff on ATT should be forwarded to Sandy [Weill] and [the head of SSB Investment Banking] as Exhibit A on why research needs to be left alone. These guys never understand the lingering consequences.

I. SSB Engaged in Improper Spinning and IPO Distribution Practices

131. SSB engaged in improper spinning practices whereby it provided preferential access to valuable IPO shares to the executives of corporations from which SSB sought or had obtained investment-banking business. During the years 1999 and 2000, SSB earned over \$6.6 billion in investment banking revenue. Obtaining this investment banking business was critical to SSB's success. For example, investment-banking fees comprised over 21% of SSB's revenue in 1999, and over 22% in 2000.

132. SSB failed to appropriately administer numerous Issuer Directed Share Programs ("DSPs") it managed during this same period. Further, SSB engaged in significant "as of" trading in IPOs and failed to ensure that its distribution of IPO shares, both through DSPs and its branch offices, was timely and accurately reflected in its books and records.

1. SSB Established a Special Branch to Facilitate Its Spinning Practices

133. SSB employed two registered representatives ("RRs") whose primary function was to open and service accounts for high net worth individuals who were founders, officers or directors of current and potential banking clients ("Executive Accounts"). The two RRs had begun servicing these types of accounts at Salomon Brothers and continued to perform this function after Salomon merged with Travelers in 1997 to create SSB. SSB took steps and entered into written agreements to provide these two RRs with preferential, special, and unusual treatment including the following:

- SSB gave each of these two RRs special compensation, including a draw of \$1 million for the first 6 months of their employment and a minimum of \$500,000 for the second 6 months;
- SSB provided office space for one of the two RRs on SSB's equities trading floor in New York;
- SSB treated the business of the two RRs, designated "Private Wealth Management," as if it were a separate SSB branch office ("PWM Branch") for the purpose of determining IPO allocations, when it was actually only 2 brokers;⁵
- SSB provided the two RRs with unique access to hot IPO shares to distribute to the Executive Accounts that was far above and beyond that of any other broker or branch; and
- SSB provided the two RRs with access to IPO shares for distribution to the Executive accounts from (i) the SSB Branch retail allocation, with PWM being treated as a "branch office"; and (ii) the institutional pot. In some cases, the two RRs were able to obtain access to DSP shares from issuers for distribution to the Executive Accounts.

2. SSB Provided Preferential Treatment to Executive Accounts in the Allocation of Hot IPOs

134. SSB distributed its IPO shares by dividing the firm's allocation between its retail and institutional clients. Generally, SSB allocated to its retail clients, as a group, approximately 20-30% of the firm's allotment in any specific IPO, with a majority of the remaining shares designated for allocations to institutional clients. Those shares set aside for retail clients were designated as the "retail retention," and the remaining shares were designated as the "institutional pot."

135. The retail shares were distributed to specific accounts through SSB's branch managers. For every IPO, SSB gave each branch manager a specific number of shares, and the manager determined which retail brokers received shares and how many shares each retail broker received. The retail broker then determined the allocation of shares among his or her retail accounts, subject to the branch manager's final approval.

136. The PWM Branch and its clients, however, were treated differently. As noted, the two RRs' client base consisted primarily of high net worth individuals whose companies were potential investment banking clients or had provided investment banking business to SSB, and these two individual brokers were designated as a special branch with a separate profit and loss assessment. The PWM Branch received favorable treatment in the allocation of hot IPO shares. Although SSB's written procedures for the distribution of IPO shares specifically prohibited favoritism for the personal accounts of corporate executives, SSB in fact provided preferential treatment to Executive Accounts in connection with the distribution of hot IPO shares throughout the relevant period.

a. Special Access to Retail and Institutional Shares

137. While other SSB retail branches were ordinarily limited to receiving IPO shares for clients from the retail retention, in many instances the two RRs in the PWM Branch obtained shares from both the retail retention and the institutional pot. This arrangement enabled them to consistently provide the Executive Accounts with larger numbers of shares in lucrative hot IPOs than were allocated to other retail accounts.

138. For example, from June 1996 through August 2000, WorldCom's then-President and CEO received IPO allocations in 9 offerings from Salomon and 12 offerings from SSB. He made profits of \$10,612,680 and \$923,360 respectively, totaling \$11,536,041 on these IPO allocations. From 1996 through 2000, WorldCom paid \$75,955,000 in investment banking fees to SSB.

139. During 1999 and 2000, the two RRs in the PWM Branch received 35% of the total IPO shares allocated for distribution to SSB's ten largest branches and PWM combined. During this same period, these two brokers generated less than 3% of this combined group's commission revenue and had less than 5% of the group's assets under management. In 5.3% of the IPOs during this period, the two PWM brokers alone received a greater IPO allocation than the total shares distributed to SSB's ten largest branches.

b. PWM's Solicitation of Syndicate for Additional IPO Shares

140. In addition to the arrangement that provided the two PWM brokers with special access to large numbers of IPO shares for its client base, these two RRs aggressively solicited the Syndicate Department for additional shares in order to give preferential treatment to founders, officers, and directors of investment banking clients. PWM brokers regularly requested additional shares from Syndicate, while retail brokers did so rarely. This occurred as early as 1996 and continued throughout the relevant period. For example, in a June 7, 1996 facsimile to the Syndicate Department, one of the RRs requested shares in the McLeod USA IPO for "Salomon Brothers Investment Banking Relationships to receive preferential treatment."

⁵ The two RRs ended their partnership in 1999 after which each operated as a separate branch and the practices described herein continued. However, the two RRs are referred to as the "PWM Branch."

c. Special Access to DSP Shares

141. As well as obtaining hot IPO shares for Executive Accounts from the retail retention and institutional pot, a PWM broker sought access, on at least one occasion, to shares reserved for an Issuer's Directed Share Program for allocation to Executive Accounts.⁶

142. In a July 6, 1999 letter, one of the two PWM Branch RRs solicited the President and CEO of Focal for the inclusion of various favored Executive Accounts in Focal's DSP. Of the seventeen listed PWM clients who were Focal bondholders requesting equity shares, at least thirteen were telecom company executives. One of these seventeen PWM clients, the former CEO of McLeod USA, received 100,000 shares through Focal's DSP.

143. SSB also directly allocated issuers' DSP shares to the Executive Accounts. When trades through an Issuer's DSP program could not be confirmed, SSB used those shares for its own clients and distributed them to its favored accounts. For example, one of the PWM RRs was assigned by SSB to administer the KQIP DSP. KQIP began trading in the aftermarket on November 9, 1999. Several days later, the issuer's CFO contacted the PWM RR and stated that 20,000 shares of IPO stock were left over from the DSP, and asked if the RR would like to allocate the shares to one of his clients. The RR took the DSP shares and in turn gave them to another broker who had assisted him with the KQIP DSP for allocation to that broker's favored customers. On November 12, 1999, the second broker allocated 5,000 shares of KQIP IPO stock to a customer, who was able to purchase them at the IPO price. On November 16, 1999, the broker allocated the remaining 15,000 shares of KQIP IPO stock to the same customer at the IPO price. On December 24, 1999 the customer sold all 20,000 shares of KQIP for a profit of \$832,540.

144. Additionally, several Executive Accounts serviced by the PWM brokers received IPO shares from a significant number of DSPs. For example, DSP shares were allocated in more than one-third of the SSB IPOs awarded to the former Executive Vice President of Qwest Communications International from May 1998 through September 2000. Likewise, DSP shares were allocated in half of the SSB IPOs awarded to the President of Qwest Communications International from June 1999 through September 2000.

3. Both SSB and Executives of the Firm's Investment Banking Clients Profited Significantly From SSB's Spinning Practices

145. The spinning practices engaged in by Salomon before the merger with Citigroup, and then by SSB after the merger through the PWM Branch proved very lucrative to both the firm and the executives of the firm's investment banking clients. Executives of five telecom companies made approximately \$40 million in profits from approximately 3.4 million IPO shares allocated from 1996 – 2001, and SSB earned over \$404 million in investment banking fees from those companies during the same period.

Company	IPO Shares to Company Executives Pre-Merger (1/96-11/97)	IPO Shares to Company Executives Post-Merger (12/97-12/01)	Net Profits of Executives on Pre-Merger IPO Shares (1/96 – 11/97) (to nearest 000)	Net Profits of Executives on Post-Merger IPO Shares (12/97 – 12/01) (to nearest 000)	Investment Banking Fees Paid to SSB, Pre-Merger (1/96 – 11/97) (to nearest 000)	Investment Banking Fees Paid to SSB, Post-Merger (12/97 – 12-01) (to nearest 000)
Global Crossing	0	37,000	\$ 0	\$254,000	\$0	\$121,049,000
Metromedia Fiber Network	3,000	98,300	\$11,000	\$1,511,000	\$5,243,000	\$43,865,000
McLeodUSA	198,500	459,500	\$4,849,000	\$4,582,000	\$23,071,000	\$48,810,000
Qwest	254,654	838,822	\$1,272,000	\$7,763,000	\$13,998,000	\$32,810,000
WorldCom	1,236,400	262,000	\$20,146,000	(\$273,000)	\$17,631,000	\$97,857,000
Totals	1,692,554	1,695,622	\$26,278,000	\$13,837,000	\$59,943,000	\$344,391,000

4. SSB Could Not Rely on Its Records to Determine if IPOs Were Fully Distributed

146. SSB's record keeping and its system of assessing whether the IPO distribution was completed were totally inadequate. The records failed to timely and accurately record the firm's distribution of IPO shares to its clients. As a result, the firm could not rely on these records to ensure that the distribution was complete. This faulty record keeping was particularly evident in the areas of "as of" trades and the distribution of DSP shares. These "as of" trades frequently provided immediate profits to the recipients.

a. "As Of" Trades

147. In the Metromedia Fiber offering, SSB booked approximately 68% of all allocations on an "as of" basis two days or more after the IPO date and well after secondary market trading had begun in each stock. In the Juniper Networks offering, over 80% of all allocations booked by SSB were booked on an "as of" basis two days or more after the IPO date. In at least 10 offerings, over 10% of the offering was booked on an "as of" basis two or more days after the IPO date.

148. SSB placed a number of these "as of" IPO trades in Executive Accounts. In addition, SSB's inadequate record keeping led to the appearance that certain IPO allocations were sold short in violation of industry regulations. For example, Juniper Networks ("JNPR") IPO stock went public on Thursday, June 24, 1999 at \$34 per share. Trade tickets for the purchase of 5000 shares by WorldCom's former President and CEO were marked on the day after the IPO, Friday, June 25 at 3:12 p.m., and the shares were not booked into the account until the following Tuesday, June 29. SSB recorded

⁶ In each IPO, shares were set aside for distribution to a group of individuals designated by the Issuer through its Directed Share Program, sometimes referred to as the "friends and family" program.

this transaction on an "as of" basis. Though the shares had not yet been booked into the client's account and the tickets for the IPO trades were not yet written and time stamped, the CEO sold 4,000 JNPR shares on June 25 at 12:03 p.m., at prices of \$100 and \$100.31 per share, for a profit of \$264,125. The CEO sold the remaining 1,000 shares of JNPR on April 4, 2000 at \$210 per share, following a 3:1 stock split, for a total profit of \$860,125.

149. Similarly, the former Chairman of Qwest Communications also received several "as of" IPO allocations that traded at a substantial profit in the aftermarket. For example, SSB booked 5000 JNPR IPO shares into the account of the Qwest Chairman on June 29, 1999, even though the IPO trade tickets were time stamped at 3:12 p.m. on June 25, one day after the IPO date. At 11:59 a.m. on June 25, the Qwest Chairman sold 2000 shares of JNPR for a profit of \$132,063, even though the tickets for the IPO trades had not yet been written and time stamped, once again giving the appearance that the IPO shares were sold short. In addition, on June 5, 2000, SSB booked 10,000 shares of ONI Systems Corp. ("ONIS") IPO stock into this same client's account at the IPO price, even though ONIS had begun trading in the aftermarket on June 1, 2000. The Qwest Chairman ultimately sold the ONIS IPO stock for a profit of more than \$562,000.

b. Directed Share Programs

150. In many instances in which SSB was retained to administer the issuer's DSP, a large number of allocations were booked into customers' accounts after the stock began trading in the secondary market, resulting in a substantial number of "as of" trades. Some of these instances resulted directly from SSB's failure to ensure that orders for DSP shares were confirmed prior to the start of secondary market trading. In fact, one of the PWM brokers acknowledged that, if he could not confirm a DSP allocation with a program participant, he would continue to attempt to contact participants even after secondary market trading had begun in the stock. SSB's inadequate record keeping left the firm unable to ensure that the distribution of DSP shares had been completed before the stock began trading in the secondary market.

151. Moreover, SSB did not appropriately administer DSPs. For example, SSB relied upon branch offices and their staff to manage these labor-intensive programs without adequate central supervision and coordination. Further, despite managing numerous DSPs, SSB had no written procedures or supervisory system in effect to ensure the appropriate administration of these programs and the complete and timely distribution of DSP shares.

5. SSB Failed to Supervise Reasonably the Activities of the PWM Branch and Others to Prevent Spinning

152. SSB failed to have supervisory procedures and systems in place to (i) prevent spinning; (ii) create records it could reasonably rely upon to assess whether or not the distribution of IPO shares was completed in compliance with applicable law; and (iii) ensure that issuers' DSP programs were managed in conformance with all applicable industry rules and regulations.

153. By establishing the PWM Branch and providing the two RRs with several special considerations, including the ability to obtain significantly larger hot IPO allocations than other brokers, SSB ensured favorable treatment for the Executive Accounts. Moreover, SSB management failed to adequately supervise the allocation process and specifically failed to take steps to ensure that the PWM Branch complied with SSB's policy prohibiting favoritism for the personal accounts of corporate executives. SSB also failed to accurately and timely record its distribution of IPO shares and failed to have a system to ensure that IPO distributions were completed, and recorded as completed, prior to the initiation of aftermarket trading. Finally, SSB failed to adopt written supervisory procedures and a supervisory system sufficient to ensure that the firm appropriately administered DSPs.

II.

CONCLUSIONS OF LAW

1. The State Corporation Commission has jurisdiction over this matter pursuant to the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code of Virginia.

2. SSB Published Fraudulent Research on Focal and Metromedia Fiber

As described in the Findings of Fact above, SSB publicly issued the following fraudulent reports on Focal Communications and Metromedia Fiber that contained misstatements and omissions of material facts about the companies covered, contained recommendations that were contrary to the actual views of its analysts, overlooked or minimized the risk of investing in these companies and predicted substantial growth in the companies' revenues and earnings without a reasonable basis:

- Focal: Reports issued on February 21, 2001 and April 30, 2001; and
- Metromedia Fiber: Reports issued on April 30, 2001, June 6, 2001, and June 28, 2001.

As a result, SSB violated Securities Rule ("Rule") 21 VAC 5-20-280 A 18.

3. SSB Published Exaggerated, Unbalanced or Unwarranted Statements and Made Recommendations Without a Reasonable Basis

As described in the Findings of Fact above, SSB issued certain research reports for Focal, RCN Communications, Level 3 Communications, XO Communications, Adelpia Business Solutions, and Williams Communications Group that did not disclose the pressure exerted by investment banking on Grubman not to downgrade those stocks, did not disclose other relevant facts, and did not provide a sound basis for evaluating facts regarding these companies business prospects. In addition, certain of the reports for Williams and Focal contained exaggerated or unwarranted statements or claims about these companies, and opinions for which there was no reasonable basis. The treatment of risks and potential benefits in the reports also was not adequately balanced. As a result, SSB violated Rule 21 VAC 5-20-280 A 18 in publishing the following misleading reports, as described in paragraphs 78 - 92:

- Focal: Reports issued on April 10, 2000, April 18, 2000, April 26, 2000, and July 31, 2000.
- Level 3: Report issued on April 18, 2001.

- WCG: Reports issued on May 1, 2001, August 1, 2001, and September 21, 2001.
- XO: Reports issued on April 26, 2001, and July 25, 2001.
- Adelpia: Report issued on May 14, 2001.
- RCN: Report issued on May 3, 2001.

4. SSB Published a Misleading Recommendation on AT&T

As described in the Findings of Fact above, SSB did not, in the November 1999 research report upgrading AT&T, disclose that Grubman's objectivity had been compromised by the facts described above in paragraphs 93 - 122. This would have been material to investors. As a result, such report was misleading and SSB violated Rule 21 VAC 5-20-280 A 18.

5. SSB's Business Practices Created Conflicts of Interest

As described in the Findings of Fact above, SSB's business practices allowed investment bankers to wield inappropriate influence over research analysts. SSB failed to manage, in an adequate or appropriate manner, the conflicts of interest these practices generated. Accordingly, SSB violated Rule 21 VAC 5-20-280 E 12.

6. SSB's Policies Were Not Reasonably Designed To Prevent The Potential Misuse Of Material, Non-Public Information

As described in the Findings of Fact above, during the relevant period SSB did not maintain written policies and procedures reasonably designed to prevent the sharing and misuse of material, non-public information between an affiliated person of SSB who served as a director of another company and an SSB research analyst covering that company. By reason of the foregoing, SSB violated Rule 21 VAC 5-20-280 E 12.

7. SB Engaged in Spinning

As described in the Findings of Fact above, SSB provided favorable and profitable allocations of hot IPO shares to officers of existing or potential investment banking clients who were in a position to direct their companies' investment banking business to SSB. The officers sold the shares provided to them for substantial profit. Subsequently, the companies for which the officers worked provided SSB with investment banking business. As a result of these actions, SSB violated Rule 21 VAC 5-20-280 E 12.

8. SSB Maintained Inaccurate Books and Records in Connection with its Spinning Activities and IPO Distribution Practices

As described in the Findings of Fact above, SSB allowed its employees to engage in "as of" trading and otherwise failed to maintain accurate books and records with respect to spinning. SSB also failed to maintain adequate books and records to ensure that its distributions of IPO shares were completed prior to the initiation of secondary market trading. As a result, SSB violated Rule 21 VAC 5-20-280 E 12.

9. SSB Failed to Supervise

As described in the Findings of Fact above, SSB failed to establish and maintain adequate procedures to protect research analysts from conflicts of interest from its investment banking operation. Moreover, SSB failed adequately to supervise the activities of its research analysts: it failed to respond to indications that SSB research was misleading and failed to have a system to provide reasonable assurances that its research reports complied with Rule 21 VAC 5-20-260. SSB also failed adequately to supervise the employees engaged in spinning. Finally, SSB failed to establish and maintain adequate procedures to ensure the proper administration of Issuer Directed Share Programs. As a result, SSB violated Rule 21 VAC 5-20-260.

10. The Commission finds the following sanctions appropriate and in the public interest.

III.

ORDER

On the basis of the Findings of Fact, Conclusions of Law, and Citigroup Global's consent to the entry of this Order, for the sole purpose of settling this matter, prior to a hearing and without admitting or denying any of the Findings of Fact or Conclusions of Law,

IT IS HEREBY ORDERED:

1. This Order concludes the Investigation by the Commission's Division of Securities and Retail Franchising ("Division") and any other action that the Division could commence under the Act on behalf of the Commonwealth of Virginia as it relates to Citigroup Global, arising from or relating to the subject of the Investigation, 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. Pursuant to § 12.1-15 of the Code of Virginia, Citigroup Global will refrain from violating Rules 21 VA 5-20-280 A 18, 21 VAC 5-20-280 E 12, and 21 VAC 5-20-260 in connection with the research practices referenced in this Order and will comply with the Act and the Regulations in connection with the research practices referenced in this Order, and will comply with the undertakings of Addendum A, incorporated herein by reference.

3. **IT IS FURTHER ORDERED that:**

As a result of the Findings of Fact and Conclusions of Law contained in this Order, Citigroup Global shall pay a total amount of \$400,000,000.00. This total amount shall be paid as specified in the final judgment in the related action by the Securities and Exchange Commission against Respondent Citigroup Global ("SEC Final Judgment") as follows:

a) \$150,000,000 to the states (50 states, plus the District of Columbia and Puerto Rico) (Respondent Citigroup Global's offer to the state securities regulators hereinafter shall be called the "state settlement offer"). Upon execution of this Order, Citigroup Global shall pay the sum of \$3,272,446 of this amount to the Commission as a civil monetary penalty pursuant to § 13.1-521 of the Act. The total amount to be paid by Citigroup Global to state securities regulators pursuant to the state settlement offer may be reduced due to the decision of any state securities regulator not to accept the state settlement offer. In the event another state securities regulator determines not to accept Respondent Citigroup Global's state settlement offer, the total amount of the Virginia payment shall not be affected, and shall remain at \$3,272,446;

b) \$150,000,000 as disgorgement of commissions, fees and other monies as specified in the SEC Final Judgment;

c) \$75,000,000, to be used for the procurement of independent research, as described in the SEC Final Judgment;

d) \$25,000,000, to be used for investor education, as described in Addendum A, incorporated by reference herein.

Citigroup Global agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to payment made pursuant to any insurance policy, with regard to all penalty amounts that Respondent Citigroup Global shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. Citigroup Global further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any penalty amounts that Citigroup Global shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. Citigroup Global understands and acknowledges that these provisions are not intended to imply that the Commission would agree that any other amounts Citigroup Global shall pay pursuant to the SEC Final Judgment may be reimbursed or indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit with regard to any state, federal or local tax.

No portion of the payments for independent research or investor education shall be considered disgorgement or restitution, and/or used for compensatory purposes.

4. If payment is not made by Citigroup Global or if Citigroup Global defaults in any of its obligations set forth in this Order, the Commission may vacate this Order, at its sole discretion, upon 10 days notice to Respondent Citigroup Global and without opportunity for administrative hearing and Respondent Citigroup Global agrees that any statute of limitations applicable to the subject of the Investigation and any claims arising from or relating thereto are tolled from and after the date of this Order.

5. This Order is not intended by the Commission to subject any Covered Person to any disqualifications under the laws of any state, the District of Columbia or Puerto Rico (collectively, "State"), including, without limitation, any disqualifications from relying upon the State registration exemptions or State safe harbor provisions. "Covered Person" means Citigroup Global, or any of its officers, directors, affiliates, current or former employees, or other persons that would otherwise be disqualified as a result of the Orders (as defined below).

6. It is further ordered that this Order constitutes and includes a waiver by the Commission of any and all limitations and disqualifications that may ensue from the entry of this Order that would otherwise affect, restrict or limit the business of Citigroup Global and its predecessors, subsidiaries and affiliates or their ability to participate in offerings or avail themselves of exemptions, including, without limitation, the Uniform Limited Offering Exemption, as and to the extent now or hereafter adopted by the Commission.

7. It is further ordered that this Order is not intended to prohibit Citigroup Global from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, transfer agent, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person of any investment company, bank, insurance company, or entity or person required to be registered under the commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with such activity or in connection with the purchase or sale of any security.

8. The SEC Final Judgment, the NYSE Stipulation and Consent, the NASD Letter of Acceptance, Waiver and Consent, this Order and the order of any other State in related proceedings against Citigroup Global (collectively, the "Orders") shall not disqualify any Covered Person from any business that they otherwise are qualified, licensed or permitted to perform under the applicable law of the Commonwealth 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. For any person or entity not a party to this Order, this Order does not prohibit, limit or create: (1) any private rights or remedies against Citigroup Global; (2) liability of Citigroup Global; or (3) defenses of Citigroup Global to any claims. Nothing herein shall be construed to prohibit the use of any e-mails or other documents of Citigroup Global or of others.

10. 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 Citigroup Global arising from or relating to the subject of the Investigation.

11. 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.

12. Citigroup Global agrees not to take any action or to 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 Citigroup Global's: (i) testimonial obligations, or (ii) right to take legal or factual positions in defense of litigation or in defense of other legal proceedings in which the Commission is not a party.

13. Citigroup Global, through its execution of this Consent Order, voluntarily waives their right to a hearing on this matter and to judicial review of this Consent Order under the Act.

14. Citigroup Global 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 Citigroup Global to enter into this Consent Order.

15. This Order shall be binding upon Citigroup Global and its successors and assigns. Further, with respect to all conduct subject to Paragraph 2 above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions, the terms "Citigroup Global" and "Citigroup Global's" as used herein shall include Citigroup Global's successors and assigns (which, for these purposes, shall include a successor or assign to Citigroup Global's investment banking and research operations, and in the case of an affiliate of Citigroup Global, a successor or assign to Citigroup Global's investment banking or research operations).

16. This Consent Order shall become final upon entry and papers herein shall be passed to the file for ended causes.

NOTE: A copy of Addendum 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-2003-00021
NOVEMBER 14, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.
UBS WARBURG LLC,
UBS PAINWEBBER INC.,
Defendants

CONSENT ORDER

UBS PaineWebber Inc. ("UBS PaineWebber") is a broker-dealer registered in the Commonwealth of Virginia since September 21, 1965; and

UBS Warburg LLC ("UBS Warburg") is a broker-dealer registered in the Commonwealth of Virginia since August 8, 1991; and

For purposes of this Order, PaineWebber, UBS PaineWebber and UBS Warburg will be collectively referred to as UBS or the Firm, except in circumstances where PaineWebber, UBS PaineWebber or UBS Warburg are specifically referenced.

Coordinated investigations into the Firm's activities in connection with certain of its equity research practices during the period of approximately 1999 through 2001 have been conducted by a multi-state task force and a joint task force of the U.S. Securities and Exchange Commission ("SEC"), the New York Stock Exchange ("Exchange"), and the National Association of Securities Dealers ("NASD") (collectively, the "regulators"); and

The Firm has advised regulators of its agreement to resolve the issues raised in the investigations relating to its research practices; and

The Firm agrees to implement certain changes with respect to its research practices to achieve compliance with all regulations and any undertakings set forth or incorporated herein governing research analysts, and to make certain payments; and

The Firm 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 (the "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.

The Firm 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.

FINDINGS OF FACT

A. Background and Jurisdiction

- 1) UBS Warburg became a member organization of the Exchange on September 6, 1985. It is principally owned by UBS AG (UBS AG was formed through the June 1998 merger of Union Bank of Switzerland with Swiss Bank Corporation) and is engaged in the business of global investment banking and securities. UBS Warburg also provides services on a worldwide basis, including investment banking, securities trading and principal investments, and asset management. The principal office of UBS Warburg is located at 677 Washington Boulevard, in Stamford, Connecticut.
- 2) PaineWebber Inc. ("PaineWebber"), founded in 1879, was a full-service securities firm located in New York, and became a member of the Exchange on November 17, 1982. The services provided by PaineWebber, on a global basis, included investment banking, research, trading, investing on a principal basis, and asset management.
- 3) On November 3, 2000, UBS AG purchased PaineWebber and PaineWebber became known as UBS PaineWebber. UBS PaineWebber is indirectly owned by UBS AG. As part of the merger, PaineWebber banking and research activities were shifted to UBS Warburg LLC, and some investment

bankers and research analysts previously employed by PaineWebber became employees of UBS Warburg LLC. Since the merger, UBS PaineWebber is principally engaged in the business of servicing retail investors and no longer employs equity investment bankers or research analysts. UBS PaineWebber's principal office is located at 1285 Avenue of the Americas, New York, New York.

- 4) UBS AG has offices in over 50 countries, employing approximately 69,500 people, 35,000 of whom work for UBS PaineWebber or UBS Warburg. UBS Warburg has 90 stock exchange memberships in 30 countries and the firm's 500 equity research analysts cover about 3,300 companies world-wide.
- 5) UBS Warburg and UBS PaineWebber are registered with the Exchange, SEC, NASD and with all 50 states, the District of Columbia and Puerto Rico.

B. Overview

- 1) This action concerns the research and investment banking activities at UBS Warburg during the period July 1, 1999 through June 30, 2001 as well as the research and investment banking activities at PaineWebber from July 1, 1999 until its merger with UBS AG on November 3, 2000 (the "relevant periods").
- 2) During the relevant period, as set forth below, the Firm sought and did investment banking business with many companies covered by the Firm's Research Department. Research analysts were encouraged to participate in investment banking activities and that was a factor considered in the analysts' compensation. In addition, the decision to initiate and maintain research coverage of certain companies was in some cases coordinated with the Investment Banking Department and influenced by investment banking interests.
- 3) As a result of the foregoing, as set forth below, certain research analysts at the Firm were subject to investment banking influences and conflicts of interest between supporting the investment banking business at the Firm and publishing objective research.
- 4) As set forth below, the Firm had knowledge of these investment banking influences and conflicts of interest, yet failed to establish and maintain adequate policies, systems and procedures with respect to research analysts that were reasonably designed to detect and prevent those influences or manage those conflicts.

C. The Role of the Research Analyst

- 1) Research analysts were responsible for providing analyses of the financial outlook of particular companies in the context of the business sectors in which those companies operate and the securities markets as a whole.
- 2) The Firm published research on publicly traded companies based upon analysts' examining, among other things, financial information contained in public filings, questioning company management, investigating customer and supplier relationships, evaluating companies' business plans and the products or services offered, building financial models, and analyzing competitive trends.
- 3) After synthesizing and analyzing this information, analysts produced research in the form of full reports and more abbreviated formats that typically contained a rating, a price target, and a summary and analysis of the factors that generated the rating and/or price target. The Firm then distributed its analysts' research reports to the Firm's institutional clients, to the Firm's sales force and to retail clients upon request. Research reports were also made available to third party vendors, such as Bloomberg and First Call, who then made the reports available to subscribers to those vendors. In addition, the rating, but not the analysis contained in the research report, was published on Internet websites such as Multex, for viewing by the investing public. Similarly, UBS Warburg posted on its website (and provided in hard copy if requested), monthly summaries concerning the companies covered by its research analysts, the ratings issued, and any ratings changes from the previous month. These summaries did not include any of the analyses contained in the actual research reports.
- 4) Analysts were required according to UBS Warburg policy to submit any proposed rating upgrades or downgrades and initiations of coverage to an Investment Review Committee ("IRC") that consisted of compliance, institutional sales, equity capital markets and research department personnel. The IRC reviewed analysts' reports and approved rating and target changes as well as initiations of coverage.
- 5) Nevertheless, analysts were sometimes able to upgrade or downgrade ratings by requesting and receiving approval of one of several designated members of Research Management, who were also members of the IRC, rather than the full IRC, whenever that change in rating was based upon breaking news. Because Firm analysts sometimes changed their ratings based upon breaking news, upgrades or downgrades were authorized without the approval of the full IRC in nearly one-third of the instances in which ratings were changed during the Relevant Period.
- 6) Analysts also made themselves available to the Firm's institutional and retail sales force to answer questions about the sector and the covered companies. In addition, analysts provided periodic research updates to the Firm's sales force through "morning calls" or "morning notes," which are daily pre-market opening discussions of the market sectors and specific covered companies. Analysts also provided research updates through "blast" e-mails and voice messages, which typically provide a rating and a more abbreviated analysis than what is contained in a research report.
- 7) During the Relevant Period, analysts were expected to make independent determinations regarding coverage, stock price targets and ratings whether to buy, sell or hold certain stocks, without consideration of their research reports' potential impact upon Firm investment banking business or the business of Firm investment banking clients.
- 8) In the 1990's, the importance of research issued by analysts increased as a result of the dramatic growth in the number of individual investors and the availability of online trading. Research coverage became a marketing tool, and issuers sometimes chose an investment bank based upon the expectation that a certain analyst would cover the company's stock favorably.
- 9) As the performance and coverage of research analysts became increasingly integral to the awarding of investment banking business, the Firm encouraged its research analysts to become more involved in investment banking activities, including marketing securities issued by investment banking clients (primarily to the Firm's institutional clients) and soliciting investment banking business.

D. Research Analyst Participation in Investment Banking Activities

- 1) The Investment Banking Division at the Firm advised corporate clients and helped them execute various financial transactions, including the issuance of stock and other securities. The Firm frequently served as one of the underwriters in initial public offerings ("IPOs") - the first public issuance of stock of a company that has not previously been traded - and follow-on offerings of securities.
- 2) During the relevant period, investment banking was an important source of revenues and profits for UBS Warburg. UBS Warburg's investment banking department reported global revenues of \$1.369 billion in 1999, \$1.602 billion in 2000, and \$1.369 billion in 2001, representing nearly 15% of UBS Warburg's global revenues during that time period.
- 3) In addition to performing research functions, some of the Firm's research analysts identified companies as prospects for investment banking services, participated in "pitches" of the Firm's investment banking services to companies, and participated in "roadshows" and other activities in connection with the marketing of underwriting transactions. At times, Firm research analysts were involved in meetings between companies, prior to their IPO's, and some of the Firm's institutional customers who had expressed an interest in purchasing shares in those IPOs. These meetings would take place in various cities all over the country in order to accommodate the institutional customers and were commonly known in the industry as "analyst roadshows."
- 4) During these roadshows, the analyst would discuss the issuer with the institutional customers and would frequently arrange "one-on-one" meetings between company executives and managers of institutional clients who had expressed interest in investing. These roadshows were considered to be a service provided by the Firm to both its institutional clients as well as its investment banking clients.
- 5) Research analysts also participated in commitment committee and due diligence activities in connection with underwriting activities and assisted the Investment Banking Department in providing merger and acquisition and other advisory services to companies.
- 6) The interactions between investment bankers and certain research analysts during the Relevant Period, at times impacted the independence of those analysts' as they became increasingly involved in the Firm's efforts to secure investment banking business. As a result, an environment was created that may have led certain analysts to believe that they were expected to initiate and maintain positive research about Firm clients.

E. Participation in Investment Banking Activities was a Factor in Evaluating and Compensating Research Analysts

- 1) The compensation system at the Firm provided an incentive for research analysts to participate in investment activities and to assist in generating investment banking business for the Firm.
- 2) The performance of research analysts was evaluated by Research Management through an annual review process and analysts' bonuses were determined through this process, unless an analyst had a guaranteed bonus set by contract in advance. The guaranteed bonuses for the Firm's top analysts were frequently in the millions of dollars while the base salary was typically in the \$125,000 to \$150,000 range.
- 3) In addition to these guaranteed bonuses, six PaineWebber analysts were explicitly guaranteed "investment banking bonuses", meaning that those analysts were entitled to some portion of certain investment banking fees earned by PaineWebber.
- 4) For example, two PaineWebber analysts were promised compensation equal to 15% of the underwriting management fees earned in their respective sectors. In addition to the bonuses paid to those analysts pursuant to PaineWebber's annual review process, those two analysts received an additional \$125,000 and \$135,000, respectively, for the year 2000, because of the investment banking fees earned by PaineWebber in their respective sectors.
- 5) When UBS Warburg acquired the research and investment banking operations of PaineWebber in November 2000, the Firm removed the direct link between investment banking revenues and analyst compensation.
- 6) The UBS annual evaluation process included an evaluation of each analyst's contribution to the Firm's investment banking business as a factor in determining bonus compensation.
- 7) Each year, prior to bonuses being paid, UBS conducted a comprehensive evaluation process that rated each analyst's performance and assigned analysts rankings in one of four quartiles. As part of that process, analysts submitted self-evaluations, and other UBS employees with whom the analyst had had significant contact were also asked to submit evaluations, including investment bankers.
- 8) In describing the analysts' performance, the UBS bankers frequently included comments relating to the analyst's abilities to attract and/or maintain investment banking clients.
- 9) For example, an investment banker at UBS Warburg evaluated one analyst as "the best business builder in research I have ever known."
- 10) Similarly, Research Management considered investment banking contributions as a component of analysts' performance evaluations. The Head of UBS Warburg's Research Division evaluated that same analyst as the "most prolific analyst at the firm when it comes to generating investment banking revenues" and that he "manages the tightest coordination between research and [the Corporate Finance Division] of any sector." This evaluation was included in the section of the performance review entitled "Accomplishment/Strengths."
- 11) Furthermore, the Head of UBS Warburg's Research Division, who was ultimately responsible for evaluating analysts and determining the exact amount of their bonus compensation, referenced analysts' contributions to investment banking business as one factor in the evaluation of their performance.
- 12) The Firm also specifically requested that analysts, in writing their own self-evaluations, include, among other criteria, an assessment of their contribution to the Firm's Investment Banking Department. This led to a perception among analysts that contribution to investment banking was a factor in compensation.

- 13) In response to this request, one analyst described his own performance for the Firm by highlighting his involvement with several investment banking deals done by the Firm during the previous year. The analyst then boasted that he was responsible for generating \$15 million in investment banking revenue for the Firm during that time.

F. Investment Banking Interests Influenced the Firm's Decisions to Initiate and Maintain Research Coverage

- 1) In general, the Firm determined whether to initiate and maintain research coverage based upon investor interest in a company or based upon investment banking considerations, such as attracting companies to generate investment banking business or maintaining a positive relationship with existing investment banking clients.
- 2) As a matter of practice, the Firm initiated coverage on companies that engaged the Firm in an investment banking transaction and maintained coverage for a period of time beyond the transaction.
- 3) Research analysts were aware that, in certain circumstances, their positive and continued coverage of particular companies was an important factor for the generation of investment banking business. Thus, some research analysts and investment bankers coordinated the initiation and maintenance of research coverage based upon, among other things, investment banking considerations.
- 4) For example, analysts were required to seek authorization from Research Management prior to dropping coverage of a company, unless the reason for dropping coverage was due the departure of the covering analyst. However, when the company involved was an investment banking client, the analyst was also expected to consult with the investment banking personnel responsible to that client.
- 5) Additionally, according to an e-mail by UBS Warburg Head of Global Technology Investment Banking, it was an implicit condition in the UBS Warburg investment banking agreements that UBS Warburg would continue to provide research coverage of its clients for a period of time following a transaction. Such implied promises to investment banking clients impacted the Research Department's authority to make its own independent determinations concerning the continuation of coverage.
- 6) When a UBS Warburg analyst informed the Head of the Research Department that he intended to drop coverage of a particular company, he was asked whether there was any "banking relationship" and was told to "check with" the banker who worked with that company.
- 7) Although coverage of the company was dropped in that instance, the lead banker of the technology group at UBS Warburg reminded the research analyst and Research Management of the implicit promise made during pitch meetings that coverage would be maintained for a significant period of time: "The problem is that many companies . . . in asking for credentials for a pitch will ask directly if we are meeting our research obligations to the companies we bank. They generally expect an IPO fee to justify coverage for three years . . ."
- 8) In another instance, when a UBS Warburg research analyst informed his banking counterpart that he intended to drop coverage of four biotechnology companies, the banker forwarded that message to a member of Investment Banking Management who sent an e-mail to the analyst stating that he wished "to have the opportunity to discuss future potential revenue opportunities from these clients" before coverage was dropped.
- 9) The Investment Banking Department also sometimes had an impact upon determinations made by analysts regarding the initiation of coverage. When investment bankers became aware of opportunities to cultivate investment banking business, they sometimes suggested to the analyst in that sector that coverage should be initiated.
- 10) For example, a Firm investment banker sent an e-mail to a Firm research analyst indicating that a company with whom he had discussed investment banking business had asked "if there was an interest by UBS Warburg to cover them from a research stand point." The banker went on to say that he believed that "the timing is good" for initiation of research coverage of the company and offered to set up a meeting between the company and the analyst.
- 11) Similarly, a Firm analyst informed his banking counterparts that they should wait to call a company to discuss a potential investment banking deal until "after I pick up coverage."

G. The Firm's Pitch Materials Contained Discussions of Research Coverage

- 1) During the relevant period, research coverage was an important factor considered by companies in selecting a firm for an investment banking transaction.
- 2) Certain analysts understood that the issuance of positive research about an issuer was a pre-condition to the Firm's obtaining the issuer's banking business.
- 3) In competing for investment banking business from prospective issuers, the Firm typically sent investment bankers to meet with company management in order to persuade the company to select the Firm as one of the underwriters in a contemplated transaction. Research analysts often accompanied bankers on these "pitch" meetings. At these meetings, Firm investment bankers would present their level of expertise in the company's sector and discuss their previous experience with other companies, as well as their view of the company's merits and likelihood of success.
- 4) In some instances, the research analyst's coverage and impact on the market place concerning companies under coverage was a component of the pitch presented by the Firm. As a result of these presentations, certain issuers selected an investment bank because of the reputation of the analyst that would cover the company's stock and the issuer's belief that the coverage would be positive.
- 5) Furthermore, certain research analysts who covered the company's sector often worked with investment bankers to prepare the Firm's pitch presentation and attended the pitch meeting.
- 6) In preparation for each presentation, the investment bankers, sometimes with an analyst's input, prepared a "pitch book" that was distributed at the meeting and contained a summary of the Firm's presentation.

- 7) Some pitch books contained information relating to the company, its competition, the sector in which it operated and the nature of the services the Firm could provide to the company and its shareholders after the completion of a potential offering. Additionally, Firm pitch books sometimes contained implicit representations that the Firm would continue to provide service to the issuer after the offering by providing research coverage about the company.
- 8) Some pitch books contained information indicating that a specific analyst would cover the company and included data demonstrating how that analyst's positive comments about other companies in the sector had had a direct positive impact upon the stock prices of those companies.
- 9) For example, the pitch book presented to JDS Uniphase by PaineWebber, discussed the impact that PaineWebber research had on covered stocks by including a graphic depicting the performance of stocks on the Firm's "Buy List" as opposed to stocks on the Firm's "Attractive List" and "Neutral List." At the top of the graphic, PaineWebber quoted a report from Reuters which stated, "Shares of semiconductor companies specializing in chips for the communications market rose on Thursday after PaineWebber published a report citing the sector's growth prospects."
- 10) Similarly, in a pitch book presented to Avant Immunotherapeutics, Inc., PaineWebber presented a slide entitled "Demonstrated Strength in Equity Trading and Research." One of the sub-topics on the slide stated, "Buy and attractive recommendations have outperformed the S&P 500 by 84 percentage points for the period 1/90 through 12/99" while "Sell and unattractive ratings have underperformed the S&P 500 by 361 percentage points for the period 1/90 through 12/99."
- 11) Because analysts often participated in the Firm's efforts to win investment banking business, analysts were sometimes subjected to competing pressures after a stock became publicly traded. The type of information contained in the pitch books, such as the examples above, implied to issuers that the Firm would provide positive research coverage if selected for an investment banking transaction, and that such coverage could result in rising stock prices for those companies.

H. Research Analysts Rarely Issued Neutral or Negative Ratings

- 1) During the relevant period, PaineWebber's rating system allowed research analysts to assign one of four ratings to a stock: "Buy", defined as total return expected to exceed that of the S&P 500 by 20 percentage points or more over the next 12 months; "Attractive", 12 month total return potential that is 10-20 percentage points greater than the market's; "Neutral", 12 month total return potential within 10 percentage points of the market's; "Unattractive", expected to underperform the market by more than 10 percentage points on a total return basis over the next 12 months.
- 2) During the relevant period, UBS Warburg's rating system differed slightly from PaineWebber's and allowed research analysts to assign one of five ratings to a stock: "Strong Buy", defined as greater than 20% excess return potential; "Buy", positive excess return potential; "Hold", low excess return potential; "Reduce", negative excess return potential; "Sell", greater than 20% negative excess return potential. All of these ratings related to a 12 month time horizon.
- 3) During the relevant period, the level of the price target and the strength of the recommendation placed on a stock by covering analysts sometimes had a significant impact on the stock price. Investment bankers and issuers, being fully aware of the potential impact of analysts' recommendations, were motivated to seek research coverage containing positive recommendations.
- 4) In fact, certain analysts considered the investment banking implications for the Firm when contemplating issuing even a neutral rating about an investment banking client. For example, a member of Equity Sales Management, sent an e-mail to one of UBS Warburg's telecom analysts stating "The salesforce is extremely frustrated with your research, price targets, ratings . . . They feel that you're being somewhat flippant and not taking responsibility for your recommendations and for having lost hundreds of millions of dollars for people." The analyst responded that he would never utilize a Hold rating on a stock unless one of two conditions occurred: "1) if I believe the company is about to go bankrupt; 2) if there is no investment banking business to be had there."
- 5) Notwithstanding that PaineWebber had four available ratings and UBS Warburg had five, the Firm's research analysts rarely issued ratings other than "Strong Buy" and "Buy" on the stocks of investment banking clients. Out of several thousand companies covered by UBS Warburg during the relevant period, UBS Warburg issued only seven "Hold" ratings and two "Sell" ratings on companies with which it had an investment banking relationship.
- 6) Similarly, from July 1, 1999, until the time of the merger, PaineWebber issued only sixteen "Neutral" ratings and five "Unattractive" ratings on companies with which it had an investment banking relationship.

I. In Certain Instances, the Firm Published Exaggerated or Unwarranted Research

- 1) On several occasions, the conflicts of interest discussed above resulted in analysts publishing ratings and/or recommendations that were exaggerated or unwarranted, and/or contained opinions for which there was no reasonable basis. The following are examples of how these conflicts affected the research:
- 2) In April of 1998, UBS Warburg served as the lead manager on an IPO for Triangle Pharmaceuticals ("Triangle") and received \$1.8 million in investment banking fees.
- 3) Notwithstanding a market capitalization value of approximately \$352,000,000, in November of 1999, Triangle had yet to earn any revenue. Rather, investor optimism for the stock was based upon the anticipated approval by the Food and Drug Administration ("FDA") of several new drugs, including its "lead HIV drug", Coactinon.
- 4) In a research report issued on October 8, 1999, the UBS Warburg research analyst who covered Triangle issued a research report that maintained a "Buy" rating while relaying news to investors that a study of the drug Coactinon had proved "inconclusive." The analyst also wrote that the form of testing used by Triangle to gain approval from the FDA had been used before but "had been in less favor recently," and that accordingly it "is unclear what the FDA's requirements will now be" for testing the drug.

- 5) On December 10, 1999, the FDA informed the company that it would require an additional round of testing, which would cause at least a substantial delay, and perhaps ultimately a cancellation, of the release and sale of the drug. As a result the stock price fell more than \$3 -- or 23% -- from \$15.63 to \$12.00 on the date of the announcement.
- 6) On that same day, the analyst published a new research report in which she relayed the news to investors but maintained her "Buy" rating, based in part, according to the report, upon the analyst's belief that a different drug in development by Triangle was the company's "most important near-term opportunity."
- 7) The analyst spoke to the UBS Warburg sales force before the market opened following Triangle's announcement of the FDA's decision and made a statement in form or in substance that the FDA's action had been an anticipated possibility notwithstanding the analyst's "Buy" rating on the stock.
- 8) Following that call, a member of UBS Warburg's Equity Trading Management contacted the analyst by e-mail and expressed disappointment that the analyst anticipated that the FDA might take this action but had failed to adequately emphasize that possibility to the sales force.
- 9) The analyst responded that her failure to emphasize negative information regarding Triangle was, at least partially, a result of the analyst's allegiance to the investment banking client: "Triangle is a very important client of [the firm]. We could not go out with a big research call trashing their lead product, although we had a feeling the FDA might balk. Had we been right or wrong, it would have been a disaster. I just wanted the salesforce to know we were not surprised, and that where appropriate we had had some conversations with the buy-side. Sorry this was not conveyed."
- 10) Similarly, in September 1999, UBS Warburg acted as a co-lead underwriter of Interspeed's IPO and received approximately \$700,000 in investment banking fees as a result.
- 11) In October 1999, the analyst initiated coverage on Interspeed with a "Buy" rating and a \$15 price target and maintained that position for several months. On January 3, 2000, the Firm's analyst received an e-mail from a junior analyst who asked what to do if Interspeed's annual report reflects inventory and a sales breakout which "differ materially from what we have in the model." The junior analyst also remarked that Interspeed should "get new auditors, their cash flow statement doesn't add up."
- 12) That same day, the analyst issued a research report stating the Interspeed had fallen "dramatically short on the top line" in the prior quarter "due to various consumer financing and delivery issues." Additionally, the analyst issued the "Buy" rating in spite of the fact that the stock price had risen above the analyst's price target.
- 13) Two days later, on January 5, 2000, the analyst instructed a member of the Firm's sales force, "Don't put people into Interspeed -- very risky." Nevertheless, the analyst maintained his Buy rating on the stock.
- 14) Approximately 15 minutes later, the recipient of that e-mail replied, asking "so why is ispd [stock symbol for Interspeed] a short?" The analyst replied, "Just lumpy revenue, some stuffing of channel, creative accounting."
- 15) The analyst's reference to "customer financing and delivery issues" in his January 3rd report should have more fully described his concern that Interspeed was suffering from lumpy revenue or channel stuffing.
- 16) A week after that, on January 11, 2000, the analyst received a question from an institutional sales force member asking about Interspeed. He responded, "BE CAREFUL about being long Interspeed. They will report a great number for the December quarter, at least on the surface of things, but the quality of that number is not necessarily self-evident." (emphasis in the original).
- 17) On February 4, 2000, the UBS Warburg analyst issued another research report following Interspeed's announcement of its fourth quarter results, which exceeded the analyst's expectations. In that report, the analyst reiterated his "Buy" rating and raising his price target from \$15 to \$28.
- 18) On March 20, 2000, while the analyst still maintained his "Buy" rating and \$28 price target and with the stock price exceeding that target, the analyst sent an e-mail to UBS Warburg's sales force informing them that another company had developed a product to compete with Interspeed. One of the members of the sales force responded, "This sounds like a short . . . correct? (Off the record, of course)." The analyst responded, "YES." However, the analyst still maintained the "Buy" rating.
- 19) On May 31, 2000, the analyst sent an e-mail to two institutional customers saying that "The two shorts of the group I would suggest are (1) [another issuer] and (2) Interspeed. I'd be wary of shorting any of the others." Nevertheless, the analyst still maintained his "Buy" rating on Interspeed.
- 20) On July 21, 2000, the analyst dropped the rating on Interspeed from a "Buy" to a "Hold".

J. UBS Warburg Received and Made Payments for Research

- 1) UBS Warburg received payments from the lead manager of offerings in which UBS Warburg did not participate for the issuance of research during the relevant time period.
- 2) During the relevant period, UBS Warburg received a payment of \$100,000 from an outside firm in connection with the offering of Flextronics International, Ltd. The cover letter enclosing the check indicated that the check was a "special research check." However, UBS Warburg failed to disclose in its research reports concerning Flextronics that it had received the payment, nor did it disclose the source or amount of the payment.
- 3) During the relevant period, UBS Warburg also received a payment from an outside firm in the amount of approximately \$113,000 in connection with the offering of Atmel, Inc. The cover letter enclosing the check stated that the check represented "guaranteed economics for research." However, UBS Warburg failed to disclose in its research reports concerning Atmel that it had received the payment, nor did it disclose the source or amount of the payment.

- 4) During the relevant period, UBS Warburg also paid a "research fee" of \$150,000 at the direction of the issuer, to two broker-dealers in conjunction with the underwriting transaction of Netopia, Inc. in which UBS Warburg was the lead-manager. However, UBS Warburg did not take steps to ensure that this broker-dealer disclosed in its research reports that it had been paid to issue research. Further UBS Warburg did not disclose or cause to be disclosed the details of these payments.
- 5) During the relevant period, UBS Warburg also made several payments totaling approximately \$283,000, at the direction of the issuer, for "research" to broker-dealers in conjunction with an underwriting transaction of Espeed, Inc., in which UBS Warburg was the lead manager. However, UBS Warburg did not take steps to ensure that this broker-dealer disclosed in its research reports that it had been paid to issue research. Further UBS Warburg did not disclose or cause to be disclosed the details of these payments.

K. The Firm Failed To Adequately Supervise Its Research and Investment Banking Departments

- 1) While one of the roles of research analysts was to produce objective research, the Firm also encouraged them to participate in investment banking activities. As a result of the foregoing, these analysts were subject to investment banking influences and conflicts of interest between supporting the Firm's investment banking business and publishing objective research.
- 2) The Firm had knowledge of these investment banking influences and conflicts of interest yet failed to manage them adequately to protect the objectivity of its published research.
- 3) The Firm failed to establish and maintain adequate policies, systems and procedures reasonably designed to ensure the objectivity of its published research. Although the Firm had some policies governing research analyst activities during the relevant period, these policies were not adequate to fully address the conflicts of interest that existed.

II.

CONCLUSIONS OF LAW

- 1) The Commission has jurisdiction over this matter pursuant to §13.1-501 *et seq.* of the Code of Virginia.
- 2) The Commission finds that the Firm violated Securities Rule ("Rule") 21 VAC 5-20-280(E)(12) by:
 - i) engaging in the acts and practices that created or maintained inappropriate influence by the Investment Banking Department over research analysts, therefore imposing conflicts of interest on its research analysts, and failing to manage these conflicts in an adequate or appropriate manner;
 - ii) issuing research reports that were affected by the conflicts of interest imposed on its research analysts as described above;
 - iii) making payments for research to other broker-dealers not involved in underwriting transactions when the Firm knew that these payments were made, at least in part, for research coverage, and by failing to disclose or cause to be disclosed in offering documents or elsewhere the fact of such payments; and
 - iv) receiving payments in conjunction with underwriting transactions from outside entities for research issued without disclosing receipt of those payments to the public as required by Section 17(b) of the Securities Act of 1933, as amended.
- 3) The Firm violated Rule 21 VAC 5-20-260 by failing to establish and maintain adequate policies, systems and procedures for supervision and control of the Research and Investment Banking Departments reasonably designed to detect and prevent the foregoing investment banking influences and manage the conflicts of interest to assure compliance with applicable securities laws and regulations.
- 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 UBS Warburg's and UBS PaineWebber's consent to the entry of this Order, for the sole purpose of settling this matter, prior to a hearing and without admitting or denying any of the Findings of Fact or Conclusions of Law,

IT IS HEREBY ORDERED:

- 1) This Order concludes the investigation by the Commission's Division of Securities and Retail Franchising ("Division") and any other action that the Division could commence under the Act on behalf of the Commonwealth of Virginia as it relates to the Firm, relating to certain research practices at the Firm described herein.
- 2) Pursuant to § 12.1-15 of the Code of Virginia, the Firm will refrain from violating 21 VAC 5-20-280(E)(12) and 21 VAC 5-20-260 in connection with the research practices referenced in this Order and will comply with the Act and Regulations in connection with the research practices referenced in this Order and will comply with the undertakings of Addendum A, incorporated herein by reference.
- 3) As a result of the Findings of Fact and Conclusions of Law contained in this Order, the Firm shall pay a total amount of \$80,000,000.00. This total amount shall be paid as specified in the SEC Final Judgment as follows:
 - a) \$25,000,000 to the states (50 states, plus the District of Columbia and Puerto Rico) (the Firm's offer to the state securities regulators hereinafter shall be called the "state settlement offer"). Upon execution of this Order, the Firm shall pay the sum of \$545,408 of this amount to the Treasurer, Commonwealth of Virginia as a civil monetary penalty pursuant to § 13.1-521 of the Code of Virginia. The total amount to be paid by the Firm to

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

state securities regulators pursuant to the state settlement offer may be reduced due to the decision of any state securities regulator not to accept the state settlement offer. In the event another state securities regulator determines not to accept the Firm's state settlement offer, the total amount of the Virginia payment shall not be affected, and shall remain at \$545,408;

- b) \$25,000,000 as disgorgement of commissions, fees and other monies as specified in the SEC Final Judgment;
 - c) \$25,000,000, to be used for the procurement of independent research, as described in the SEC Final Judgment;
 - d) \$5,000,000, to be used for investor education, as described in Addendum A, incorporated by reference herein.
- 4) If payment is not made by the Firm or if the Firm defaults in any of its obligations set forth in this Order, the Commission may vacate this Order, at its sole discretion, upon 10 days notice to the Firm and without opportunity for administrative hearing.
 - 5) The Firm agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including but not limited to payment made pursuant to any insurance policy, with regard to all penalty amounts that the Firm shall pay pursuant to this Order or section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. The Firm further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any penalty amounts that the Firm shall pay pursuant to this Order or section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. The Firm understands and acknowledges that these provisions are not intended to imply that Virginia would agree that any other amounts the Firm shall pay pursuant to the SEC Final Judgment may be reimbursed or indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit with regard to any state, federal or local tax.
 - 6) This Order is not intended by the Commission to subject any Covered Person to any disqualifications under the laws of any state, the District of Columbia or Puerto Rico (collectively, "State"), including, without limitation, any disqualifications from relying upon the State registration exemptions or State safe harbor provisions. "Covered Person" means the Firm, or any of its officers, directors, affiliates, current or former employees, or other persons that would otherwise be disqualified as a result of the Orders (as defined below).
 - 7) It is further ordered that this Order constitutes and includes a waiver by the Commission of any and all limitations and disqualifications that may ensue from the entry of this Order or the SEC Orders that would otherwise affect, restrict or limit the business of the Firm and its predecessors, subsidiaries and affiliates or their ability to participate in offerings or avail themselves of exemptions, including, without limitation, the Uniform Limited Offering Exemption, as and to the extent now or hereafter adopted by the Commission.
 - 8) It is further ordered that this Order is not intended to prohibit the Firm from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, transfer agent, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.
 - 9) The SEC Final Judgment, the NYSE Stipulation and Consent, the NASD Letter of Acceptance, Waiver and Consent, this Order and the order of any other State in related proceedings against the Firm (collectively, the "Orders") shall not disqualify any Covered Person from any business that they otherwise are qualified, licensed or permitted to perform under the applicable law 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.
 - 10) The Orders shall not disqualify any Covered Person from any business that they otherwise are qualified, licensed or permitted to perform under applicable state law.
 - 11) 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 Firm including, without limitation, the use of any e-mails or other documents of the Firm or of others regarding research practices, or limit or create liability of the Firm, or limit or create defenses of the Firm to any claims.
 - 12) 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 Firm in connection with certain research practices at the Firm.

NOTE: A copy of Addendum 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-2003-00022
DECEMBER 10, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

U.S. BANCORP PIPER JAFFRAY INC.,
Defendant

CONSENT ORDER

U.S. Bancorp Piper Jaffray Inc. (hereinafter "USBPJ") is a broker-dealer registered in the Commonwealth of Virginia; and

Coordinated investigations into USBPJ's activities in connection with certain of its equity research and investment banking practices during the period of approximately 1999 through 2001 have been conducted by a multi-state task force and a joint task force of the U.S. Securities and Exchange Commission, the New York Stock Exchange, and the National Association of Securities Dealers (collectively, the "regulators"); and

USBPJ 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

USBPJ has advised regulators of its agreement to resolve the investigations relating to its equity research and investment banking practices; and

USBPJ agrees to implement certain changes with respect to its equity research and investment banking practices, and to make certain payments;
and

USBPJ voluntarily elects to permanently waive any right to a hearing on this matter and judicial review of this Consent Order (the "Order") under § 12.1-39 of the Code of Virginia;

NOW, THEREFORE, the State Corporation 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 FACT

A. Background and Jurisdiction

1. USBPJ is a broker-dealer with its principal place of business in Minneapolis, Minnesota. The firm engages in a full-service securities business, including retail and institutional sales, investment banking services, trading, and research.
2. USBPJ is currently registered with the Commission as a broker-dealer, and has been so registered since April 4, 1981.
3. This action concerns the years 1999, 2000, and 2001 (the "relevant period"). During that time, USBPJ engaged in both research and investment banking ("IB") activities.
4. At various times during the relevant period, USBPJ placed undue emphasis on using its research analysts to maximize opportunities to obtain investment-banking revenues from companies in the technology, telecommunications, and biotechnology industry sectors. Such emphasis on obtaining investment-banking revenue created conflicts of interest for the research analysts that resulted in the issuance of research reports that violated the Act. USBPJ failed adequately to monitor and supervise the conflicts of interest inherent in seeking investment-banking opportunities from companies covered by USBPJ research analysts. USBPJ's violative conduct, described herein, was caused by a flawed organizational structure, combined with inadequate supervision of the conflicts of interest.
5. USBPJ grouped its research analysts by industry sector and those analysts worked as a team with the firm's investment bankers, who focused on the same industry sector. The majority of research analysts' compensation was paid in the form of bonuses, which for some analysts was directly tied to revenues from investment banking transactions of companies in their industry sector. In other cases, the analyst's contribution to investment banking revenue, and investment banker input into analysts' evaluations played a significant part in determining the analysts' bonuses. In certain cases, investment bankers commented in reviews that research analysts needed to become lead analysts, a reference to using their professional opinions and reports to assist the firm in obtaining the top role in investment banking transactions. As a result of these influences, certain USBPJ research analysts indirectly were motivated to obtain, retain and increase investment-banking revenue.
6. In certain instances, USBPJ also provided draft research reports to potential investment banking clients during sales pitches, and this implicit promise of favorable research was an important aspect of USBPJ's attempts to gain the companies' investment banking business. In other instances, after determining to issue research, USBPJ provided company executives with draft reports, including the proposed rating and target price, and solicited comments on the report from those company executives.
7. USBPJ failed to disclose that it received compensation from the proceeds of underwriting for, among other services, providing research. It also paid proceeds of certain underwritings to other broker-dealer firms to issue research on companies whose offerings it underwrote and did not ensure that such payments were disclosed.
8. Finally, USBPJ engaged in improper behavior by threatening to drop research coverage on a company if USBPJ did not receive a certain role in the company's offering of securities.

B. USBPJ's Structure and Procedures Encouraged Research Analysts to Contribute to Investment Banking Revenue, Thus Creating Conflicts of Interest

(1). Overview of USBPJ and the Financial Contribution of its Equity Capital Markets Division

9. USBPJ was founded in 1895.¹ The firm is headquartered in Minneapolis, Minnesota, and has approximately 3,100 employees, including approximately 875 financial advisers, more than 80 investment bankers, and approximately 70 research analysts. USBPJ has operations in 124 offices in 25 states throughout the country.
10. During the relevant period, USBPJ's business included retail brokerage, known as Private Advisory Services; fixed income underwriting, sales and trading (known as Fixed Income Capital Markets); and equities investment banking, syndicate, research, and institutional sales and trading (known as Equity Capital Markets or "ECM"). Thus, equity research and investment banking were in the same business line and, ultimately, reported to the same individual.
11. In 1998, USBPJ generated equity investment banking revenue of approximately \$79,500,000. That increased by 100 percent to approximately \$159,000,000 in 1999. In 2000, revenue from equity investment banking grew to approximately \$269,200,000, a 69 percent increase over 1999. In 2001, USBPJ's revenue from equity investment banking was approximately \$153,000,000. From 1999 through 2001, revenue from equity investment banking represented a significant portion of the firm's revenue, accounting for between 19 – 26 percent of the firm's total revenue.

(2). USBPJ Aligned Research Analysts With the Firm's Investment Bankers

(a). USBPJ Developed and Implemented Specific Plans To Have Research Analysts Work With Investment Bankers in an Effort to Obtain Investment Banking Business

12. During the relevant period, many companies, particularly those in the technology area, issued stock through public offerings, and there was intense competition among investment banking firms to obtain this business. In order to maximize its chances to participate in these offerings, USBPJ made a concerted effort to include its research analysts in its solicitation of this business. This effort included developing and implementing specific marketing plans, which provided for research analyst involvement in the investment banking process.

(i). Move to the Left Strategy

13. In May 2000, USBPJ's ECM Operating Committee amended its procedures and strategies in a specific effort to gain lead manager status in more offerings. The Lead Manager is the firm typically listed on the left side of the offering prospectus. Thus, USBPJ implemented a plan referred to as the "Move to the Left Strategy." The ECM Operating Committee noted its strong commitment to a "multi-pronged strategy" to obtain lead-manager status on offerings. In instructions to ECM employees, the ECM Operating Committee stated that the firm "must begin to wage a war in earnest for lead-manager status." That plan instituted a "line in the sand" policy: The firm would not accept a syndicate position in any deal unless the firm was placed in the major bracket for the underwriting.
14. The Research Department played an important role in the firm's Move to the Left Strategy. Specifically, to develop a "lead manager mentality," the firm developed a "lead manager Red Zone training program." That program called for the senior bankers, senior research analysts, and Capital Markets personnel to "go through this special training seminar [focused] on pitching for the lead on public equity transactions."

(ii). Lead Manager Protocol

15. In August 2000, the head of ECM's syndicate department prepared another specific effort to gain additional lead managed offerings. In setting out his new "Lead Manager Protocol" to all ECM employees, the head of the syndicate department stressed that the "formal protocol of responsibilities ... will allow all of us—Investment Banking, Research, Sales, Trading and Capital Markets—to share responsibility for the success of each and every lead-managed offering."
16. The Lead Manager Protocol, issued in August 2000, called for:
 - the lead banker and lead research analyst to make a presentation to the firm's Pre-Commitment Committee before any company would be considered for an underwriting;
 - the research analyst to participate in a "get-to-know-you" session with prospective investment banking clients as part of a "Day at Piper" session;
 - the lead banker and senior analyst to represent the prospective company client to the Commitment Committee. The lead banker and "senior analyst must demonstrate continued due diligence effort and must provide renewed commitment to the transaction";
 - research and sales to "set up a roadshow schedule to ensure a targeted and efficient roadshow.... [and] focus on ascertaining the right accounts to see and why these are the right accounts;"
 - senior analysts to "provide aggressive pre-meeting preparation and post-meeting follow-up to each 1-on-1 appointment;"

¹ U.S. Bancorp acquired USBPJ Inc., as a subsidiary in 1998.

- senior analysts to be "available during critical parts of roadshow and pricing"; and
 - the senior analyst to "coordinate with Capital Markets to sort out the aftermarket intentions of each account."
17. The Lead Manager Protocol described a primary function of a research analyst in communicating regarding the progress of the transaction once the firm had obtained a lead management role in an IPO when it stated: "Senior analyst will coordinate with Capital Markets to communicate a consistent message regarding the progress of the transaction, acting as a supporter of Capital Markets' message and not as an independent filter The goal of the [s]enior analyst is to reinforce reasonable and exceedable expectations."

(b). Research Analysts "Pitched" for Investment Banking Deals and Advocated for the Issuer at Roadshows

18. USBPJ's procedures allowed for the close alignment of research analysts with investment bankers in the same industry sector. ECM marketed to potential clients its research coverage, market making and institutional sales as part of the firm's efforts to obtain investment banking business. USBPJ used the slogan, "One Team, One Business" in its marketing materials with prospective investment banking clients. Internally, the company had "transaction teams" that included investment bankers and research analysts.
19. The emphasis on securing investment banking business through pitches and then selling the securities through roadshows gave rise to conflicts of interest for the research analysts. In some instances, the research analyst became a prime contact person for the company with respect to soliciting investment-banking business. For example, on May 10, 1999, a research analyst wrote to an officer of E-Machines, a potential investment-banking client: "This is my final appeal to be a part of the underwriting team. This is your deal and you control the strings. All we are looking for is ten percent of the economics to participate in the underwriting. This itself should be indicative of my sincere interest in your story ... In the final analysis, it is less important to have bulge bracket firm as a hood ornament than it is to have a quality analyst who will provide you with the support and coverage your company needs."

(c). Research Analysts' Participation in Pitch Meetings Was Important in Obtaining Investment Banking Mandates

20. Before USBPJ made its "pitches" to an issuer for investment banking business, the investment banker, teamed with a research analyst for the appropriate sector, would make a presentation to USBPJ's Pre-Commitment Committee. This presentation included a recommendation and analysis detailing why the firm should pursue an investment banking relationship with the issuer. After USBPJ determined to compete for a company's investment banking business, particularly in the case of an initial public offering ("IPO"), the research analyst's role was influential in obtaining that business.
21. One aspect of a research analyst's function was to play a key role in the process to "pitch" USBPJ to the prospective client. In certain instances, a research analyst's role at a pitch meeting with an issuer was to assist investment banking personnel in convincing the issuer that USBPJ should be chosen as the lead managing underwriter for the offering. A research analyst's presence suggested that the Research Department would work hand-in-hand with the investment bankers to provide service and support for the issuer. Research analysts routinely appeared with investment bankers at pitch meetings designed to help sell USBPJ to the potential client and provided information relating to their research in pitchbooks given to prospective client companies.

(d). In Certain Instances, Pitchbooks Provided to Potential Investment Banking Clients Contained Mock Research Reports Impliedly Promising Favorable Research

22. When investment bankers and research analysts presented "pitches" to prospective investment banking clients, USBPJ typically gave the prospective client a pitchbook explaining the proposed services to be provided by the firm. These pitchbooks detailed, in a most favorable manner, why USBPJ should be selected to underwrite the offering. In addition to providing information about how USBPJ would conduct the underwriting, the pitchbooks routinely included a roadmap of the amount and type of research coverage that USBPJ would provide to support the company if it obtained the investment banking business. In certain instances, USBPJ included a "mock" research report for the companies, containing a valuation analysis and "mock" rating such as "buy," impliedly promising to the issuer that the research analyst would issue a favorable research report if it selected USBPJ for the investment banking business. In some instances, USBPJ's mock research reports also included a favorable "mock" target price for the issuer's stock.
23. For example, in August 2000, USBPJ made a pitch to be the lead underwriter for an offering by TheraSense, a medical technology issuer. In preparing for the pitch, a research analyst prepared a mock research report about the issuer and presented that mock report at the pitch meeting. The mock research report noted in several places a proposed rating of "Strong Buy." The mock report contained very positive news about the company, claiming that its initial sales of the product were "nothing short of breathtaking." In part, as a result of that pitch, the company awarded USBPJ the role of lead managing underwriter, which generated underwriting fees of \$3,785,512 for the firm when the offering went effective in October 2001. USBPJ initiated coverage of the issuer with a "Strong Buy" recommendation shortly after the offering went effective.
24. Finally, after USBPJ was awarded an investment-banking mandate, another key function for a research analyst was to provide meaningful support to the firm's institutional investor clients to ensure that an underwriting was successful. Investment bankers, research analysts and company representatives generally traveled to the offices of institutional investor clients, to meet with them and describe the offering and determine their interest in purchasing the stock. At times, research analysts attended and provided significant assistance at these "roadshow" meetings.

(3). USBPJ Tied Research Analysts' Compensation to Investment Banking Revenue

25. During the relevant period, USBPJ compensated research analysts, in part, based on the amount of investment banking revenue generated within their respective industry sector. This practice created a conflict of interest for research analysts, since analysts were compensated, in part, on issuing objective research and on the firm's success in obtaining investment-banking business.

26. Specifically, USBPJ paid certain analysts a percentage of investment banking revenue and institutional commissions generated by companies in their industry sector. The firm entered into written agreements with at least 16 research analysts to pay them a defined percentage of the revenue generated by the companies they covered. This included revenue from net underwriting profits, institutional sales commissions, trading commissions, equity and debt management fees, mergers and acquisition advisory fees, equity and debt private placement fees, research checks, and syndicate trading profits. The defined percentage set forth in these written agreements ranged from a guaranteed 7 to 15 percent of the revenues generated by the companies in their industry sector.
27. Compensation for other research analysts was comprised of base salary plus a bonus. Investment banking revenue was a significant factor in determining the bonus. The bonus was based, in part, on investment banking revenue received from companies in the specific industry sector that each analyst covered, and the level of contribution the research analyst made in the effort to obtain the investment banking business. The bonus usually formed the majority of a research analyst's total compensation. In 1999 and 2000, for example, more than 85 percent of a typical research analysts' compensation came from the bonus, while in 2001 approximately 77 percent of a typical research analyst's compensation was in the form of a bonus. During that time, research analysts' salaries generally ranged from \$60,000 to \$250,000, while the discretionary bonuses ranged from \$75,000 to \$4,000,000.
28. In determining the amount of discretionary bonuses, supervisors in the research department considered, among other things, a research analyst's contributions to the firm's success in obtaining investment banking revenues. Performance evaluations of the research analysts demonstrate this consideration. Research analysts received periodic reports detailing the year-to-date revenues generated by their covered companies. At times, senior investment bankers provided these reports to the research analysts, as well as to investment banking employees, and listed the projected investment banking revenue goals for the covered companies. One supervisor noted in a performance evaluation that a certain analyst should work on becoming a "lead managing analyst." That expression was a reference to the lead managing underwriter position that USBPJ sought in offerings because it resulted in the greatest amount of control and revenue. Thus, the supervisor's expression acknowledged the role that an analyst could play at USBPJ in obtaining investment banking business. For example, one senior analyst received a salary of \$160,000 and a bonus of over \$3.8 million. In another example, an analyst received a salary of \$130,000 and a bonus of over \$3 million. In both of these instances, the bonus determination included consideration of investment banking and trading revenues for companies in the industry sector covered by the analyst.
29. The fact that research analysts contributed to the firm's efforts to obtain investment banking revenue is also evident from the personal goals set by certain research analysts. Some analysts, in setting forth their goals, stated specific investment banking revenue goals and listed the ongoing support of investment banking and sales as important to their continued success.

(4). Investment Bankers Evaluated Research Analysts' Performance and Influenced Their Bonus Compensation

30. In 2000 and 2001, investment bankers who worked on investment banking business with research analysts participated in the annual performance evaluations of those research analysts. Specifically, in certain instances, investment bankers completed and provided to the Director of Research a "Banker Peer Review" on certain research analysts. Investment bankers evaluated research analysts using specific criteria, including:
 - "proactively generates and shares valuable M&A/strategic ideas;"
 - "prepares for pitches and contributes to preparation of pitchbook;"
 - "effective in pitches; [and] takes the aftermarket commitment seriously."
31. Thus, investment bankers provided significant input in the performance evaluation of research analysts which, in turn, influenced the bonus compensation of those research analysts. For example, an investment banker noted in his banker peer review that a particular analyst: "needs to be proactive in pursuing fee-generating companies for his coverage list. He is very focused on big cap names that do not pay."
32. This review process indicated to research analysts that, in part, their role was to assist the investment bankers and the firm's investment banking clients.

(5). USBPJ Lacked Procedures and Did Not Adequately Monitor Research Analysts' Sharing of Draft Research Reports With Issuers

33. In certain cases, prior to the dissemination of research reports, USBPJ research analysts provided copies of their draft reports to an issuer's executives, and solicited comments and suggestions for such reports. Providing draft research reports to an issuer's executives could potentially compromise a research analysts' independence in that the investment banking clients may pressure the analyst to make inappropriate changes to the draft report.
34. Certain draft research reports provided to an issuer included not only the factual portions of a draft report, but also the analyst's valuation, rating and suggested target price. In some cases, company executives were given electronic copies of the research report, and returned to the firm a "red-lined" version of the report with their comments and edits. For example, on September 27, 2001, a USBPJ research analyst sent a representative of Genta, Inc. an e-mail containing a draft report with a rating. This e-mail stated, "Hope you are doing better. Here is a draft of our initiation note. Please review it and send me any comments you may have. Thanks..." On October 2, 2001, Genta responded to the e-mail with extensive comments on the note.
35. In other instances, USBPJ investment bankers suggested to issuer clients that research reports initiating coverage would be subject to approval by the issuer. For example, on January 11, 2001, an investment banker wrote to numerous executives at Metromedia Fiber Network, Inc. ("Metromedia") thanking them for their meeting with a USBPJ senior research analyst. The banker wrote, "[The analyst] has decided to initiate coverage with a Strong Buy, our firm's highest recommendation...his research associate...will be calling you later today to request help in finalizing the report. *Nothing will be published without your prior approval.*" (Emphasis added). On January 26, 2001, USBPJ initiated coverage of Metromedia with a "strong buy" and a \$27 price target.

36. On November 22, 2000, a USBPJ senior investment banker wrote to executives of Qwest thanking them for an in-person meeting. The banker wrote: "We expect to initiate research coverage within the next few weeks and will submit a draft of such report for your review and approval prior to publication."
37. Notwithstanding the potential that research analysts could be subjected to pressure by issuers, USBPJ failed to have adequate procedures or controls to monitor such communications.

(6). USBPJ Lacked Procedures And Controls Sufficient To Monitor The Influence of Investment Banking on Research Analysts

38. In view of the interaction between research analysts and investment banking described above, USBPJ lacked adequate systems or procedures to supervise the influence that investment banking opportunities had on research personnel. For example, on January 17, 2001, a USBPJ senior research analyst wrote an e-mail to a junior analyst seeking input as to whether he should maintain a "buy" rating on Natural Microsystems, Inc. ("NMSS"). USBPJ had downgraded NMSS from "strong buy" in December 2000 based on the company's announcement that it would likely miss its earnings projections for the year. Upon the company's announcement in January 2001 that it had, in fact, not met its projections for 2000, the senior analyst again evaluated the company's rating. In response to the senior analyst's request for input, the junior analyst responded that, in his opinion, the company should stay a "buy" "taking into consideration banking relationship," but that absent such considerations he would rate the stock a neutral.
39. On January 18, 2001, USBPJ issued a research report that maintained the previously lowered "buy" rating.² The report included a lower price target than that published previously, cautionary statements about NMSS's short-term prospects and a predicted "struggle" for the company's shares during the first half of 2001. In the same research report, USBPJ lowered its revenue estimates by almost one half and reduced the earnings per share to show a loss in fiscal year 2001. At that time, USBPJ defined a "buy" rating as: "Expect positive price appreciation over next 12 months; Solid long term company fundamentals; attractive long-term valuation, though shares may be extended based on near-term parameters." USBPJ subsequently lowered its rating to "neutral" on April 12, 2001.
40. Moreover, USBPJ rarely issued a sell rating. During most of the review period, USBPJ had a four point rating scale: strong buy, buy, neutral, and sell. More than 80 percent of the research reports issued contained either "buy" or "strong buy" recommendations, with less than 20 percent of the companies, on average, rated as a "neutral." Throughout the review period, USBPJ gave less than one percent of companies a "sell" recommendation. In certain cases, the firm would discontinue coverage, usually without explanation, rather than drop a company to a sell rating. In those cases, therefore, USBPJ had only a three point rating system.

C. USBPJ Issued Research on Two Companies That Lacked a Reasonable Basis Or Was Imbalanced

41. As to two companies, Esperion Therapeutics, Inc. and Triton Network Systems, USBPJ issued research reports that lacked a reasonable basis or were imbalanced.

(1). Esperion Therapeutics, Inc.

42. In August 2000, USBPJ served as co-manager for the IPO of Esperion Therapeutics, Inc. ("Esperion") and consequently initiated research coverage of Esperion on September 5, 2000 with a "buy" rating. On January 9, 2002, a USBPJ senior research analyst stated in an e-mail to a senior investment banker: "ESPR delayed a pipeline product and completely dropped development of a second pipeline product, giving a reason that was nothing short of hokey. So it was bad news all around....Esperion has not met a single milestone that they have laid out since they went public. Everything has slipped. [Esperion's CEO] is a good scientist, an awful CEO."
43. Notwithstanding these statements, USBPJ's January 2002 industry report "Investing in Biotechnology" and research report on January 24, 2002, both reiterated the existing buy rating (now termed outperform).

(2). Triton Network Systems

44. In July 2000, USBPJ served as co-manager for Triton Network Systems' ("Triton") IPO. On August 7, 2000, a USBPJ senior research analyst initiated research coverage of Triton with a "buy" rating and a \$45 price target. Soon after the IPO, shares of Triton reached a high of \$47.75, but the value of the stock quickly declined. USBPJ maintained a "buy" rating while the stock price declined to \$1 13/16 over the next eight months.
45. On March 30, 2001, the analyst issued a "blast" e-mail to institutional clients with cautionary statements about Triton due to the likely loss of a key customer, Advanced Radio Telecom, which was considering a Chapter 11 bankruptcy filing. Other than the "blast" e-mail, USBPJ did not issue a new research report directly on that information at that time. Notwithstanding this negative news, USBPJ maintained a "buy" rating. Another month passed before USBPJ disclosed in a broadly disseminated research report Triton's problems with this customer while downgrading Triton to a neutral on May 1, 2001. After two more months, when Triton was trading below \$1, the research analyst told the head of USBPJ's equity research department, that since the company was in bankruptcy proceedings, "we can drop now if banking says ok." USBPJ discontinued coverage of Triton with a last published rating of neutral.

D. USBPJ Threatened to Drop Research Coverage of Emisphere Technologies, Inc., if it Did Not Award USBPJ the Lead Manager Role in an Offering

46. In September 1999, USBPJ attempted to compel Emisphere Technologies, Inc. to select it for investment banking business by informing company executives that it would drop research coverage of the company if it were not selected as the lead manager for an offering of Emisphere's securities. USBPJ's threatening conduct undermined competition for investment banking services.

² USBPJ widely distributed its research through public services such as Thompson Financial's First Call and on its website www.gotoanalyst.com.

E. USBPJ Failed to Disclose That it Received Payments From Proceeds of Certain Underwritings, In Part, To Publish Research Regarding The Issuer

47. From 1999 through 2001, USBPJ received payments out of the proceeds of certain underwritings to compensate the firm for services that included publishing research on the issuer. These payments were made in the form of "research guarantees" or "research checks." During this period, USBPJ accepted more than \$1.8 million in exchange for, among other services, issuing research reports. Despite having an obligation to do so, the firm failed to disclose in research reports or elsewhere that it received the payments, in part, as compensation for issuing the reports. For example:
48. In June 1999, USBPJ received a \$400,000 research check in connection with a \$200 million high yield debt offering in April 1999 for Just for Feet. USBPJ was not a manager on the offering and did not disclose this payment in its ongoing research or elsewhere.
49. In July 1999, USBPJ received a \$150,000 check in connection with an offering of common stock by JDS Uniphase Corp. Although USBPJ was not an underwriter in the offering, the firm received the payment, in part, for continued research coverage of the company.
50. In March 2001, USBPJ received a \$120,000 research check in connection with an underwriting that went effective in May 2001 for Converse Technology Inc. USBPJ failed to disclose in research it published on the company that it had received this compensation, in part, for issuing research regarding the subject company.

F. USBPJ Failed to Ensure Public Disclosure of Payments It Made from the Proceeds of Underwritings to Brokerage Firms To Issue Research Coverage Regarding Its Investment Banking Clients

51. From 1999 through 2001, at the direction of certain issuer clients, USBPJ paid portions of certain underwriting proceeds to other brokerage firms to initiate or continue research coverage on issuers for which Piper served as lead or co-manager. It knew that these payments were, in part, for research. USBPJ did not take steps to ensure that the brokerage firms paid to initiate or continue coverage of its investment banking clients disclosed that they had been paid to issue such research. Further, USBPJ did not disclose or cause to be disclosed the fact of such payments.
52. or example, in 2000, USBPJ paid underwriting proceeds of \$100,000 to another underwriter in conjunction with USBPJ's lead manager position on Onyx Pharmaceuticals' ("Onyx") stock offering. While this underwriter was not invited to participate in Onyx's offering, the payment was made in response to a letter dated September 22, 2000 from the underwriter asking for \$300,000 in "underwriting participation" for continued research and market making. A representative of the underwriter wrote, "From August 31, 1999 until August 15, 2000, we were the only firm in print on Onyx Pharmaceuticals and we remain a Strong Buy rating." USBPJ did not ensure that this payment was disclosed to the public in its published research on Onyx.
53. In April 2000, USBPJ, acting as lead manager for an offering for Buca, Inc. directed the payment of an aggregate of \$105,000 to three brokerage firms for the issuance of research. In February 2001, while assisting in another investment banking transaction for Buca, Inc., USBPJ distributed \$225,000 to other firms for their research coverage. USBPJ did not ensure that these payments were disclosed to the public.

G. USBPJ Failed to Adequately Supervise Its Research Analysts and Investment Banking Professionals

54. During the relevant period, USBPJ's management failed adequately to monitor the activities of the firm's research and investment banking professionals to ensure compliance with state securities laws and regulations. Among other things, this failure to supervise gave rise to and perpetuated the above-described violative conduct.

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 Commission finds that Defendant USBPJ engaged in acts and practices that created and/or maintained inappropriate influence by investment banking over research analysts and therefore imposed conflicts of interest on research analysts. USBPJ failed to manage these conflicts in an adequate and appropriate manner in violation of Securities Rule ("Rule") 21 VAC 5-20-260.
3. The Commission finds that Defendant USBPJ has committed dishonest and unethical practices under Rule 21 VAC 5-20-280(E)(12), as described in the Findings of Fact above, by issuing research that contained opinions for which there was no reasonable basis and/or exaggerated or unwarranted claims.
4. The Commission finds that Defendant USBPJ inappropriately threatened executives of a potential investment-banking client by stating that they would drop research coverage of the company if the firm was not selected as the lead manager in an investment banking transaction in violation of Rule 21 VAC 5-20-280(E)(12).
5. The Commission finds that Defendant USBPJ received compensation directly or indirectly, from an issuer, underwriter or dealer, in part, for issuing research reports, without fully disclosing the receipt or the amount of the compensation in violation of Rule 21 VAC 5-20-280(E)(12).
6. The Commission finds that Defendant USBPJ, as described in the Findings of Fact above, made payments for research to other broker-dealers not involved in an underwriting transaction, when the firm knew that these payments were made, at least in part, for research

coverage, and failed to disclose or cause to be disclosed in offering documents or elsewhere the fact of such payments in violation of Rule 21 VAC 5-20-280(E)(12).

7. The Commission finds that Defendant USBPJ failed to establish and enforce written supervisory procedures reasonably designed to ensure that analysts were not unduly influenced by investment banking concerns. Despite knowledge of research analysts' complex responsibilities and conflicts of interest, Defendant USBPJ failed to implement a system to detect and insulate its research analysts from improper influence and pressure by investment banking personnel. To the contrary, Defendant USBPJ's business practices motivated research analysts to issue research that would attract and retain investment-banking business in violation of Rule 21 VAC 5-20-260.
8. 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 Defendant USBPJ's consent to the entry of this Order, for the sole purpose of settling this matter, prior to a hearing and without admitting or denying any of the Findings of Fact or Conclusions of Law,

IT IS HEREBY ORDERED:

1. This Order concludes the investigation by the Commission's Division of Securities and Retail Franchising ("Division") and any other action that the Division could commence under the Act on behalf of the Commonwealth of Virginia as it relates to Defendant USBPJ, relating to certain research or banking practices at Defendant USBPJ.

2. Pursuant to § 12.1-15 of the Code of Virginia, Defendant USBPJ will refrain from violating 21 VAC 5-20-280(E)(12) and 21 VAC 5-20-260 in connection with the research practices referenced in this Order and will comply with the Act and Regulations in connection with the research practices referenced in this Order and will comply with the undertakings of Addendum A, incorporated herein by reference.

IT IS FURTHER ORDERED that:

3. As a result of the Findings of Fact and Conclusions of Law contained in this Order, Defendant USBPJ shall pay a total amount of \$32,500,000.00. This total amount shall be paid as specified in the SEC Final Judgment as follows:

a) \$12,500,000 to the states (50 states, plus the District of Columbia and Puerto Rico) (Defendant USBPJ's offer to the state securities regulators hereinafter shall be called the "state settlement offer"). Upon execution of this Order, Defendant USBPJ shall pay the sum of \$272,704 of this amount to the Treasurer, Commonwealth of Virginia as a civil monetary penalty pursuant to § 13.1-521 of the Act. The total amount to be paid by Defendant USBPJ to state securities regulators pursuant to the state settlement offer may be reduced due to the decision of any state securities regulator not to accept the state settlement offer. In the event another state securities regulator determines not to accept Defendant USBPJ's state settlement offer, the total amount of the Virginia payment shall not be affected, and shall remain at \$272,704;

b) \$12,500,000 as disgorgement of commissions, fees and other monies as specified in the SEC Final Judgment;

c) \$7,500,000, to be used for the procurement of independent research, as described in the SEC Final Judgment;

d) Defendant USBPJ agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to payment made pursuant to any insurance policy, with regard to all penalty amounts that Defendant USBPJ shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. Defendant USBPJ further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any penalty amounts that Defendant USBPJ shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. Defendant USBPJ understands and acknowledges that these provisions are not intended to imply that the Commission would agree that any other amounts Defendant USBPJ shall pay pursuant to the SEC Final Judgment may be reimbursed or indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit with regard to any state, federal or local tax.

4. If payment is not made by Defendant USBPJ or if Defendant USBPJ defaults in any of its obligations set forth in this Order, the Commission may vacate this Order, at its sole discretion, upon 10 days notice to Defendant USBPJ and without opportunity for hearing.

5. This Order is not intended by the Commission to subject any Covered Person to any disqualifications under the laws of any state, the District of Columbia or Puerto Rico (collectively, "State"), including, without limitation, any disqualifications from relying upon the State registration exemptions or State safe harbor provisions. "Covered Person" means Defendant USBPJ, or any of its officers, directors, affiliates, current or former employees, or other persons that would otherwise be disqualified as a result of the Orders (as defined below).

6. It is further ordered that this Order constitutes and includes a waiver by the Commission of any and all limitations and disqualifications that may ensue from the entry of this Order or the SEC Orders that would otherwise affect, restrict or limit the business of USBPJ and its predecessors, subsidiaries and affiliates or their ability to participate in offerings or avail themselves of exemptions, including, without limitation, the Uniform Limited Offering Exemption, as and to the extent now or hereafter adopted by the Commission.

7. It is further ordered that this Order is not intended to prohibit USBPJ from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, transfer agent, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.

8. The SEC Final Judgment, the NYSE Stipulation and Consent, the NASD Letter of Acceptance, Waiver and Consent, this Order and the order of any other State in related proceedings against Defendant USBPJ (collectively, the "Orders") shall not disqualify any Covered Person from any business that they otherwise are qualified, licensed or permitted to perform under the applicable law of the Commonwealth 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. 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 USBPJ including, without limitation, the use of any e-mails or other documents of Defendant USBPJ or of others regarding research practices, limit or create liability of Defendant USBPJ or limit or create defenses of Defendant USBPJ to any claims.

10. 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 Defendant USBPJ in connection with certain research and/or banking practices at Defendant USBPJ.

11. 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.

12. Defendant USBPJ agrees not to take any action or to 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 USBPJ's: (i) testimonial obligations, or (ii) right to take legal or factual positions in defense of litigation or in defense of other legal proceedings in which the Commission is not a party.

13. Defendant USBPJ, through its execution of this Consent Order, voluntarily waives their right to a hearing on this matter and to judicial review of this Consent Order under § 12.1-39 of the Code of Virginia.

14. Defendant USBPJ 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 Defendant USBPJ to enter into this Consent Order.

15. The parties represent, warrant and agree that they have received independent legal advice from their attorneys with respect to the advisability of executing this Consent Order.

16. This Consent Order shall become final upon entry.

NOTE: A copy of Addendum 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-2003-00024
MAY 27, 2003**

APPLICATION OF
NATIONAL COVENANT PROPERTIES
5101 N. Francisco Avenue
Chicago, Illinois 60625

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia, as amended

ORDER OF EXEMPTION

THIS MATTER came for consideration upon written application dated February 27, 2003, with exhibits attached thereto, as subsequently amended, of National Covenant Properties ("NCP") requesting that certain 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 individuals be exempted from the agent registration requirements of said Act.

BASED UPON THE INFORMATION submitted, the following facts, in addition to others not enumerated herein, appear to exist: NCP is a not for profit Illinois corporation organized exclusively for religious, charitable, educational, and scientific purposes; NCP intends to offer and sell up to \$40,000,000 in aggregate principal amount of 5-Year Fixed Rate Renewable Certificates (Series A), Variable Rate Certificates (Series G), and Individual Retirement Account ("IRA") Certificates (collectively, the "Certificates") on terms and conditions as more fully described in the Offering Circular filed as a part of the application; upon the exemption of the above-captioned Certificates, NCP will discontinue issuer transactions for all Certificates previously exempted from the securities registration requirements of the Act; the Certificates will be offered and sold by the officers of NCP who will not be compensated for their sales efforts.

THE COMMISSION, based on the facts asserted by NCP in the written application and exhibits, is of the opinion and finds, and does hereby ADJUDGE AND ORDER that, pursuant to the provisions of § 13.1-514.1 B of the Act, the securities described above be, and they hereby are, exempted from the securities registration requirements of the Act and the officers of NCP who offer and sell the Certificates be, and they hereby are, exempted from the agent registration requirements of said Act.

**CASE NO. SEC-2003-00025
MAY 14, 2003**

APPLICATION OF
MISSION INVESTMENT FUND OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA
8765 West Higgins Road
Chicago, Illinois 60631

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia, as amended

ORDER OF EXEMPTION

THIS MATTER came for consideration upon written application dated April 2, 2003, with exhibits attached thereto, as subsequently amended, of Mission Investment Fund of the Evangelical Lutheran Church in America ("Mission") requesting that certain unsecured investment obligations known as Mission Investments be exempted from the securities registration requirements of the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code of Virginia.

BASED UPON THE INFORMATION submitted, the following facts, in addition to others not enumerated herein, appear to exist: Mission is a not for profit Minnesota corporation organized exclusively for religious purposes; Mission intends to offer and sell to certain investors up to \$160,000,000 in an aggregate principal amount of Mission TermSelect-adjustable rate Investments, Mission TermSelect-fixed rate Investments, MissionFuture4KIDZ (custodian for minor only) Investments, MissionPlus Investments, MissionFirst Investments, MissionAdvantage-adjustable rate Investments, and MissionAdvantage-fixed rate Investments on terms and conditions as more fully described in the Offering Circular filed as a part of the application; and said securities are to be offered and sold by certain registered agents of Mission who will not be compensated for their sales efforts.

THE COMMISSION, based on the facts asserted by Mission in the written application and exhibits, is of the opinion and finds, and does hereby ADJUDGE AND ORDER that, pursuant to the provisions of § 13.1-514.1 B of the Act, the securities described above be, and they hereby are, exempted from the securities registration requirements of the Act.

**CASE NO. SEC-2003-00026
SEPTEMBER 16, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

PAUL ROMWEBER,
Defendant

ORDER TO DISMISS

On September 8, 2003, the staff of the Division of Securities and Retail Franchising ("Division"), by counsel, moved that the hearing scheduled to take place on September 9, 2003, be dismissed in that the matter has been settled by the Defendant to the satisfaction of the Division.

On September 9, 2003, Hearing Officer Howard Anderson, after reviewing this motion and the premises therein, entered a report recommending that the Commission enter an order dismissing the case and accept the Defendant's offer of settlement, and strike this matter from the docket of active cases.

THE COMMISSION, having reviewed the Report of the Hearing Officer and the Settlement Order hereby ORDERS THAT:

(1) The recommendations of the Hearing Officer are hereby accepted.

(2) This matter is stricken from the active docket, but the Commission continues to have jurisdiction over the matter until satisfaction of the conditions contained in the Settlement Order.

**CASE NO. SEC-2003-00026
SEPTEMBER 23, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

PAUL G. ROMWEBER,
Defendant

SETTLEMENT ORDER

The Commission's Division of Securities and Retail Franchising ("Division") has instituted an investigation of Defendant, Paul G. Romweber, pursuant to § 13.1-518 of the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code of Virginia.

As a result of its investigation, the Division alleges that:

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

1. Defendant engaged in fraudulent and deceitful practices in violation of Virginia Code § 13.1-503(3).
2. Defendant induced excessive trading in customers' accounts in violation of Commission Rule 21 VAC 5-20-280 A2.
3. Defendant recommended securities to customers without reasonable grounds to believe those securities met customers' investment objectives in violation of Commission Rule 21 VAC 5-20-280 A3.
4. Defendant executed trades in customers' accounts without their approval in violation of Commission Rule 21 VAC 5-20-280 A4.
5. Defendant effected transactions through manipulative, deceptive, or fraudulent devices in violation of Commission Rule 21 VAC 5-20-280 A15.
6. Defendant guaranteed customers against losses in violation of Commission Rule 21 VAC 5-20-280 A16.

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 the allegations made against him, Defendant has offered, and agreed to comply with, the following terms and undertakings:

1. Defendant will not, at any time in the future, (i) seek to become registered under the Act as an agent of a broker-dealer, (ii) engage in the offer and sale of any security to a resident of the Commonwealth, or (iii) be associated in any supervisory capacity with any broker-dealer registered under the Act.
2. Defendant, pursuant to § 13.1-521 of the Code of Virginia, will pay to the Commonwealth a penalty in the amount of eight thousand dollars (\$8,000).
3. Defendant, pursuant to § 13.1-518 of the Code of Virginia, will pay to the Commission the sum of one thousand dollars (\$1,000) to defray the costs of the investigation.

The Division has recommended that Defendant's offer of settlement be accepted pursuant to the authority granted to the Commission in § 12.1-15 of the Code of Virginia.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Pursuant to the authority granted to the Commission in § 12.1-15 of the Code of Virginia, Defendant's offer of settlement is accepted;
2. Defendant fully comply with the aforesaid terms and undertakings of the settlement;
3. Defendant, pursuant to § 13.1-521 of the Code of Virginia, pay to the Commonwealth a penalty in the amount of eight thousand dollars (\$8,000);
4. Defendant, pursuant to § 13.1-518 of the Code of Virginia, pay to the Commission the sum of one thousand dollars (\$1,000) to defray the costs of the investigation and that the Commonwealth of Virginia and the Commission recover of and from Defendant said amounts;
5. Defendant pay the total sum of nine thousand dollars (\$9,000) in monthly installments of \$500 per month. The first payment of \$500 is payable by Defendant contemporaneously with the entry of this Settlement Order, with the remaining payments payable the first day of each month beginning October 1, 2003; and
6. The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding as described above, or take 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-2003-00027
MAY 27, 2003**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting A Revision to the Rules Governing Trademarks and Service Marks

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 § 59.1-92.19 of the Trademark and Service Mark Act ("Trademark 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 Trademark Act.

The rules and regulations issued by the Commission pursuant to § 59.1-92.19 of the Trademark Act are set forth in Title 21 of the Virginia Administrative Code.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Division of Securities and Retail Franchising ("Division") has submitted to the Commission a proposed revision to Chapter 120 of Title 21 of the Virginia Administrative Code entitled "Rules Governing Trademarks and Service Marks," which amend the rule at 21 VAC 5-120-50.

The proposed revision clarifies the process for determining when an application for a trademark or a service mark is finally refused.

The Division has recommended to the Commission that the proposed revision should be considered for adoption with an effective date of September 1, 2003.

The Division also has recommended to the Commission that a hearing should be held, if requested by the commenters, to consider the proposed revisions, and the Commission is of the opinion that a hearing should be held, if requested, to consider the proposed revision.

THEREFORE, IT IS ORDERED THAT:

(1) The proposed revision to Trademark Rule 21 VAC 5-120-50 is attached hereto and made a part hereof.

(2) All interested persons TAKE NOTICE that the Commission shall conduct a hearing, if necessary, in the Commission's Courtroom, 2nd Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219 at 10:00 a.m. on July 24, 2003, to consider the adoption of the revisions proposed by the Division with an effective date of September 1, 2003.

(3) On or before July 11, 2003, any person desiring to comment in support of or in opposition to the proposed revisions shall file such comments in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218.

(4) On or before July 11, 2003, any person intending to appear and be heard at the hearing on the proposed revisions shall file written notice of his intention to do so, which notice shall include his comments in support of or in opposition to the proposed revisions, with the Clerk of the Commission at the address set forth in the preceding paragraph.

(5) All filings made under paragraph (3) or (4) shall contain a reference to Case No. SEC-2003-00027.

(6) AN ATTESTED COPY hereof, together with a copy of the proposed revision, shall be sent by the Clerk of the Commission to the Division in care of William Rhea Shelton, Section Chief, who forthwith shall give further notice of the proposed adoption of the revision to the rules by mailing a copy of this Order, together with the attached proposed revision, to all trademarks and service marks registered by the Commission in the Commonwealth of Virginia.

(7) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the attached proposed revision, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(8) On or before May 30, 2003, the Commission's Division of Information Resources shall make available this Order and the attached proposed revisions on the Commission's website, <http://www.state.va.us/sec/caseinfo/orders.htm>.

NOTE: A copy of Attachment A entitled "Rules Governing Trademarks and Service Marks" 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-2003-00027
AUGUST 27, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting A Revision to the Rules Governing Trademarks and Service Marks

ORDER ADOPTING AMENDED RULES

On June 19, 2003, the Division of Securities and Retail Franchising ("Division") mailed notice of proposed amendments to the Commission's Trademarks and Service Marks Rules ("Rules") and Order to Take Notice to all interested parties pursuant to the Virginia Trademark and Service Mark Act, § 59.1-92.1 et seq. of the Code of Virginia. The Order to Take Notice describes the proposed amendments and afforded interested parties an opportunity to file written comments or requests for hearing.

No written comments were filed.

The Commission, upon consideration of the proposed amendments as modified, the recommendation of the Division, and the record in this case, finds that the proposed modified amendments should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The evidence of mailing of the Order to Take Notice of the proposed Rules amendments shall be filed in and made part of the record in this case.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(2) The proposed Rules amendments are adopted effective September 1, 2003. A copy of the modified Rules amendments is attached to and made part of this order.

(3) 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 Trademarks and Service Marks" 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-2003-00036
JUNE 20, 2003**

APPLICATION OF
MOUNT VERNON PARK ASSOCIATES, INC.
8042 Fairfax Road
Alexandria, Virginia 22306

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia, as amended

ORDER OF EXEMPTION

THIS MATTER came for consideration upon written application dated May 21, 2003, with exhibits attached thereto, as subsequently amended, of Mount Vernon Park Associates, Inc. ("Mount Vernon") requesting that certain 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 Mount Vernon's President, Jay Sterne, be exempted from the agent registration requirements of said Act.

BASED UPON THE INFORMATION submitted, the following facts, in addition to others not enumerated herein, appear to exist: Mount Vernon is a non-stock Virginia corporation organized and operated not for private profit but exclusively for fraternal, social and athletic purposes: Mount Vernon intends to offer and sell Debt Security Bonds (Certificates of Indebtedness) in an approximate aggregate amount of up to \$450,000 on terms and conditions as more fully described in the Prospectus filed as a part of the application; and said securities are to be offered and sold by Jay Sterne who will not be compensated for his sales efforts.

THE COMMISSION, based on the facts asserted by Mount Vernon in the written application and exhibits, is of the opinion and finds, and does hereby ADJUDGE AND ORDER that, pursuant to the provisions of § 13.1-514.1 B of the Act, the securities described above be, and they hereby are, exempted from the securities registration requirements of the Act and that Jay Sterne be, and he hereby is, exempted from the agent registration requirements of said Act

**CASE NO. SEC-2003-00037
OCTOBER 28, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION
v.
CRISTETA DACUMOS,
Defendant

SETTLEMENT ORDER

The Commission's Division of Securities and Retail Franchising ("Division") has instituted an investigation of Defendant, Cristeta Dacumos, pursuant to § 13.1-518 of the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code of Virginia.

As a result of its investigation, the Division alleges that:

1. Defendant offered and sold unregistered stock through Integrated Brokerage Services, Inc. d/b/a 21st Century Technologies Escrow in violation of § 13.1-502(3) of the Act in that the offers and sales were transactions, practices or a course of business which operates a fraud or deceit upon the purchaser by:

- a. Failing to inform purchasers that the stock was unregistered,
- b. Failing to inform purchasers that she was not registered to offer or sell stock under her registration,
- c. Failing to inform purchasers that the restricted stock the purchasers were buying was ineligible for resale;

2. Defendant was not registered as an agent of Integrated Brokerage Services, Inc. d/b/a 21st Century Technologies Escrow, in violation of § 13.1-504 A of the Act;

3. Defendant was acting as an agent for two different entities, Bright Cove Securities, Inc. and Integrated Brokerage Services, Inc. d/b/a 21st Century Technologies Escrow, in violation of § 13.1-504 B of the Act;

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

4. Defendant sold unregistered securities in the form of stock of 21st Century Technologies, Inc., in violation of § 13.1-507 of the Act; and
5. Defendant made material misrepresentations in the offer and sale of numerous limited partnerships, including Advantage Real Estate Maturity Fund LP, to numerous investors in violation of § 13.1-502(2) of the Act by representing to investors that:
 - a. The partnerships were safe investments,
 - b. The investors could get their principal returned within a definite timeframe, usually one to three years,
 - c. The investors would make up to 20 percent return on their investment in these partnerships.

Defendant admits to the Commission's jurisdiction and authority to enter this Settlement Order:

- a. Defendant admits that she acted as an unregistered agent of an unregistered broker-dealer pursuant to § 13.1-504 A of the Act;
- b. Defendant admits that she sold unregistered securities pursuant to § 13.1-507 of the Act; and
- c. Defendant neither admits nor denies the remaining allegations.

As a proposal to settle all matters arising from these allegations, Defendant has offered, and agreed to comply with, the following terms and undertakings:

1. Defendant, pursuant to § 13.1-519 of the Act, will be permanently enjoined from future violations of the Act;
2. Defendant, pursuant to § 13.1-521 of the Act, will pay to the Commonwealth a penalty in the amount of forty thousand dollars (\$40,000);
3. Defendant, pursuant to § 13.1-518 of the Act, will pay to the Commission the sum of seven thousand five hundred dollars (\$7,500) to defray the costs of the investigation; and
4. It is recognized and understood that if the Defendant fails to comply with any of the foregoing terms and undertakings, the Commission reserves the right to take whatever action it deems appropriate, including but not limited to, instituting a show cause proceeding under the Act or other applicable statutes based on such failure to comply, on the allegations contained herein and/or on such other allegations as are warranted, and the Defendant will not contest the exercise of the right reserved, but may otherwise defend against any action taken by the Commission.

The Division has recommended that Defendant's offer of settlement be accepted pursuant to authority granted to the Commission in § 12.1-15 of the Code of Virginia.

THEREFORE, IT IS ORDERED THAT:

1. Pursuant to the authority granted to the Commission in § 12.1-15 of the Code of Virginia, the Defendant's offer of settlement is accepted;
2. Defendant fully comply with the aforesaid terms and undertakings of the settlement;
3. Defendant, pursuant to § 13.1-519 of the Act, is permanently enjoined from violating the provisions of the Act;
4. Defendant, pursuant to § 13.1-521 of the Act, pay to the Commonwealth a penalty in the amount of forty thousand dollars (\$40,000);
5. Defendant, pursuant to § 13.1-518 of the Act, pay to the Commission the sum of seven thousand five hundred dollars (\$7,500) to defray the costs of the investigation;
6. Defendant will pay the total sum of forty-seven thousand five hundred dollars (\$47,500) no later than October 31, 2003; and
7. This matter is dismissed and the papers herein be placed in the file for ended causes.

**CASE NO. SEC-2003-00043
JULY 30, 2003**

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

v.
JAMES O. IVY,
Defendant

SETTLEMENT ORDER

The Commission's Division of Securities and Retail Franchising ("Division") has instituted an investigation of Defendant, James O. Ivy, pursuant to § 13.1-518 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

As a result of its investigation, the Division alleges that the Defendant (i) transacted business as an unregistered agent in violation of § 13.1-504A of the Act, and (ii) offered for sale and sold unregistered, non-exempt securities, to wit: investment contracts in the form of natural gas sale/buyback agreements issued by Mountain Energy Corporation, in violation of § 13.1-507 of the Act.

The Defendant neither admits nor denies these allegations, but admits to the Commission's jurisdiction and authority to enter this Settlement Order. The Defendant has provided the Division with evidence that he is currently in bankruptcy proceedings. Based on this evidence, the Division has agreed to waive all monetary penalties and costs of investigation.

As a proposal to settle all matters arising from these allegations, Defendant has offered, and agreed to comply with, the following terms and undertakings:

- (1) The Defendant will be permanently enjoined from violating the provisions of the Act in the future.

The Division has recommended that Defendant's offer of settlement be accepted pursuant to authority granted to the Commission in § 12.1-15 of the Code of Virginia.

THEREFORE, IT IS ORDERED THAT:

- (1) Pursuant to the authority granted to the Commission in § 12.1-15, of the Code of Virginia, the Defendant's offer of settlement is accepted.
- (2) Pursuant to § 13.1-519 of the Act, the Defendant is permanently enjoined from violating provisions of the Act.

**CASE NOS. SEC-2003-00046 and SEC-2003-00047
NOVEMBER 14, 2003**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.
KENNETH E. BROWN,
and
A WING AND A PRAYER, LLC,
Defendants

SETTLEMENT ORDER

The Commission's Division of Securities and Retail Franchising ("Division") has instituted an investigation of Defendants, Kenneth E. Brown ("Brown") and A Wing and A Prayer, LLC ("AWAP") pursuant to § 13.1-518 of the Virginia Securities Act ("Act"), § 13.1-50 et seq. of the Code of Virginia.

As a result of its investigation, the Division alleges that:

- (i) Brown obtained money by means of an omission to state material facts in the offer and sale of securities, to wit: promissory notes of Sterling Financial Services of Florida-1, Inc. and Halliday Village Mobile Home Park, Inc., without disclosing the high risk, non-liquid nature of the investments, in violation of § 13.1-502 (2) of the Act;
- (ii) Brown, in the offer or sale of securities, notes of USAA SNP-III, directly or indirectly, engaged in a transaction, practice or course of business which operates or would operate as a fraud or deceit upon such other person, in violation of § 13.1-502 (3) of the Act;
- (iii) Brown offered and sold securities, promissory notes of Par-East, Inc., AWAP and USAA SNP-III, without being registered as an agent for the firms, in violation of § 13.1-504 A of the Act;
- (iv) In 1997, Brown was dually employed by Southern Capital Securities, Inc. and Guardian Investor Services, LLC., in violation of § 13.1-504 B of the Act;
- (v) In 2001, Brown was dually employed with AWAP and Jonathan Roberts Financial Group, Inc., in violation of § 13.1-504 B of the Act;
- (vi) Brown offered for sale and sold unregistered securities, promissory notes of Par-East and Halliday Village Mobile Home Park, in violation of § 13.1 -507 of the Act;
- (vii) Brown effected securities transactions not recorded on the regular books and records of the broker-dealer, an investment in AWAP and notes of USAA SNP-III, in violation of Rule 21 VAC 5-20-280 B 2;
- (viii) Brown established or maintained an account containing fictitious information in order to execute a sale of securities of Sterling Financial Services of Florida-1 , Inc., which would otherwise be unlawful or prohibited, in violation of Rule 21 VAC 5-20-280 B 3;
- (ix) Brown recommended to a Virginia customer the purchase of a security, notes of USAA SNP-III, without reasonable grounds to believe that the recommendation was suitable for the customer based upon reasonable inquiry concerning the customers' investment objectives, financial situation and needs and other relevant information, in violation of Rule 5-20-280 A 3 and B 6;

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- (x) Brown contradicted or negated the importance of information contained in a prospectus or other offering materials in the offer and sale of notes of USAA SNP-III with the intent to deceive or mislead, in violation of Rule 21 VAC 5-20-280 E 2;
- (xi) Brown failed to provide a prospectus to a Virginia resident in the offer and sale of a security, notes of USAA SNP-III, in violation of Rule 21 VAC 5-20-280 E 8;
- (xii) AWAP employed an unregistered agent, Kenneth Brown, in the offer and sale of securities, an investment in AWAP to Virginia residents, in violation of § 13.1-504 B of the Act; and
- (xiii) AWAP offered and sold unregistered securities, an investment in AWAP, to Virginia residents without being registered in violation of § 13.1 -507 of the Act.

The Defendants neither admit nor deny the allegations, but admit to the Commission's jurisdiction and authority to enter this order.

As a proposal to settle all matters arising from the allegations made against them, the Defendants have offered, and agreed to comply with, the following terms and undertakings:

- (i) Pursuant to § 13.1-518 of the Act, Brown agrees to pay to the Commission the sum of five thousand dollars (\$5,000) towards the costs of investigation;
- (ii) Defendants will provide to those holders of an AWAP promissory note, who may still be owed funds and who do not have a copy of the promissory note, a copy of said note;
- (iii) Defendants agree to continue to make payments, on a pro-rata basis, including interest as set out below, from the net revenues of AWAP assets (subject to third party secured debt service, taxes, operation, maintenance and repair costs) to AWAP noteholders who may still be owed funds until such noteholders have been repaid a total amount equal to the original principal amount of his/her AWAP note. Any amounts remaining unpaid hereunder shall bear interest at the annual rate of six percent (6%) from the date hereof to be paid with the payments as provided above;
- (iv) Defendants agree to repay such amounts within ten (10) years and submit a yearly report to the Division showing the number of noteholders involved, the amounts paid, and the amount still unpaid hereunder;
- (v) Defendants agree that extraordinary net funds obtained by AWAP through refinancing, sale, or other transactions or activities outside the ordinary course of business activities, will, to the extent there are amounts remaining unpaid hereunder, be used to curtail such amounts;
- (vi) Brown agrees to special supervision by his broker-dealer for a period of two (2) years from the date of this Order;
- (vii) Brown agrees that a violation by him or by AWAP, for so long as he is the controlling member thereof, of the provisions of this settlement order will require him to immediately surrender his securities agent registration with the Division and further agrees not to reapply for registration in Virginia for a period of two (2) years;
- (viii) AWAP will offer and sell in the Commonwealth, whether directly or indirectly, only securities that are either registered under the Act or exempted therefrom;
- (ix) AWAP will employ, for purposes of offering or selling securities in the Commonwealth, only agents who are registered under the Act or exempted therefrom;
- (x) Brown will offer and sell in the Commonwealth, whether directly or indirectly, only securities that are either registered under the Act or exempted therefrom;
- (xi) It is recognized and understood that if the Defendants fail to comply with any of the foregoing terms and undertakings, then the Commission reserves the right to take whatever action it deems appropriate, including, but not limited to, instituting a show cause proceeding under the Act or other applicable statutes based on such failure to comply, on the allegations contained herein and/or on such other allegations as are warranted, and the Defendants will not contest the exercise of the right reserved.

The Division has recommended that the Defendants' offer of settlement be accepted pursuant to the authority granted to the Commission in § 12.1-15 of the Code of Virginia. Accordingly,

IT IS ORDERED THAT:

- (1) Pursuant to the authority granted to the Commission in § 12.1-15 of the Code of Virginia, the Defendants' offer of settlement is accepted;
 - (2) The Defendants shall fully comply with the aforesaid terms and undertakings of the settlement;
 - (3) Brown, pursuant to § 13.1-518 of the Act, shall pay to the Commission the sum of five thousand dollars (\$5,000) to defray the costs of investigation, and that the Commission recover from Brown said amounts;
 - (4) The sum total of five thousand dollars (\$5,000) tendered by Brown contemporaneously with the entry of this Settlement Order is accepted;
- and
- (5) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding as described above, 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-2003-00059
OCTOBER 16, 2003**

APPLICATION OF
LUTHERAN CHURCH EXTENSION FUND - MISSOURI SYNOD
10733 Sunset Office Drive
St. Louis, Missouri 63127

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia, as amended

ORDER OF EXEMPTION

THIS MATTER came for consideration upon written application dated August 27, 2003, with exhibits attached thereto, as subsequently amended, of Lutheran Church Extension Fund - Missouri Synod ("LCEF") requesting that certain Savings Stamps, Dedicated Savings Certificates, Steward Account Certificates, Fixed Rate Term Notes, Floating Rate Term Notes, Growth Certificates, Congregation Demand Certificates, Congregation Steward Account Certificates, Congregation Fixed Rate Endowment Certificates, Congregation Floating Rate Endowment Certificates and Flex Plus 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 members of LCEF be exempted from the agent registration requirements of said Act.

BASED UPON THE INFORMATION submitted, the following facts, in addition to others not enumerated herein, appear to exist: LCEF is a Missouri Corporation organized and operated not for private profit but exclusively for religious, educational and charitable purposes; LCEF intends to offer and sell the securities in an approximate aggregate amount of \$75,000,000 on terms and conditions as more fully described in the Offering Circular filed as part of the application; and said securities are to be offered and sold by officers of LCEF who will not be compensated for their sales efforts.

THE COMMISSION, based on the facts asserted by LCEF in the written application and exhibits, is of the opinion and finds, and does hereby ADJUDGE AND ORDER that, pursuant to the provisions of § 13.1-514.1 B of the Act, the securities described above be, and they hereby are, exempted from the securities registration requirements of the Act and officers of LCEF be, and they hereby are, exempted from the agent registration requirements of said Act.

**CASE NO. SEC-2003-00068
NOVEMBER 14, 2003**

APPLICATION OF
NEW LIFE METROPOLITAN COMMUNITY CHURCH OF HAMPTON ROADS
4035 E. Ocean View Avenue
Norfolk, Virginia 23518

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia, as amended

ORDER OF EXEMPTION

THIS MATTER came for consideration upon written application dated September 8, 2003, with exhibits attached thereto, as subsequently amended, of New Life Metropolitan Community Church of Hampton Roads ("New Life") requesting that certain First Deed of Trust Bonds and Second Deed of Trust Bonds 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 members of New Life be exempted from the agent registration requirements of said Act.

BASED UPON THE INFORMATION submitted, the following facts, in addition to others not enumerated herein, appear to exist: New Life is a non-stock Virginia corporation operating not for private profit but exclusively for religious purposes; New Life intends to offer and sell First Deed of Trust Bonds and Second Deed of Trust Bonds in an approximate aggregate amount of \$570,000 (\$535,500 First Deed of Trust Bonds and \$34,500 Second Deed of Trust Bonds) on terms and conditions as more fully described in the Prospectus filed as a part of the application; said securities are to be offered and sold by a bond sales committee composed of members of New Life who will not be compensated for their sales efforts; and said securities may also be offered and sold by broker-dealers so registered under the Act.

THE COMMISSION, based on the facts asserted by New Life in the written application and exhibits, is of the opinion and finds, and does hereby ADJUDGE AND ORDER that, pursuant to the provisions of § 13.1-514.1 B of the Act, the securities described above be, and they hereby are, exempted from the securities registration requirements of the Act and the members of the bond sales committee be, and they hereby are, exempted from the agent registration requirements of said Act.

**CASE NO. SEC-2003-00069
NOVEMBER 20, 2003**

APPLICATION OF
FAITH BAPTIST CHURCH OF MADISON HEIGHTS, VA
3768 S. Amherst Highway
Madison Heights, Virginia 24572

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia, as amended

ORDER OF EXEMPTION

THIS MATTER came for consideration upon written application dated September 30, 2003, with exhibits attached thereto, as subsequently amended, of Faith Baptist Church of Madison Heights, VA ("Faith Baptist Church") requesting that certain First Deed of Trust Bonds 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 members of Faith Baptist Church be exempted from the agent registration requirements of said Act.

BASED UPON THE INFORMATION submitted, the following facts, in addition to others not enumerated herein, appear to exist: Faith Baptist Church is a nonstock Virginia corporation operating not for private profit but exclusively for religious purposes; Faith Baptist Church intends to offer and sell First Deed of Trust Bonds in an approximate aggregate amount of \$700,000 on terms and conditions as more fully described in the Prospectus filed as a part of the application; said securities are to be offered and sold by a bond sales committee composed of members of Faith Baptist Church who will not be compensated for their sales efforts; and said securities may also be offered and sold by broker-dealers so registered under the Act.

THE COMMISSION, based on the facts asserted by Faith Baptist Church in the written application and exhibits, is of the opinion and finds, and does hereby ADJUDGE AND ORDER that, pursuant to the provisions of § 13.1-514.1 B of the Act, the securities described above be, and they hereby are, exempted from the securities registration requirements of the Act and the members of the bond sales committee be, and they hereby are, exempted from the agent registration requirements of said Act.

TABLES

CLERK'S OFFICE

Summary of the changes in the number of Virginia corporations, foreign corporations, and limited partnerships licensed to do business in Virginia, and of amendments to Virginia, foreign, and limited partnership charters during 2002 and 2003.

VIRGINIA CORPORATIONS

	<u>2002</u>	<u>2003</u>
Certificates of Incorporation issued	19,232	19,337
Corporations voluntarily terminated	2,903	2,969
Corporations involuntarily terminated	126	89
Corporations automatically terminated	15,755	16,021
Reinstatements of terminated corporations	4,490	4,392
Charters amended	2,835	2,800
Active Stock Corporations	142,893	144,228
Active Non-Stock Corporations	29,339	30,686
Total Active Virginia Corporations	172,232	174,914

FOREIGN CORPORATIONS

Certificates of Authority to do business in Virginia issued	4,660	4,511
Voluntary withdrawals from Virginia	1,401	1,244
Certificates of Authority automatically revoked	2,815	2,465
Certificates of Authority involuntarily revoked	20	20
Reentry of corporations with surrendered or revoked certificates	846	748
Charters amended	1,074	1,013
Active Stock Corporations	32,147	32,338
Active Non-Stock Corporations	1,967	2,050
Total Active Foreign Corporations	34,114	34,388
Total Active (Domestic and Foreign) Corporations	206,346	209,302

LIMITED PARTNERSHIPS

Limited Partnership Certificates filed	1,877	1,666
Limited Partnership Certificates amended	355	366
Limited Partnership Certificates voluntarily canceled	212	171
Limited Partnership Certificates involuntarily canceled	541	507
Total Active (Domestic and Foreign) Limited Partnerships	8,519	8,598

LIMITED LIABILITY COMPANIES

Articles of organization filed	19,599	24,673
Articles of organization amended	1,334	1,623
Articles of organization voluntarily canceled	1,077	1,341
Articles of organization involuntarily canceled	5,850	7,809
Total Active (Domestic and Foreign) Limited Liability Companies	68,011	84,465

LIMITED LIABILITY PARTNERSHIPS

Statements of registration as a Registered Limited Liability Partnership	71	76
Renewals of registration as a Registered Limited Liability Partnership	906	1,014
Total Active (Domestic and Foreign) Registered Limited Liability Partnerships	983	1,094

GENERAL PARTNERSHIPS

Total active General Partnerships filed	148	200
Total active General Partnerships on record	923	900

BUSINESS TRUSTS

Articles of organization filed.....	15
Articles of organization amended.....	0
Articles of organization voluntarily canceled.....	0
Articles of organization involuntarily canceled.....	0
Total Active Business Trusts.....	15

**COMPARISON OF REVENUES DEPOSITED BY THE CLERK'S OFFICE
FOR THE FISCAL YEARS ENDING JUNE 30, 2002, AND JUNE 30, 2003**

<u>General Fund</u>	<u>2002</u>	<u>2003</u>	<u>(Difference)</u>
Securities Application Fees-Utilities	\$9,750.00	\$9,725.00	(\$25.00)
Charter Fees	1,602,225.00	1,515,155.20	(87,069.80)
Entrance Fees	1,526,865.00	1,451,585.00	(75,280.00)
Filing Fees	808,425.00	846,657.00	38,232.00
Registered Name	3,050.00	2,830.00	(220.00)
Registered Office and Agent	0.00	0.00	0.00
Service of Process	28,890.00	30,480.00	1,590.00
Copy and Recording Fees	478,329.88	450,716.04	(27,613.84)
SCC Annual Report Sales	5,999.68	6,213.00	213.32
Uniform Commercial Code Revenues	1,607,380.00	1,619,947.00	12,567.00
Excess Fees Paid into State Treasury	128,711.82	193,495.43	64,783.61
Miscellaneous Sales	0.00	0.00	0.00
TOTAL	\$6,199,626.38	\$6,126,803.67	(\$72,822.71)

Special Fund

Domestic-Foreign Corp. Registration Fee	\$16,288,805.13	\$30,318,000.93	\$14,029,195.80
Limited Partnership Registration Fee	406,227.00	411,027.00	4,800.00
Reserved Name - Limited Partnership	19,310.00	16,195.00	(3,115.00)
Certificate Limited Partnership	57,525.00	61,325.00	3,800.00
Application Reg. Foreign LP	19,500.00	22,725.00	3,225.00
Reinstatement LP	13,350.00	15,800.00	2,450.00
Registration Fee LLC	2,048,960.00	2,524,550.00	475,590.00
Application For. Reg. LLC	169,025.00	188,250.00	19,225.00
Art of Org. Dom. LLC	1,551,850.00	2,000,700.00	448,850.00
AMEND, CANC, CORR. RAC, Etc. LLC	71,270.00	90,060.00	18,790.00
SCC Bad Check Fee	5,015.00	6,575.00	1,560.00
Interest on Del. Tax	0.00	0.00	0.00
Penalty on Non-Pay Fees by Due Date	656,525.97	741,176.10	84,650.13
Statement of Reg. As Domestic LLP	6,500.00	6,800.00	300.00
LLP Annual Continuation	34,875.00	51,550.00	16,675.00
Statement of Partnership Authority GP Dom	3,200.00	4,225.00	1,025.00
Statement of Partnership Authority GP For	200.00	400.00	200.00
Statement of Amendments - GP	375.00	350.00	(25.00)
Statement of Reg. As Foreign LLP	1,300.00	1,700.00	400.00
Statement of Amendment LLP	850.00	675.00	(175.00)
Reinstatement/Reentry LLC	76,400.00	90,800.00	14,400.00
Tape Sales, Misc Fees	74,000.00	105,000.00	31,000.00
Copies, Recording Fees	0.00	0.00	0.00
Recovery of Prior Yr Expenses	0.00	0.00	0.00
LLP Reinstatement	200.00	50.00	(150.00)
TOTAL	\$21,505,263.10	\$36,657,934.03	\$15,152,670.93

Valuation Fund

Corp Operations Rec Of Copy and Cert Fees	\$5,910.00	\$6,752.00	\$842.00
Recovery of Prior Yr Expenses	1,672.00	3,582.00	1,910.00
TOTAL	\$7,582.00	\$10,334.00	\$2,752.00

Trust & Agency Fund

Fines Imposed and Collected by SCC	\$58,416.00	\$270,560.00	\$212,144.00
Debt Set Off Collection	<u>284.00</u>	<u>360.00</u>	<u>\$76.00</u>
TOTAL	\$58,700.00	\$270,920.00	\$212,220.00
 GRAND TOTAL	 \$27,771,171.48	 \$43,065,991.70	 \$15,294,820.22

**COMPARISON OF FEES COLLECTED BY THE BUREAU OF FINANCIAL INSTITUTIONS
FOR FISCAL YEARS ENDING JUNE 30, 2002, AND JUNE 30, 2003**

	<u>2002</u>	<u>2003</u>
Banks	\$6,885,387	\$6,352,283
Savings Institutions and Savings Banks	33,180	12,201
Consumer Finance Licensees	714,114	450,946
Credit Unions	761,188	835,928
Trust subsidiaries and Trust Companies	121,266	124,389
Industrial Loan Associations	22,682	21,696
Money Order Sellers and Transmitters	38,000	32,250
Debt Counseling Agency Licensees	11,400	11,550
Mortgage Lenders and Mortgage Brokers	1,713,333	1,881,247
Check Cashers		25,300
Payday Lenders		64,300
Miscellaneous Collections	<u>29,978</u>	<u>76,169</u>
TOTAL	\$10,330,528	\$9,888,259

**COMPARISON OF FEES AND TAXES COLLECTED BY THE BUREAU OF INSURANCE
FOR THE FISCAL YEARS ENDING JUNE 30, 2002, AND JUNE 30, 2003**

<u>Kind</u>	<u>2002</u>	<u>2003</u>	<u>Increase or (Decrease)</u>
<u>General Fund</u>			
Gross Premium Taxes of Insurance Companies	\$292,702,124.84	\$332,797,770.18	\$40,095,645.34
Fraternal Benefit Societies Licenses	580.00	540.00	(40.00)
Viatical Settlement Provider Lic Fees	500.00	1,500.00	1,000.00
Viatical Settlement Broker Lic Fees	2,600.00	2,950.00	350.00
Hospital, Medical, and Surgical Plans and Salesmen's Licenses	0.00	0.00	0.00
Interest on Delinquent Taxes	216,655.42	124,960.67	(91,694.75)
Penalty on non-payment of taxes by due date	90,674.74	182,484.34	91,809.60
<u>Special Fund</u>			
Company License Application Fee	23,500.00	21,000.00	(2,500.00)
Health Maintenance Organization License Fee	0.00	0.00	0.00
Automobile Club/ Agent Licenses	7,700.00	6,400.00	(1,300.00)
Insurance Premium Finance Companies Licenses	11,200.00	11,400.00	200.00
Agents Appointment Fees	12,655,711.00	12,966,184.00	310,473.00
Surplus Lines Broker Licenses	23,400.00	31,135.00	7,735.00
Producer License Application Fees	539,610.00	697,425.00	157,815.00
Recording, Copying, and Certifying Public Records Fee	57,640.90	50,369.00	(7,271.90)
Assessments To Insurance Companies for Maintenance of the Bureau of Insurance	9,175,080.00	7,202,032.06	(1,973,047.94)
Miscellaneous Revenue	114,069.31	1,537.17	(112,532.14)
Recovery of Prior Year Expenses	113,934.73	168,446.74	54,512.01
Fire Programs Fund	16,722,680.86	19,400,207.26	2,677,526.40
P&C Consultant License Fees	46,675.00	87,900.00	41,225.00
SCC Bad Check Fee	175.00	150.00	(25.00)
Managed Care Health Ins. Plan Appeals Fee	1,350.00	2,200.00	850.00
Appointment Fee Penalty	243,200.03	313,804.00	70,603.97
Administrative Penalty Payment	138,000.00	0.00	(138,000.00)
Fines Imposed by State Corporation Commission	1,333,310.00	1,301,792.93	(31,517.07)

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Private Review Agents	0.00	0.00	0.00
Flood Assessment Fund	153,545.94	165,854.36	12,308.42
Heat Assessment Fund	1,593,132.09	1,718,607.00	125,474.91
Fraud Assessment Fund	3,623,134.29	4,017,871.38	394,737.09
Reinsurance Intermediary Broker Fees	500.00	2,000.00	1,500.00
Reinsurance Intermediary Managers Fee	0.00	1,000.00	1,000.00
Managing General Agent Fees	7,500.00	5,000.00	(2,500.00)
MCHIP Assessment	417,574.69	273,721.65	(143,853.04)
State Publication Sales	50.00	0.00	(50.00)
Debt Set Off Collections	0.00	0.00	0.00
Fire Programs Fund Interest	79,497.09	48,204.50	(31,292.59)
Fraud Assessment Interest	<u>19,538.19</u>	<u>9,635.65</u>	<u>(9,902.54)</u>
TOTAL	\$340,114,844.12	\$381,614,082.89	\$41,499,238.77

**COMPARISON OF ASSESSMENT OF PUBLIC SERVICE COMPANIES
FOR THE YEARS 2002 AND 2003**

<u>Class of Company</u>	Value of all Taxable Property Including Rolling Stock		Increase or (Decrease)
	<u>2002</u>	<u>2003</u>	
Electric Light & Power Corporations	\$16,956,900,239.00	\$17,561,787,986.00	\$604,887,747.00
Gas Corporations	1,390,167,491.00	1,405,956,046.00	15,788,555.00
Motor Vehicle Carriers (Rolling Stock only)	54,391,116.80	49,673,081.48	(4,718,035.32)
Telecommunications Companies	9,882,428,455.00	9,850,284,098.00	(32,144,357.00)
Water Corporations	<u>95,700,460.00</u>	<u>105,965,477.00</u>	<u>10,265,017.00</u>
TOTAL	\$28,379,587,761.80	\$28,973,666,688.48	\$594,078,926.68

**COMPARISON OF ASSESSMENT OF STATE TAXES OF PUBLIC SERVICE
COMPANIES FOR THE YEARS 2002 AND 2003**

<u>Class of Company</u>	The Yearly License Tax		Increase or (Decrease)
	<u>2002</u>	<u>2003</u>	
Electric Light & Power Corporations	\$0.00	\$0.00	\$0.00
Gas Corporations	0.00	0.00	0.00
Water Corporations	<u>936,564.20</u>	<u>981,428.97</u>	<u>44,864.77</u>
TOTAL	\$936,564.20	\$981,428.97	\$44,864.77

NOTE: STATE TAXES ABOVE EXCLUDE License Tax for 2002 and 2003 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 2002 AND 2003**

<u>Class of Company</u>	<u>2002</u>	<u>2003</u>	Increase or (Decrease)
Electric Light & Power Corporations	\$0.00	\$0.00	\$0.00
Gas Corporations	0.00	0.00	0.00
Motor Vehicle Carriers	62,586.00	61,446.87	(1,139.13)
Railroad Companies	871,169.97	805,089.15	(66,080.82)

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Telecommunications Companies	9,647,092.62	10,131,556.89	484,464.27
Virginia Pilots Association	32,389.23	30,816.87	(1,572.36)
Water Corporations	<u>93,656.40</u>	<u>98,142.91</u>	<u>4,486.51</u>
TOTAL	\$10,706,894.22	\$11,127,052.69	\$420,158.47

Railroad Companies assessed at nine-hundredths of one percent and all other companies at two-tenths of one percent.

NOTE: STATE TAXES ABOVE EXCLUDE Special Tax for 2002 and 2003 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>2002</u>	<u>2003</u>	<u>Increase or (Decrease)</u>
Alexandria	\$593,463,458	654,847,635	\$61,384,177
Bedford	9,583,405	9,775,506	192,101
Bristol	16,364,868	17,443,179	1,078,311
Buena Vista	9,932,937	10,783,730	850,793
Charlottesville	138,739,651	147,217,061	8,477,410
Chesapeake	732,001,871	789,226,481	57,224,610
Colonial Heights	30,955,701	29,802,587	(1,153,114)
Covington	18,454,362	18,673,682	219,320
Danville	45,180,130	47,871,049	2,690,919
Emporia	18,892,269	18,376,541	(515,728)
Fairfax	101,762,739	121,664,681	19,901,942
Falls Church	26,448,414	32,323,402	5,874,988
Franklin	7,842,070	7,988,815	146,745
Fredericksburg	80,929,578	76,631,870	(4,297,708)
Galax	10,166,928	11,501,733	1,334,805
Hampton	253,655,206	255,620,496	1,965,290
Harrisonburg	50,344,948	50,040,449	(304,499)
Hopewell	280,786,431	408,123,683	127,337,252
Lexington	15,722,167	14,463,650	(1,258,517)
Lynchburg	201,810,808	202,266,054	455,246
Manassas	63,956,874	63,460,370	(496,504)
Manassas Park	17,561,397	18,057,258	495,861
Martinsville	26,447,350	28,378,151	1,930,801
Newport News	350,717,298	333,382,822	(17,334,476)
Norfolk	636,312,882	652,220,718	15,907,836
Norton	23,602,101	26,401,917	2,799,816
Petersburg	80,062,409	83,900,768	3,838,359
Poquoson	13,948,034	15,281,091	1,333,057
Portsmouth	275,926,363	256,641,132	(19,285,231)
Radford	16,106,528	17,033,366	926,838
Richmond	854,311,268	1,002,842,557	148,531,289
Roanoke	241,636,703	266,366,157	24,729,454
Salem	26,671,533	26,708,471	36,938
Staunton	64,929,817	67,194,234	2,264,417
Suffolk	149,677,879	149,048,625	(629,254)
Virginia Beach	745,867,961	737,334,295	(8,533,666)
Waynesboro	71,683,180	78,228,957	6,545,777
Williamsburg	47,383,235	50,185,573	2,802,338
Winchester	<u>51,169,776</u>	<u>57,833,200</u>	<u>6,663,424</u>
Total Cities	\$6,401,010,529	\$6,855,141,946	\$454,131,417

**COMPARATIVE STATEMENT OF ASSESSED VALUES OF
PROPERTIES OF PUBLIC SERVICE CORPORATIONS
AS ASSESSED BY THE STATE CORPORATION COMMISSION**

<u>Counties</u>	<u>2002</u>	<u>2003</u>	<u>Increase or (Decrease)</u>
Accomack	\$188,914,077	231,404,090	\$42,490,013
Albemarle	201,723,192	220,542,417	18,819,225
Alleghany	74,566,503	78,242,581	3,676,078
Amelia	26,409,275	25,214,992	(1,194,283)
Amherst	78,572,977	74,128,633	(4,444,344)
Appomattox	34,950,594	32,007,888	(2,942,706)
Arlington	869,014,862	900,503,657	31,488,795
Augusta	176,499,816	174,482,370	(2,017,446)
Bath	1,548,598,779	1,381,510,916	(167,087,863)
Bedford	176,094,484	196,254,489	20,160,005
Bland	15,534,869	15,319,483	(215,386)
Botetourt	136,169,577	130,771,093	(5,398,484)
Brunswick	42,481,091	44,945,210	2,464,119
Buchanan	58,674,411	109,405,486	50,731,075
Buckingham	47,855,411	38,819,501	(9,035,910)
Campbell	175,961,654	192,840,080	16,878,426
Caroline	208,649,324	207,430,071	(1,219,253)
Carroll	54,727,798	51,219,016	(3,508,782)
Charles City	31,873,590	30,436,963	(1,436,627)
Charlotte	34,938,732	34,936,253	(2,479)
Chesterfield	1,230,296,154	1,216,106,399	(14,189,755)
Clarke	36,532,604	37,874,156	1,341,552
Craig	11,009,761	10,672,587	(337,174)
Culpeper	94,274,140	117,573,930	23,299,790
Cumberland	30,077,151	29,982,894	(94,257)
Dickenson	37,525,885	39,358,069	1,832,184
Dinwiddie	99,826,010	88,212,740	(11,613,270)
Essex	32,406,939	33,026,449	619,510
Fairfax	3,250,072,885	3,182,712,158	(67,360,727)
Fauquier	314,139,929	282,162,700	(31,977,229)
Floyd	39,685,132	38,073,823	(1,611,309)
Fluvanna	137,458,357	143,703,403	6,245,046
Franklin	108,670,366	108,506,354	(164,012)
Frederick	185,065,419	177,338,711	(7,726,708)
Giles	115,948,075	119,946,439	3,998,364
Gloucester	79,269,152	80,083,126	813,974
Goochland	74,792,794	77,390,138	2,597,344
Grayson	32,355,152	26,755,344	(5,599,808)
Greene	25,162,476	27,778,996	2,616,520
Greensville	27,135,767	26,995,746	(140,021)
Halifax	870,357,505	957,034,692	86,677,187
Hanover	\$564,940,296	586,255,681	\$21,315,385
Henrico	824,265,198	876,697,054	52,431,856
Henry	109,943,040	111,938,289	1,995,249
Highland	16,667,410	16,892,425	225,015
Isle of Wight	204,916,166	218,030,151	13,113,985
James City	153,621,914	152,045,029	(1,576,885)
King George	303,836,804	288,750,090	(1,015,689)
King and Queen	22,863,960	21,848,271	36,055
King William	30,674,274	30,710,329	36,055
Lancaster	38,887,441	31,498,632	(7,388,809)
Lee	42,892,636	43,790,284	897,648
Loudoun	799,429,946	727,012,820	(72,417,126)
Louisa	1,888,350,646	1,971,817,447	83,466,801
Lunenburg	26,929,530	26,315,305	(614,225)
Madison	34,108,837	34,728,581	619,744
Mathews	19,399,790	19,792,155	392,365
Mecklenburg	189,399,788	198,297,914	8,898,126
Middlesex	32,532,207	31,916,857	(615,350)
Montgomery	116,825,741	138,606,459	21,780,718
Nelson	60,766,094	69,722,803	8,956,709
New Kent	52,857,719	53,668,042	810,323
Northampton	33,906,323	34,299,134	392,811

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Northumberland	32,246,607	30,312,999	(1,933,608)
Nottoway	38,166,197	36,648,303	(1,517,894)
Orange	69,358,718	80,614,346	11,255,628
Page	37,966,264	44,020,956	6,054,692
Patrick	35,788,793	45,977,004	10,188,211
Pittsylvania	275,515,403	255,630,055	(19,885,348)
Powhatan	66,335,888	65,476,125	(859,763)
Prince Edward	33,879,391	46,181,105	12,301,714
Prince George	56,511,816	64,455,378	7,943,562
Prince William	852,965,586	894,051,796	41,086,210
Pulaski	75,962,820	73,849,748	(2,113,072)
Rappahannock	20,047,407	25,066,048	5,018,641
Richmond	38,429,314	45,575,882	7,146,568
Roanoke	195,144,021	205,567,557	10,423,536
Rockbridge	93,458,309	85,456,486	(8,001,823)
Rockingham	156,147,587	142,905,942	(13,241,645)
Russell	209,703,334	195,110,518	(14,592,816)
Scott	\$44,248,556	44,465,881	\$217,325
Shenandoah	122,393,140	122,130,067	(263,073)
Smyth	80,566,441	76,219,704	(4,346,737)
Southampton	95,787,834	86,363,638	(9,424,196)
Spotsylvania	203,533,629	190,439,560	(13,094,069)
Stafford	166,693,738	146,465,073	(20,228,665)
Surry	1,349,219,796	1,419,648,720	70,428,924
Sussex	43,644,134	44,272,309	628,175
Tazewell	75,207,330	78,468,644	3,261,314
Warren	43,369,468	50,296,861	6,927,393
Washington	199,084,947	191,256,549	(7,828,398)
Westmoreland	43,159,241	41,343,693	(1,815,548)
Wise	61,870,286	73,606,026	11,735,740
Wythe	99,432,163	100,275,910	843,747
York	426,059,529	390,360,983	(35,698,546)
Total Counties	<u>\$21,924,186,116</u>	<u>\$22,068,851,661</u>	<u>\$159,788,314</u>
Total Cities & Counties	\$28,325,196,645	\$28,923,993,607	\$613,919,731

**COMPARISON OF FEES COLLECTED BY THE DIVISION OF SECURITIES
AND RETAIL FRANCHISING FOR THE YEARS ENDING DECEMBER 31, 2002
AND DECEMBER 31, 2003**

<u>Kind</u>	<u>2002</u>	<u>2003</u>	<u>Increase or (Decrease)</u>
Securities Act	\$7,201,807	\$7,196,902	(\$4,905)
Retail Franchising Act	320,200	360,250	40,050
Trademarks-Service Marks	15,428	18,455	3,027
Penalties	70,815	78,450	7,635
Global Settlement Penalties	1,179,237	8,453,821	7,274,584
Cost of Investigations	<u>54,694</u>	<u>30,400</u>	<u>(24,294)</u>
TOTAL	\$8,842,181	\$16,138,278	\$7,296,097

PROCEEDINGS BY DIVISIONS DURING THE YEAR 2003

DIVISION OF PUBLIC UTILITY ACCOUNTING

The following statistical data summarizes Rate Cases, various Certificate Cases, Annual Informational Filings/Earnings Tests, Fuel Factor Cases, Compliance Audits, Depreciation Studies and Special Studies made by the Division of Public Utility Accounting in 2003.

<u>General Rate Cases</u>	
Gas Companies	2
Water and Sewer Companies	3
Other	<u>2</u>
Total General Rate Cases	7
 <u>Expedited Rate Cases</u>	
Gas Companies	<u>2</u>
Total Rate Cases	9
 <u>Certificate Cases</u>	
Water and Sewer Companies	1
Gas Companies	1
 <u>Chapter 5/Certificate Cases</u>	
Electric Companies	1
Water and Sewer Companies	<u>3</u>
Total Certificate Cases	6
 <u>Chapter 5/Receivership Cases</u>	
Water and Sewer Companies	<u>1</u>
 <u>Annual Informational Filings/Earnings Tests</u>	
Electric Companies (Investor Owned)	3
Gas Companies	8
Water and Sewer Companies	<u>3</u>
Total Annual Informational Filings	14
 <u>Fuel Factor Cases - Electric Companies</u>	
	7
 <u>Compliance Audits</u>	
	2
 <u>Depreciation Studies</u>	
	3
 <u>Special Studies</u>	
Electric Companies	12
Electric Cooperatives	8
Gas Companies	1
Telephone Companies	1
Other	<u>2</u>
Total Special Studies	24

During the year 2003 Division of Public Utility Accounting received applications filed under the Public Utilities Affiliates Law 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:

<u>Number of Utility Transfer Act Cases</u>	
Transfer of Assets	7
Transfer of Securities or Control	26
<u>Number of Affiliates Act Cases</u>	
Service Agreements	19
Membership interest transfer	1
Power Sales	2
Tax allocation agreement	7
Asset transfer	7
Contribution of capital	1
Parent company guarantee	1
Pole attachment agreement	<u>1</u>
Total Number Of Cases	72

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Commission's Division of Public Utility Accounting consisted of the following personnel on December 31, 2003:

<u>Filled</u>	<u>Vacant</u>	<u>Description</u>
1		Director
2		Deputy Director
3		Manager of Audits
1		Systems Supervisor
1		Administrative Supervisor
1		Senior Office Technician
6		Principal Public Utility Accountant
1		Senior Public Utility Accountant
3	1	Public Utility Accountant
<u>1</u>		Public Utility Analyst
20	1	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 telecommunications markets with the goal of achieving an effective regulatory environment that balances the advancement of competitive markets with the protection of consumers. The Division assists the Commission in developing, implementing, and enforcing alternatives to traditional forms of regulation as competitive markets evolve. 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 2003, there were under the supervision of the Division:

14	Incumbent Investor-owned Local Exchange Telephone Companies
191	Competitive Local Exchange Telephone Companies
141	Long Distance Telephone Companies
382	Payphone Service Providers

SUMMARY OF 2003 ACTIVITIES

Consumer complaints and protests investigated	6,105
Telephone inquiries received	9,720
Tariff revisions received:	
Incumbent Local Exchange Companies	108
Competitive Local Exchange Companies	187
Interexchange Companies	132
Tariff sheets filed:	
Incumbent Local Exchange Companies	755
Competitive Local Exchange Companies	4,538
Interexchange Companies	1,548
Promotional Filings	
Incumbent Local Exchange Companies	61
Competitive Local Exchange Companies	144
Interexchange Companies	111
Cases in which staff members prepared testimony or reports	34
Certificates of Convenience and Necessity granted, Amended, or Canceled:	
Competitive Local Exchange Companies	39
Interexchange Companies	25
Interconnection Agreements/Amendments Approved or Dismissed	88
Extended Area Service studies completed or underway	6
Service Surveillance and Results Analysis Provided Monthly on:	
Telephone Companies	15
Access Lines	5,039,876
Payphone Registration and Rules Enforcement provided on:	
Local Exchange Company payphone service providers	14
Local Exchange Company payphones	26,833
Private payphone service providers	368
Private payphones	12,927
Payphone audits (2 Auditors)	842
Complaints Investigated	26
Court Cases	4

Visits to:	
Customer premises to resolve customer complaints	22
Company premises to resolve customer complaints	0
Company premises to review service performance	9
Construction Program reviews	3

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:

- Reached consensus on performance standards and performance assurance plan for Verizon South.

Monitored Verizon Virginia's Performance Assurance Plan:

- Replicating monthly results
- Monitoring ongoing audit

Implemented new rules for localities to be certificated as local exchange companies.

Drafted proposed revised rules for interconnection agreements.

Proposed rules for retail service quality and 911 service.

Participated in state-wide public meetings regarding Hurricane Isabel.

Assisted Commission counsel with respect to formal rate, service or generic matters.

Participated in matters affecting communications policy with federal agencies.

Pursued various activities related to the Commission's alternative plans for regulating telephone companies, including the following:

- Reviewed proposed service classifications for new services, and reclassifications for existing services
- Evaluated Individual Case Basis (ICB) and Special Assembly price filings
- Assisted in gathering monitoring data

Continued outreach activities by making presentations to trade and citizens groups, associations, telephone companies, and a legislative committee.

Implemented database of payphone lines.

Responded to questionnaires from the National Association of Regulatory Utility Commissioners ("NARUC") and others with respect to telecommunications matters.

Conducted operational reviews with Verizon, Sprint, Cox, Comcast, Ntelos, and Shentel.

Met with local governing bodies and citizens groups regarding local calling areas and service problems.

Managed Virginia's telephone number utilization program.

Worked with the Virginia Department for the Deaf and Hard of Hearing on monitoring the Telecommunications Relay Service in Virginia.

Staff member serves on the NARUC Staff Subcommittee on Communications.

Staff member serves on the NARUC Staff Subcommittee on Depreciation and Technology.

Staff member serves on the NARUC Staff Subcommittee on Service Quality.

Staff member serves on the Advisory Council for the Virginia Department for the Deaf and Hard of Hearing.

Staff member serves on Homeland Security Infrastructure Committee.

Staff member served on Selection Committee for Telecommunications Relay Service.

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 inter-LATA and intra-LATA telecommunications competition;
- monitoring the incumbent local exchange companies participating in the Alternative Regulatory Plans;
- monitoring competitive local exchange carriers;
- analyzing financial fitness of applicants seeking status as competitive local exchange and interexchange carriers;
- monitoring and maintaining files of electric utilities' operating 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 evolving competitive energy markets, including market power issues;

- analyzing applications for licenses to become a competitive service provider or aggregator;
- analyzing customer demand-response programs and associated trends; and
- analyzing financial and technical fitness of non-regulated firms seeking approval to build generating facilities, transmission lines or gas pipelines.

SUMMARY OF MAJOR ACTIVITIES DURING 2003

- Presented testimony on capital structure, cost of capital and other financial issues in one investor-owned utility rate case.
- Completed 13 Annual Informational Filing reports for electric, gas, telephone and water utilities.
- Analyzed and processed 22 applications of utilities seeking authority to issue securities.
- Prepared reports regarding the financial condition of 22 new entrants applying for certification to the telecommunications market.
- Continued work on applications for certificates to construct electric generating facilities resulting in three approved projects, one projected remanded for additional analysis, and four dismissed projects.
- Prepared and presented testimony in two electric fuel factor proceedings.
- Prepared reports regarding the financial condition of four companies seeking licensure as competitive energy service providers or aggregators.
- Coordinated the revision of the Commission's rules pertaining to the interest rate on customer deposits.
- Completed a Staff study of Virginia Power's energy trading activities.
- Continued participation in the collaborative committee that negotiated Verizon's duties with respect to the Telecommunications Act of 1996 and its service to competitive providers. Continued analysis of metrics from Verizon's Performance Appraisal Plan, measuring the levels of service provided to competitors.
- Continued monitoring, through the carrier to carrier guidelines, of the levels of service provided by incumbent telephone companies to competitor companies.
- Provided statistical and analytical support for the audit of Verizon's Performance Appraisal Plan.
- Proposed revisions to the Commission's Rules governing competitive local exchange carriers and proposed rules to govern the municipal local exchange carriers, adopted in Case No. PUC-2002-00115.
- Monitoring the levels of service provided by incumbent telephone companies to competitor companies.
- Monitored the implementation of rules governing electric and natural gas retail access programs regarding supplier consolidated billing, competitive metering, and aggregation.
- Prepared reports regarding open retail access programs for remaining electric cooperatives.
- Prepared reports and monitored development of pilot programs within Dominion Virginia Power's service territory.
- Assisted the development and implementation of recommendations regarding elements of the Restructuring Act, particularly those involving default service, stranded costs, and energy infrastructure.
- Supported and monitored activities regarding the continued development of Regional Transmission Organizations and associated participation of Virginia electric utilities.
- Facilitated the continued development of Electronic Data Interchange guidelines for communication among utilities and competitive service providers in Virginia and the surrounding region.
- Represented the Commission at meetings of the North American Energy Standards Board, encompassing wholesale and retail electricity and natural gas sectors, to establish Uniform Business Practices.
- Developed the Status Report to the Legislative Transition Task Force and Governor of Virginia regarding the Development of a Competitive Retail Market for Electric Generation within the Commonwealth of Virginia.
- Developed a forecast of the consumption tax collected on electricity usage for Public Service Taxation.
- Developed a forecast of budget items for Bureau of Insurance.
- Developed with the Division of Communications a forecast of the Virginia Telecommunications relay service bank balance.
- Developed a forecast of the Clerk's office special fund collection for the Office of Commission Comptroller.
- Developed a forecast of the non-general fund revenue collections and bank balances for the Division of Securities and Retail Franchising.
- Maintained the Virginia Electronic Data Transfer website.
- Designed a comprehensive database of competitive energy service providers.
- Filed comments at the Federal Energy Regulatory Commission in four proceedings.

DIVISION OF ENERGY REGULATION

Activities for Calendar Year 2003

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.

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 policy related issues including both state and national proceedings associated with industry restructuring and mergers and acquisitions of natural gas and electric utilities.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

SUMMARY OF MAJOR ACTIVITIES DURING 2003

Consumer Complaints, Letters of Protest, and Inquiries Received	6,051
Tariff Filings Received	309
Testimony and Reports Filed by Staff	61
Certificates of Convenience and Necessity Granted, Transferred, or Revised	21
Special Reports	4
Electric On-Site Construction Inspections	4
Electric Meter Tests Witnessed	3
Depreciation Studies	3
Federal Energy Regulatory Commission Filing/Comments	16
Legislative Presentations	2

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 order seller/money transmitter licensees, mortgage lenders and brokers, debt 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 2,964 applications for various certificates authority as shown below:

APPLICATIONS RECEIVED AND/OR ACTED UPON
BY THE BUREAU OF FINANCIAL INSTITUTIONS IN 2003

New Banks	4
Bank Branches	88
Bank Branch Office Relocations	8
Relocate Bank Main Office	2
Bank Mergers	9
Acquisitions Pursuant to Chapter 13 of Title 6.1	6
Acquisitions Pursuant to Chapter 15 of Title 6.1	8
Acquire a Virginia Savings Institution	1
Establish an Independent Trust Branch	2
Credit Union Mergers	2
Credit Union Service Facilities	4
Move a Credit Union Office	5
New Consumer Finance	4
Consumer Finance Offices	42
Consumer Finance Other Business	20
Consumer Finance Office Relocations	10
New Mortgage Brokers	394
New Mortgage Lenders	53
New Mortgage Lenders and Brokers	86
Mortgage Lender Broker Additional Authority	54
Exclusive Agent Qualifications	6
Acquisitions Pursuant to § 6.1-416.1 of the Virginia Code	36
Mortgage Branches	1195
Mortgage Office Relocations	541
New Money Order Sellers	23
New Non-Profit Debt Counseling Agencies	13
Non-Profit Debt Counseling Agency Additional Offices	10
New Check Cashers	51
New Payday Lenders	30
Acquire a Payday Lender	2
Payday Additional Offices	203
Payday Office Relocations	21
Payday Lender other Business	31

At the end of 2003, there were under the supervision of the Bureau 89 banks with 1,112 branches, 59 Virginia bank holding companies, 19 non-Virginia bank holding companies with banking offices in Virginia, 2 independent trust companies, 2 savings institutions with 2 offices, 68 credit unions, 7 industrial loan associations, 22 consumer finance companies with 229 Virginia offices, 48 money order sellers and money transmitters, 29 non-profit debt counseling agencies, 122 check cashers, 128 mortgage lenders with 424 offices, 857 mortgage brokers with 1,492 offices, 324 mortgage lender/brokers with 2,257 offices, and 65 payday lenders with 578 offices.

CONSUMER SERVICES

The Bureau received and acted upon 1,674 formal written complaints from consumers during 2003. The Bureau recovered a record \$16.8 million from various licensed entities, which was returned to Virginia consumers.

**DIVISION OF INSURANCE REGULATION
ACTIVITIES FOR THE FISCAL YEAR ENDING JUNE 30, 2003**

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. Regulation of insurance has been left almost exclusively to state governments since 1869, and here in the Commonwealth of Virginia the functions of the Bureau have increased with the complexity and importance of insurance in our daily lives.

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 maintenance organizations, and agents; the Property and Casualty Market Regulation Division regulates the activities of property and casualty insurers (auto, homeowner's liability and property); and the Administrative Services Division collects various special taxes and assessments on insurance companies as well as working as an auxiliary role to support the Bureau's other divisions.

The regulatory functions of the Bureau of Insurance include: (1) Agents Investigation monitors the activities of insurance agents and agencies to ensure their actions comply with state law; (2) Consumer Services answers questions and assists consumers with problems concerning insurance companies or agents by investigating consumer complaints; (3) Market Conduct conducts on-site field examinations of insurance company practices in Virginia to ensure that they comply with state law by verifying whether a company pays claims in a timely manner, ensures that underwriting decisions are not unfairly discriminatory, and evaluates marketing materials to ensure that they are not misleading; (4) 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 evaluates insurance policies and rates to ensure that they comply with state law, are understandable, are of high quality, and that the premiums charged are reasonable and fair.

SUMMARY OF 2003 ACTIVITIES

New insurance companies licensed to do business in Virginia	30
Insurance company financial statements analyzed	5,928
Financial examinations of insurance companies conducted	38
Property and Casualty insurance rules, rates and form submissions	7,436
Life and Health insurance policy forms and rates submissions	7,609
Property and Casualty insurance complaints received	3,911
Life and Health insurance complaints received	3,203
Market conduct examinations completed by the Life and Health Division	30
Market conduct examinations completed by the Property and Casualty Division	12
Insurance agents and agencies licensed	120,125
Tax and assessment audits	7,921

EXTERNAL APPEAL CALENDAR YEAR 2003

Number of Cases Reviewed	178
Eligible Appeals	80
Ineligible Appeals	98
Eligibility Pending	0
Final Adverse Decision Upheld By Reviewer	36
Final Adverse Decision Overturned by Reviewer	35
MCHIP Reversed Itself	5
Appeal Decisions Pending	4
Approximate Cost Savings to Appellants	\$567,205

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.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

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 200, Building C, 7501 North Capital of Texas Highway, Austin, Texas 78731.

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 their Special Deputy Receiver, Melvin J. Dillon, 4200 Innsbrook Drive, Glen Allen, Virginia, or P.O. Box 85058, Richmond, Virginia 23285-5058 or by e-mail at www.reciprocalgroup.com.

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:

0	qualification applications received
80	coordination applications received
4	notification applications received
2,449	investment company filings
34	filings for exemption from registration
1,285	filings for exemption-related federal covered securities
185	broker-dealer registrations approval
2,195	broker-dealer registrations renewal
161	broker-dealer registrations denied, withdrawn, and terminated
29,650	agent registrations approval
120,610	agent registrations renewal
4	agents placed on special supervision
37,028	agent registrations denied, withdrawn, and terminated
240	investment advisor registrations approval
1,653	investment advisor registrations renewal
48	investment advisor registrations denied, withdrawn, and terminated
1,897	investment advisor representative registrations denied, withdrawn, and terminated
2,309	investment advisor representative registrations approval
7,359	investment advisor representative registrations renewal
0	orders filing and/or canceling surety bonds
8	orders granting exemptions and/or official interpretations
20	orders for subpoena of records by banks, corporations, and individuals
15	orders of show cause
25	judgments of compromise and settlement
18	final order and/or judgment
1	temporary injunction

UNDER THE VIRGINIA TRADEMARK AND SERVICE MARK ACT:

455	applications for trademarks and/or service marks approved, renewed, or assigned
479	applications for trademarks and/or service marks denied, abandoned, expired, or withdrawn

UNDER THE VIRGINIA RETAIL FRANCHISING ACT:

1,309	franchise registration, renewal, or post-effective amendment applications received
265	franchises denied, withdrawn, non-renewed, or terminated

TELEPHONE CALLS AND COMPLAINTS:

1,830	pending enforcement calls
435	enforcement general inquiry calls
2,019	pending registration application calls
9,576	registration general inquiry calls

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

162	complaints resulting in investigations
23	complaints resulting in referrals
36	complaints resulting in no actions

UNIFORM COMMERCIAL CODE

The Clerk's Office is the Central Filing Office in the Commonwealth under Part 5 of Title 8.9A of the Uniform Commercial Code. It is charged with the duty of receiving, processing, indexing, and examining financing statements, continuation statements, amendments, assignments, releases and termination statements filed by nationwide financial and lending institutions, state and federal agencies, the legal profession, and the general public to perfect a security interest in collateral which secures payment or performance of an obligation. The Clerk's Office also is the Central Filing Office for Federal Tax Liens.

SUMMARY OF CALENDAR YEAR ACTIVITIES

	<u>2002</u>	<u>2003</u>
Financing/Subsequent Statements Filed	80,924	84,689
Federal Tax Liens/Subsequent Liens Filed	2,715	2,852
Reels of Microfilmed documents sold	560	560

DIVISION OF UTILITY AND RAILROAD SAFETY

The Division of Utility and Railroad Safety assists the Commission in administering safety programs involving the jurisdictional natural gas and hazardous liquid pipeline facilities, railroads, and underground utility damage prevention. The Pipeline Safety section of the Division ensures the safe operation of natural gas and hazardous liquid pipeline facilities through inspections of facilities, review of records, and investigation of incidents. The Railroad Regulation section of the Division conducts inspections of railroad facilities including track and equipment to ensure the safe operation of jurisdictional railroads within Virginia. The Damage Prevention section investigates all reports of "probable violations" of the Underground Utility Damage Prevention Act ("Act") and presents its findings and recommendations to the Commission's Damage Prevention Advisory Committee. The Committee makes enforcement recommendations to the Commission. The Division provides free training relative to the Act to stakeholders, conducts public education campaigns, and promotes partnership amongst various parties to further underground utility damage prevention in Virginia.

Summary of 2003 Activities

Consumer Complaints and Inquiries Received	0
Natural Gas Safety Inspections	544
Hazardous Liquid Safety Inspections	99
Testimony and Reports	48
Special Reports	0
Accident Investigations	24
Underground Utility Damage Reports Processed	1,792
Persons receiving Damage Prevention Training from Staff	2,283
Number of damage prevention educational materials disseminated	379,200
Number of railroad track units ¹ inspected	8,473
Number of railroad locomotive and car units ² inspected	23,214

¹ Each mile of track, record, crossing at grade, among others is considered a track unit.

² Each locomotive, car, motive power equipment record, among others is considered a unit.

INDEX OF LEADING MATTERS DISPOSE OF BY FORMAL ORDER

- A -

A&N Electric Cooperative	
For review of tariffs and terms and conditions of service for retail access.....	533
For authority to issue long-term debt.....	540
Acceleration National Insurance Company	
Take Notice Order of license revocation pursuant to § 38.2-1040 of the Code of Virginia.....	68
License revocation pursuant to § 38.2-1040 of the Code of Virginia.....	68
Acceptance Insurance Company	
Take Notice Order of license suspension pursuant to § 38.2-1040 of the Code of Virginia.....	109
License suspension pursuant to § 38.2-1040 of the Code of Virginia.....	110
Ace America's Cash Express, Cheque Cashing, Inc., d/b/a	
For authority to conduct business as an agent of a money order seller/money transmitter in its payday lending office(s).....	14
For authority to sell in its payday lending office(s) prepaid telephone service offered by a third party.....	14
Actuarial Opinions and Memoranda, In the matter of Adopting Revisions to the Rules Governing	
Order to Take Notice.....	164
Order Adopting Revisions to Rules.....	165
Adelphia Business Solutions of Virginia, LLC	
For review and correction of the assessment of the value of property subject to local taxation - Tax Year 2000.....	181
For review and correction of the assessment of the value of property subject to local taxation-Tax Year 2000.....	181
Adelphia Communications Corporation	
For application of § 56-466.1 of the Code of Virginia to pole attachment practices of Northern Virginia Electric Cooperative.....	410
Advance Financial Services, LLC	
For license to engage in business as a payday lender.....	19
For authority to conduct tax preparation business in its payday lending office(s).....	26
Advantage Real Estate Management LLC	
Judgment for alleged violations of the Virginia Securities Act.....	610
Advantage Real Estate Maturity Fund, LPs	
Judgment for alleged violations of the Virginia Securities Act.....	610
AEP Retail Energy, LLC	
For permanent licenses to conduct business as a natural gas and electric competitive service provider and as an aggregator.....	334
AES Communications, L.L.C.	
For cancellation of certificates to provide interexchange and local telecommunications services in Virginia.....	261
Aggregation of retail electric customers under the provisions of the Virginia Electric Utility Restructuring Act, In the matter concerning the	
Order Adopting Revised Regulations.....	371
AGL Resources Inc.	
For authority to issue short-term debt, long-term debt, and common stock to an affiliate.....	601
AGL Services Company	
For authority to issue short-term debt, long-term debt, and common stock to an affiliate.....	601
Alexandria Postal Credit Union	
In the matter of merger into Commonwealth FCU.....	50
Allegheny Power, The Potomac Edison Company, d/b/a	
To revise its cogeneration tariff pursuant to PURPA § 210.....	381
For authority to enter into a tax allocation agreement among affiliates.....	469

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

For waiver of provision of the Rules Governing Retail Access to Competitive Energy Services	508
For a determination that the Commission's July 11, 2000, Order Approving Phase I Transfers of Allegheny Power's functional separation plan covers the December 22, 2000, Release and Guarantee Agreement between Allegheny Power, Allegheny Energy Supply Company, LLC and the Holders of Certain Pollution Control Notes, or in the alternative, for approval of the said Agreement Nunc Pro Tunc	526
Allied Cash Advance Virginia LLC, d/b/a Allied Cash Advance For license to engage in business as a payday lender.....	25
Allied Cash Advance, Allied Cash Advance Virginia LLC, d/b/a For license to engage in business as a payday lender.....	25
Allstate Indemnity Company Settlement for alleged violations of §§ 38.2-304, <u>et al.</u> of the Code of Virginia.....	150
Settlement for alleged violation of § 38.2-1906 D of the Code of Virginia	157
Allstate Insurance Company Settlement for alleged violations of §§ 38.2-510 A 1, <u>et al.</u> of the Code of Virginia.....	150
Settlement for alleged violation of § 38.2-1906 D of the Code of Virginia	157
Alpha Title & Settlement Company License revocation pursuant to § 38.2-1831 of the Code of Virginia	175
Alston, Deanna To acquire 50 percent of the ownership of Highlands Venture Financial, L.L.C. d/b/a Cash America.....	29
Alticomm of Virginia, Inc. For certificate to provide local exchange telecommunications services	233
American Electric Power - Virginia In the matter of considering an electricity retail access pilot program	305
American Electric Power, Appalachian Power Company, d/b/a To revise its fuel factor pursuant to § 56-249.6 of the Code of Virginia	544
Order Establishing 2003-2004 Fuel Factor.....	546
American Electric Power-Virginia, Appalachian Power Company, d/b/a For approval of Functional Separation Plan under the Virginia Electric Utility Restructuring Plan	312
American Family Life Assurance Company of Columbus Settlement for alleged violations of § 38.2-610 of the Code of Virginia.....	99
American Fiber Network of Virginia, Inc. Dismissal Order.....	196
For extension of time to submit audited financial statements	204
American Home Finance, Inc. Settlement for alleged violations of Chapter 16 of Title 6.1 of the Code of Virginia	49
American International Mortgage Bankers, Inc. License revocation pursuant to § 6.1-413 of the Code of Virginia	47
American Long Lines of Virginia, Inc. For certificate to provide local exchange telecommunications services	224
American National Lawyers Insurance Reciprocal, RRG, In Receivership Final Order	140
American Network Insurance Company To vacate Consent Order entered April 17, 2001.....	77
American Republic Insurance Company Settlement for alleged violations of §§ 38.2-606, <u>et al.</u> of the Code of Virginia.....	126

America's Energy Alliance, Inc. For licenses to conduct business as an electric and natural gas competitive service provider and aggregator	334
America's First Title LLC License revocation pursuant to § 6.1-2.27 of the Code of Virginia	166
Americo Financial Life and Annuity Insurance Company Settlement for alleged violation of § 38.2-610 of the Code of Virginia	100
AMG Guaranty Corp. To acquire 100 percent of the voting shares of Old Dominion Trust Company (Norfolk, Virginia)	38
Amvest Oil & Gas, Inc. To furnish natural gas service pursuant to § 56-265.4:5 of the Code of Virginia.....	498, 579
Amwest Surety Insurance Company Take Notice Order of license suspension pursuant to § 38.2-1040 of the Code of Virginia	81
Annual Audited Financial Reports, In the matter of Adopting Revisions to the Rules Governing Order to Take Notice.....	129
Order Adopting Revisions to Rules	130
Annual fees for licensed payday lenders Order to Take Notice.....	54
Order Adopting a Regulation.....	54
APC PCS, L.L.C. Dismissal Order.....	193
Appalachian Payday Loans, James C. Dotson, d/b/a For license to engage in business as a payday lender	18
Appalachian Power Company For authority to issue long-term debt.....	442, 579
For approval to participate in a consolidated affiliates tax agreement between American Electric Power Company, Inc., and its subsidiaries under Chapter 4 of Title 56 of the Code of Virginia	476
Order Granting Reconsideration	581
Order on Reconsideration	581
Appalachian Power Company, d/b/a American Electric Power To revise its fuel factor pursuant to § 56-249.6 of the Code of Virginia	544
Order Establishing 2003-2004 Fuel Factor.....	546
Appalachian Power Company, d/b/a American Electric Power-Virginia For approval of Functional Separation Plan under the Virginia Electric Utility Restructuring Plan	312
Approved Acquisition Corp. To acquire Approved Financial Corp.	37
AquaSource, Inc. For approval under the Utility Transfers Act.....	414
AT&T Broadband Phone of Virginia, Inc. To cancel existing certificates to provide local exchange and interexchange telecommunications services and to reissue certificates reflecting the corporate name change	229
AT&T Communications of Virginia, Inc. Dismissal Order.....	207
AT&T Communications of Virginia, LLC For reductions in the intrastate carrier access rates of Verizon Virginia Inc. and Verizon South Inc.	267
Atkins, Michael L., t/a Mike Atkins Excavating Final Order	308

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Atlanta Life Insurance Company	
Settlement for alleged violations of § 38.2-610 of the Code of Virginia.....	128
Atlantic Cash Group, Inc., d/b/a Minutemen Payday Loans	
For license to engage in business as a payday lender.....	16
For authority to conduct tax preparation business in its payday lending office(s)	16
Atlee Commerce Center II, L.L.C.	
Order Nullifying a Merger	59
Atmos Energy Corporation	
Settlement for alleged violations of the Underground Utility Damage Prevention Act	443, 460
For Annual Informational Filing.....	459, 604
For authority to issue common stock.....	472, 603
Settlement for alleged violations of the Gas Pipeline Safety Act	591
For authority to incur short-term indebtedness pursuant to Virginia Code §§ 56-60 and 56-65.1 and for approval of an affiliate arrangement pursuant to Virginia Code § 56-76 <u>et seq.</u>	599
Atmos Energy Corporation, d/b/a United Cities Gas Company	
For approval of the condemnation of an easement across the property and/or right-of-way at Norfolk Southern Railway Company.....	307
Atmos Energy Corporation, d/b/a United Cities Gas Company-Virginia	
For Annual Informational Filing.....	363
ATX Telecommunications Services of Virginia, LLC	
For approval of transfers of control	187
Aubon Water Company	
Order Making Final Certain Interim Rates and Emergency Surcharge and Closing Dockets Except the Receivership	302
Order Extending Emergency Rates, Directing Reports by Receiver and Staff, and Setting Hearing	312
- B -	
B&J Enterprises, L.C.	
To increase its monthly sewer rates	350
Order on Motion.....	361
Order on Reconsideration	361
Bank acquisitions of real estate brokerage subsidiaries, Proposed regulation relating to	
Dismissal Order.....	38
BARC Electric Cooperative	
For review of tariffs and terms and conditions of service for retail access.....	554
For authority to issue long-term debt.....	583
Barehut, Inc., d/b/a Speedy Cash	
For authority to sell in its payday lending office(s) cellular telephones and cellular telephone service offered by a third party	20
Bear, Stearns & Co., LLC	
Consent Order	618
Bexley Properties, LLC	
For authorization to transfer utility stock pursuant to the Utility Transfers Act.....	450
Bexley, LLC	
For authorization to transfer utility stock pursuant to the Utility Transfers Act.....	450
Big Caney Water Corporation	
For authority to transfer assets.....	578
Blue Ridge Telecom Trust	
For approval to transfer membership interest.....	294

Bluefield Valley Water Works Company For increase in rates, fees, and charges pursuant to the Small Water or Sewer Public Utility Act	603
Bolen, Keith Allen License revocation pursuant to § 38.2-1831 of the Code of Virginia	135
Bright Cove Securities, Inc. Judgment for alleged violations of the Virginia Securities Act.....	610
Bristol Virginia Utilities Board, City of Bristol, d/b/a To cancel existing certificates and issue certificates reflecting new name	274
Bristol's E-Z Cash Advance, LLC For authority to allow a third party to conduct retail sales business from the licensee's payday lending office(s).....	33
Broadwing Communications Services of Virginia, Inc. For approval to transfer assets and customers	253
For cancellation of its interexchange certificate	292
Brown, Kenneth E. Settlement for alleged violations of the Virginia Securities Act	709
Buckeye Check Cashing of Virginia, Inc. d/b/a Check\$mart For authority to conduct business as a Virginia Lottery sales agent in its payday lending offices	28
Business Telecom of Virginia, Inc. Dismissal Order.....	197
- C -	
C III Communications Operations, LLC For approval to transfer assets and customers	253
For certificate to provide interexchange exchange telecommunications services and for interim operating authority	254
Final Order	256
To cancel existing certificates and reissue certificates reflecting new name	286
C III Communications, LLC For approval to transfer assets and customers	253
C.C.I., CAT Communications International, Inc., d/b/a Dismissal Order.....	189
Cable & Wireless of Virginia, Inc. To discontinue interexchange telecommunications services in Virginia	222
To cancel existing certificates to provide local exchange and interexchange telecommunications services and to reissue certificates reflecting the corporate name change	251
Capital Research and Management Company For authority under Chapters 3, 4, and 5 of Title 56 of the Code of Virginia.....	276
Caroline Water Company, Inc., d/b/a Ladysmith Water Company For Failure to File Annual Report for Tax Year 2003.....	184
Caronet, Inc. For approval of transfer of control of Progress Telecom Virginia, LLC, to Odyssey Telecorp, Inc.....	296
Carrea, Anthony Judgment for alleged violations of §§ 38.2-502 1, <u>et al.</u> of the Code of Virginia.....	133
Carrea, Anthony John Judgment for alleged violation of the Virginia Securities Act	613
Cascade Mountain Property Owners Association, Incorporated For authority to acquire and to dispose of utility assets pursuant to the Utility Transfers Act and for the issuance of certificates pursuant to §§ 56-265.2 and 56-225.3	376

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Cascade Mountain Water Company, Inc. For authority to acquire and to dispose of utility assets pursuant to the Utility Transfers Act and for the issuance of certificates pursuant to §§ 56-265.2 and 56-225.3	376
Cash Company of Bristol, VA, The, Universal Credit Corporation of VA, d/b/a For authority to conduct tax preparation business in its payday lending office(s)	17
Cash Company of Virginia, The, d/b/a The Cash Company of Weber City For license to engage in business as a payday lender.....	24
For authority to conduct tax preparation and electronic tax filing business in its payday lending office(s).....	24
Cash Company of Weber City, The, The Cash Company of Virginia, d/b/a For license to engage in business as a payday lender.....	24
For authority to conduct tax preparation and electronic tax filing business in its payday lending office(s).....	24
Cash Express of Virginia, Inc. For authority to conduct business as an agent of a money order seller/money transmitter in its payday lending offices	36
Cash In A Flash, Persepolis, Inc., d/b/a For license to engage in business as a payday lender.....	35
Cash Now - Hampton Roads, Harris Financial Services, Inc., d/b/a For license to engage in business as a payday lender.....	25
CashNet, Inc. For authority to conduct business as an agent of a money order seller/money transmitter in its payday lending offices	27
Casualty Reciprocal Exchange Take Notice Order of license suspension pursuant to § 38.2-1040 of the Code of Virginia	101
License suspension pursuant to § 38.2-1040 of the Code of Virginia	102
CAT Communications International, Inc. Dismissal Order.....	193, 195
CAT Communications International, Inc., d/b/a C.C.I. Dismissal Order.....	189
Caterpillar Insurance Services Corporation Settlement for alleged violations of §§ 38.2-1812, <u>et al.</u> of the Code of Virginia.....	178
Cavalier Telephone, LLC For enforcement of interconnection agreement.....	203
CD Restaurants, Inc. Settlement for alleged violations of 14 VAC 5-410-40 D.....	170
Centennial Homes, Inc., d/b/a Trendmaker Homes For review of HOW Insurance Company, Home Warranty Corporation and Home Owners Warranty Corporation Deputy Receiver's Determination of Appeal	78
Central Locating Service, Ltd. Settlement for alleged violations of the Underground Utility Damage Prevention Act	409, 411, 415, 427, 444, 461, 470
Central Telephone Company of Virginia Dismissal Order.....	189, 190, 192, 193, 195, 196, 197, 207
For approval of modification to the Companies' Alternative Regulatory Plan.....	250
Central United Life Insurance Company For approval of an assumption reinsurance agreement pursuant to § 38.2-136 C of the Code of Virginia	160
Central Virginia Electric Cooperative For approval of its plan to implement retail access	553
Century Indemnity Company To eliminate impairment in its surplus and restore same to minimum amount required by law.....	179

Challenge Financial Investors Corp. Settlement for alleged violations of Chapter 16 of Title 6.1 of the Code of Virginia.....	52
Chaparral (Virginia) Inc. For early termination of special contract and related findings	499
Order on Reconsideration	502
Check City Check Cashing, Tosh of Utah, Inc. (Used in Virginia By: Tosh, Inc.), d/b/a For license to engage in business as a payday lender	16
For authority to conduct business as an agent of a money order seller/money transmitter in its payday lending offices	17
Check First, Inc. For license to engage in business as a payday lender	21
Check Holders, Paul Douglas Jackson, d/b/a For license to engage in business as a payday lender	21
For authority to conduct a pawnbroking business in payday lending office(s)	22
CheckSmart, Buckeye Check Cashing of Virginia, d/b/a For authority to conduct business as a Virginia Lottery sales agent in its payday lending offices	28
Check-N-Hold, Inc. For license to engage in business as a payday lender	21
Cheque Cashing, Inc., d/b/a Ace America's Cash Express For authority to conduct business as an agent of a money order seller/money transmitter in its payday lending office(s).....	14
For authority to sell in its payday lending office(s) prepaid telephone service offered by a third party	14
Chesapeake Appraisal & Settlement Services, Inc. Settlement for alleged violations of §§ 6.1-2.26, <u>et al.</u> of the Code of Virginia	177
Chincoteague Bay Trails End Association, Inc. For approval of the purchase of the stock of Trails End Utility Company, Inc., pursuant to Chapter 5 of Title 56 of the Code of Virginia.....	531
Cigna Dental Health of Virginia, Inc. Settlement for alleged violations of §§ 38.2-316 A, <u>et al.</u> of the Code of Virginia	128
Cigna Healthcare of Virginia, Inc. Settlement for alleged violations of §§ 38.2-510 A 15, <u>et al.</u> of the Code of Virginia	132
Cincap-Martinsville, LLC For certificate for electric generation facilities in the City of Martinsville.....	316
Cincinnati Indemnity Company, The Settlement for alleged violations of §§ 38.2-305 A, <u>et al.</u> of the Code of Virginia	139
Cincinnati Insurance Company, The Settlement for alleged violations of §§ 38.2-231 A, <u>et al.</u> of the Code of Virginia	139
Citigroup Global Markets, formerly known as Salomon Smith Barney, Inc. Consent Order	670
Citizens Bancorp of Virginia, Inc. To acquire Citizens Bank and Trust Company	37
City of Bristol, d/b/a Bristol Virginia Utilities Board To cancel existing certificates and issue certificates reflecting new name	274
City of Manassas, The For certificate to provide local exchange telecommunications services	279
City of Martinsville, The For certificate to provide local exchange telecommunications services	219

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

City of Salem, The		
For certificate to provide local exchange telecommunications services		263
City of Staunton, The		
For approval of authority to provide qualifying communications services pursuant to Article 5.1 to Title 56 of the Code of Virginia		262
CityNet Telecommunications, Inc.		
For authority to transfer of control		265
CLM Telcom LLC		
For certificates to provide local exchange and interexchange telecommunications services		203
CLM Telecom, LLC, New Century Telecom, Inc., d/b/a		
Dismissal Order.....		209
CNG International Corporation		
For exemption from the prior approval and filing requirements of the Affiliates Act or, in the alternative, for approval of transfer of furniture and office equipment pursuant to Chapter 4, Title 56 of the Code of Virginia		437
Coastal Mortgage Corp. of Virginia		
License revocation pursuant to § 6.1-413 of the Code of Virginia		46
Colonial Virginia Bank		
For certificate of authority to begin business as a bank at 6720 Sutton Road, Gloucester, Gloucester County, Virginia and for authority to establish a branch at 1578 Greate Road, Gloucester Point, Gloucester County, Virginia.....		30
Columbia Gas of Virginia, Inc.		
To Change Rates, Charges, Rules, and Regulations		339
Order on Reconsideration	344, 346,	522
Order Granting Reconsideration.....	345,	521
Settlement for alleged violations of the Accountable Pipeline Safety and Partnership Act		401
Order Suspending Payment and Dismissing Proceeding		404
For Amendment of Certificates Pursuant to Virginia Code § 56-265.3.....		434
Settlement for alleged violations of the Underground Utility Damage Prevention Act		510
For approval of gas supply and other related supply arrangements pursuant to Chapter 4 of Title 56 of the Code of Virginia		516
For authority to assume indebtedness.....		518
For approval of intercompany financing		520
For approval of a communications facilities co-location agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia		560
Columbia Ventures Broadband, LLC		
For authority to transfer control.....		287
Commonwealth Public Service Corporation		
For Annual Informational Filings.....		335
CommonwealthOne FCU		
In the matter of Alexandria Postal Credit Union merger into		50
Communication Technologies Carrier Services, Inc.		
For certificates to provide local exchange and interexchange telecommunications services		215
Community Bank of Virginia, The		
For certificate of authority to begin business as a bank at 6657 Lake Harbour Drive, Midlothian, Chesterfield County, Virginia and for authority to establish a branch at 10014 Robious Road, Chesterfield County, Virginia.....		32
Community Electric Cooperative		
For failure to collect and remit electric utility consumption taxes.....		183
For approval of retail access tariffs and terms and conditions of service for retail access.....		456
For authority to issue long-term debt.....		556, 562
CompBenefits Insurance Company, formerly Lincoln Memorial Life Insurance Company		
Final Order		64

Competitive local exchange carriers, localities as competitive local exchange carriers, and local inter-carrier matters, In the matter of regulations governing Order Adopting Rules	205
Concert Communications Sales of Virginia LLC To cancel existing certificates and issue certificates reflecting new name	228
Constellation NewEnergy, Inc. For license to conduct business as a natural gas competitive service provider.....	337
Continental General Insurance Company Settlement for alleged violations of § 38.2-316 C 2 of the Code of Virginia	136
CoreComm Virginia, Inc For approval of transfers of control	187
Cortez, Bok Sun For review of HOW Insurance Company, Home Warranty Corporation and Home Owners Warranty Corporation Deputy Receiver's Determination of Appeal.....	93
Courthouse Cheque Exchange, d/b/a Howard Voight For a License to engage in business as a payday lender.....	35
Covington Cash, Magsamen Incorporated, d/b/a For license to engage in business as a payday lender.....	31
Cox Communications, PCS, L.P. Dismissal Order.....	193
CPV Warren, LLC For certificate for electric generation facilities in Warren County, Virginia	365
Craig-Botetourt Electric Cooperative For authority to issue long-term debt.....	541, 605
Correcting Order Nunc Pro Tunc.....	541
Credit General Insurance Company Take Notice Order of license revocation pursuant to § 38.2-1040 of the Code of Virginia	71
License revocation pursuant to § 38.2-1040 of the Code of Virginia	71
Credit life and credit accident and sickness insurance pursuant to Code of Virginia §§ 38.2-3725, 38.2-3726, 38.2-3727, and 38.2-3730, In the matter of adoption of adjusted prima facie rates for Order to Take Notice.....	113
Order Adopting Adjusted Prima Facie Rates for the Triennium Commencing January 1, 2004	113
Credit Suisse First Boston LLC Consent Order	625
Credit Union Regulation, Proposed Order to Take Notice.....	56
CRG International of Virginia, Inc., d/b/a Network One For discontinuance of local exchange telecommunications services and cancellation of certificate	202
Crusader Cash Advance of Virginia, LLC For authority to conduct business as an agent of a money order seller/money transmitter in its payday lending offices	29
CTC Communications of Virginia, Inc. For authority to transfer control	287
- D -	
D & Q Enterprises, Inc., d/b/a Paymasters For license to engage in business as a payday lender.....	22

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Dacumos, Cristeta	
Settlement for alleged violations of the Virginia Securities Act.....	707
Dahabshil, Inc.	
Settlement for alleged violation of § 6.1-371 of the Code of Virginia	50
Dale Service Corporation	
For general increase in rates	316
Amending Order	318
For Annual Informational Filing for Calendar Year 2002	503
Daleville Water Company	
For failure to file an annual report for Tax Year 2003	185
Davis, Kim C., d/b/a Easy Financial Services	
For license to engage in business as a payday lender.....	27
Default service to retail customers under the provisions of the Virginia Electric Utility Restructuring Act, In the matter concerning the provision of	
Order.....	430, 432
Delmarva Power & Light Company	
For approval of the Federal and State Income Tax Allocation Agreement between Pepco Holdings, Inc., and its subsidiaries under Chapter 4 of Title 56 of the Code of Virginia.....	486
For authority to issue up to \$225,000,000 of debt securities and/or preferred stock.....	497
Dental Benefit Providers of Maryland, Inc.	
Settlement for alleged violations of §§ 38.2-316 A, <u>et al.</u> of the Code of Virginia	105
DFV Capital Corporation	
For approval to transfer membership interest	294
Dickens Place, L.L.C.	
Order Nullifying a Merger	59
Dickenson County Public Service Authority	
For authority to transfer assets.....	578
Dickey, Steven R.	
For relief under the Retail Franchising Act	610
DL King, LLC, d/b/a King's Cash Advance	
For license to engage in business as a payday lender.....	29
For authority to rent and/or sell personal property from its payday lending offices	31
Doctors Insurance Reciprocal, RRG, In Receivership	
Final Order	140
Dominion Energy, Inc.	
For exemption from the filing and prior approval requirements of Chapter 4 of Title 56 of the Code of Virginia or, in the alternative, approval of the transfer of inventory and Parts Reimbursement Agreement	421
For exemption from the filing and prior approval requirements of Chapter 4 of Title 56 of the Code of Virginia or, in the alternative, approval of transfers of inventory	498
Dominion Resources, Inc.	
For approval to transfer membership interest.....	294
For exemption from the filing and prior approval requirements of Chapter 4 of Title 56 of the Code of Virginia or, in the alternative, approval of a parent company guaranty, and for expedited consideration	454
For exemption of a Tax Allocation Agreement and a Cash Contribution 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 and Cash Contribution.....	488
Dominion Retail, Inc.	
For exemption of agreement for wholesale sales of power from the filing and prior approval requirements of Chapter 4, Title 56 of the Code of Virginia or, in the alternative, for approval of wholesale power service agreement under Chapter 4, Title 56 of the Code of Virginia, and for expedited consideration	372

Dominion Telecom, Inc. For approval of extension of existing affiliate agreement	595
Dominion Transmission, Inc. For approval of a pipeline construction contract and pipeline operation and maintenance agreement under Chapter 4, Title 56 of the Code of Virginia	436
Dominion Virginia Power, Virginia Electric and Power Company, d/b/a In the matter concerning the application of Virginia Electric and Power Company d/b/a Dominion Virginia Power for approval of a plan to transfer functional and operational control of certain transmission facilities to a Regional Transmission Entity	310
For certificate of public convenience and necessity for facilities in Loudoun County: Beaumeade-Beco 230 kV Transmission Line and Beaumeade-Greenway 230 kV Transmission Line	314
For a certificate for facilities in Fluvanna County: Two parallel 500 kV transmission lines to provide service to Tenaska Virginia Partners, L.P.'s electric generating facility	348
For revision of certificates under the Utility Facilities Act	450
For approval of retail access pilot programs	478
Dotson, James C., d/b/a Appalachian Payday Loans For license to engage in business as a payday lender	18
Drake, Allen Judgment for alleged violations of the Virginia Securities Act	610
DSL.net Communications VA, Inc. Dismissal Order	198
DSLnet Communications VA, Inc. For authority for minority transfer of control	288
DT Services, Inc. For approval to transfer membership interest	294
- E -	
Eagle Check Cashing, Eagle Financial of MD., Inc. (Used in Virginia by: Eagle Financial, Incorporated), d/b/a For license to engage in business as a payday lender	19
For authority to conduct business as an agent of a money order seller/money transmitter in its payday lending offices	23
For authority to conduct retail sales business in its payday lending offices	23
For authority to conduct business as a Virginia Lottery sales agent in its payday lending offices	28
East Coast Transport, Inc. For authority to enter into affiliate transactions under Chapter 4 of Title 56 of the Code of Virginia	472
Eastern Virginia Conference of the International Pentecostal Holiness Church For Order of Exemption pursuant to § 13.1-514.1 B of the Code of Virginia	614
Easy Financial Services, Kim C. Davis, d/b/a For license to engage in business as a payday lender	27
Economic Computer Systems, Inc., Michael Pitts, d/b/a Dismissal Order	213
Electricity retail access pilot program - American Electric Power - Virginia, In the matter of considering an Dismissal Order	305
Electricity retail access pilot program - Virginia Electric and Power Company, In the matter of considering an Dismissal Order	305
eLink Telecommunications of Virginia, Inc. For approval of the merger of Newco, a wholly owned subsidiary of Eureka Broadband Corporation d/b/a EurekaGGN with and into eLink Telecommunications of Virginia, Inc., establishing eLink Telecommunications of Virginia as a wholly owned subsidiary of Eureka Broadband Corporation	216

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Ellicott City Underground, Inc., Robert Lee Morris, Individually, and t/a
 Order Establishing Payment Plan 475

Ellis, Urchie B.
 Regarding a request for the State Corporation Commission to create and/or designate a special Staff to represent the
 interests of the general public..... 513

Empire Acceptance Company, Inc.
 License revocation pursuant to § 6.1-413 of the Code of Virginia 55
 Order Reinstating a License..... 57

Energy Consultants, Inc.
 For permanent license to conduct business as an electric aggregator 337

Enron Broadband Services of Virginia, Inc.
 For cancellation of certificates to provide local exchange and interexchange telecommunications services in Virginia 261

EPIK Communications, Incorporated
 For approval of transfer of control of Progress Telecom Virginia, LLC, to Odyssey Telecorp, Inc. 296

Equityquest Financial, LLC
 License revocation pursuant to § 38.2-1831 of the Code of Virginia 162

Erie Insurance Company
 Settlement for alleged violations of §§ 38.2-510 A 10, et al. of the Code of Virginia..... 129

Erie Insurance Exchange
 Settlement for alleged violations of §§ 38.2-305, et al. of the Code of Virginia..... 129

Essex Acquisition Corporation
 For certificates to provide local exchange and interexchange telecommunications services 217

Essex Telecommunications of Virginia, Inc.
 For cancellation of certificate to provide local exchange telecommunications services in Virginia 259

Eureka Broadband Corporation, d/b/a EurekaGGN
 For approval of the merger of Newco, a wholly owned subsidiary of Eureka Broadband Corporation d/b/a EurekaGGN
 with and into eLink Telecommunications of Virginia, Inc., establishing eLink Telecommunications of Virginia as a
 wholly owned subsidiary of Eureka Broadband Corporation..... 216

Eureka Telecom, LLC
 For certificates to provide local exchange and interexchange telecommunications services 236
 Order Granting Reconsideration 237
 Order on Reconsideration 238

EurekaGGN, Eureka Broadband Corporation, d/b/a
 For approval of the merger of Newco, a wholly owned subsidiary of Eureka Broadband Corporation d/b/a EurekaGGN
 with and into eLink Telecommunications of Virginia, Inc., establishing eLink Telecommunications of Virginia as a
 wholly owned subsidiary of Eureka Broadband Corporation..... 216

Evergreen Services, Inc.
 For license to engage in business as a payday lender..... 33

Excel Mortgage Bankers, Mortgage Finders of Virginia, Inc., d/b/a
 License revocation pursuant to § 6.1-413 of the Code of Virginia 49

Executive Life Insurance Company of New York
 Take Notice Order of license revocation pursuant to § 38.2-1040 of the Code of Virginia..... 60
 License revocation pursuant to § 38.2-1040 of the Code of Virginia 61

Faith Baptist Church of Madison Heights, VA
 For Order of Exemption pursuant to § 13.1-514.1 B of the Code of Virginia..... 712

Faithloan, Inc., d/b/a Midas Mortgage	
License revocation pursuant to § 6.1-413 of the Code of Virginia	47
Order Reinstating a License	50
Faithway Church of Jesus of the Apostolic Faith, Inc.	
Order	58
Farmers Insurance Exchange	
Settlement for alleged violations of §§ 38.2-305, <u>et al.</u> of the Code of Virginia	161
Fast Payday Loans, Inc.	
For license to engage in business as a payday lender	36
FeroNetworks, Inc.	
For certificate to provide local exchange telecommunications services	235
Fidelity & Guaranty Life Insurance Company	
Settlement for alleged violations of § 38.2-610 of the Code of Virginia	127
Fidelity Bankers Life Insurance Company	
Order Approving Second Amendment of Agreement and Declaration of Trust	60
First Bancorp, Inc.	
To acquire all the voting shares of First Commonwealth Bank	25
First National Life Insurance Company of America	
Take Notice Order of license revocation pursuant to § 38.2-1040 of the Code of Virginia	66, 131
FlexCheck of Virginia, LLC	
Cease and Desist Order	53
FNB Corporation	
To acquire Bedford Bancshares, Inc.	31
Focal Communications Corporation of Virginia	
For approval to discontinue local exchange and interexchange telecommunications services in certain areas of Virginia	252
France Telecom Corporate Solutions L.L.C.	
For certificate to provide local exchange telecommunications services	229
Franklin American Life Insurance Company	
Take Notice Order of license revocation pursuant to § 38.2-1040 of the Code of Virginia	67
License revocation pursuant to § 38.2-1040 of the Code of Virginia	67
Freedom Life Insurance Company of America	
Settlement for alleged violations of §§ 38.2-316 A, <u>et al.</u> of the Code of Virginia	149
Fries Exchange Customers	
For Extended Local Service from United Telephone-Southeast, Inc.'s Fries Exchange to its Austinville and Wytheville Exchanges	213
- G -	
GC Acquisition Limited	
For approval of the transfer of control of Global Crossing Ltd. (Debtor-in-Possession)'s Virginia operating subsidiaries to GC Acquisition Limited	214
For approval of the transfer of control of Global Crossing Ltd.'s Virginia operating subsidiaries to GC Acquisition Limited	270
Dismissal Order	272
GCR Telecommunications, Inc.	
Dismissal Order	192
Ginsberg, Gerry R.	
For Payment of Interest	74

Global Crossing Ltd. For approval of the transfer of control of Global Crossing Ltd. (Debtor-in-Possession)'s Virginia operating subsidiaries to GC Acquisition Limited	214
Global Crossing Ltd. (Debtor-in-Possession) For approval of the transfer of control of Global Crossing Ltd.'s Virginia operating subsidiaries to GC Acquisition Limited	270
Dismissal Order.....	272
Goldman, Sachs & Co. Settlement for alleged violations of the Virginia Securities Act.....	636
Granite Settlement Services LLC License revocation pursuant to § 6.1-2.27 of the Code of Virginia	167
Granite Telecommunications, LLC For certificates to provide local exchange and interexchange telecommunications services.....	218
Graphic Arts Benefit Corporation To vacate Order Suspending License entered November 22, 2000	72
Groundhog Mtn. Water & Sewer Co., Inc. For increase in rates, fees, and charges pursuant to the Small Water or Sewer Public Utility Act	537
Group Hospitalization and Medical Services, Inc. Settlement for alleged violations of § 38.2-3407.14 of the Code of Virginia.....	159
Gubar, Leonard For Payment of Interest.....	74
Guilford Company, The For official interpretation pursuant to the Virginia Securities Act § 13.1-525	617
Gulfport Financial, L.L.C., d/b/a Virginia Cash Advance For license to engage in business as a payday lender.....	18
- H -	
Hamilton Insurance Company Take Notice Order of license suspension pursuant to § 38.2-1040 of the Code of Virginia	69
License revocation pursuant to § 38.2-1040 of the Code of Virginia	70
Harbert PE Holdings, LLC To acquire 35.9 percent of the ownership of Express Check Advance of Virginia, LLC d/b/a Express Check Advance	37
Harleysville Mutual Insurance Company For approval of an assumption reinsurance agreement pursuant to § 38.2-136 C of the Code of Virginia	104
Correcting Order	104
Harrell, Kevin L. Settlement for alleged violations of the Virginia Securities Act.....	612
Harrington Settlement Company, LLC License revocation pursuant to § 38.2-1831 of the Code of Virginia	111
To vacate Order Revoking License entered January 24, 2003.....	112
Harris Financial Services, Inc., d/b/a Cash Now - Hampton Roads For license to engage in business as a payday lender.....	25
Henry County Power, LLC For certificate for electric generation facilities in Henry County, Virginia.....	320
Hicks Bonding Company Settlement for alleged violations of §§ 38.2-512, <u>et al.</u> of the Code of Virginia.....	159

Hicks, Keith P. Settlement for alleged violations of §§ 38.2-512, <u>et al.</u> of the Code of Virginia	159
Household International, Inc. Order Amending Settlement Order	45
Hutek, Steven E. Settlement for alleged violations of the Virginia Securities Act	616
- I -	
IDT America of Virginia, LLC For certificates to provide local exchange and interexchange telecommunications services	223
IGF Insurance Company To vacate Order Suspending License entered September 24, 2001	70
Infinity Mortgage Company, Inc. (Boston) (Used in Virginia by: Infinity Mortgage Company, Inc.) License revocation pursuant to § 6.1-418 of the Code of Virginia	51
Innovation Funding, Inc. License revocation pursuant to § 6.1-418 of the Code of Virginia	51
Instant Money Service, T. Byrd, Inc., d/b/a For authority to conduct business as an agent of a money order seller/money transmitter in its payday lending offices	15
Insurance Corporation of New York, The Take Notice Order of license suspension pursuant to § 38.2-1040 of the Code of Virginia	146
License suspension pursuant to § 38.2-1040 of the Code of Virginia.....	146
Integrated Brokerage Services, Inc. Judgment for alleged violations of the Virginia Securities Act.....	610
International Indemnity Company (In Liquidation) Take Notice Order of license revocation pursuant to § 38.2-1040 of the Code of Virginia	72
License revocation pursuant to § 38.2-1040 of the Code of Virginia	73
Investigation of revision to Verizon Virginia Inc.'s Network Service Interconnection Tariff S.C.C. Va.-No. 218 Order Accepting Revision Filed February 11, 2003, on Interim Basis and Requesting Comments	247
Ivy, James O. Settlement for alleged violations of the Virginia Securities Act	708
- J -	
J.P. Morgan Securities, Inc. Consent Order	646
J.W. Holdings, Inc. For authority to acquire and dispose of utility assets pursuant to the Utility Transfers Act and for the issuance of a certificate pursuant to Va. Code §§ 56-265.2 and 56-265.3	373
Jackson, Paul Douglas, d/b/a Check Holders For license to engage in business as a payday lender	21
For authority to conduct a pawnbroking business in payday lending office(s)	22
Jackson, Richard B. For review of HOW Insurance Company, Home Warranty Corporation and Home Owners Warranty Corporation Deputy Receiver's Determination of Appeal.....	150
Jefferson Pilot Securities Corporation Settlement for alleged violations of the Virginia Securities Act	615

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

JMIC Life Insurance Company
Settlement for alleged violations of § 38.2-610 of the Code of Virginia..... 156

Johnson, Emily Eleanore
License revocation pursuant to § 38.2-1831 of the Code of Virginia 108

Jones Telecommunications of Virginia, Inc.
To cancel existing certificate to provide local exchange telecommunications services and to reissue certificate reflecting the corporate name change 293

Jones, Robert E. Lee, Jr.
Order of Dismissal 191

Jong, Shawpin
Take Notice Order of Judgment Order 148
Judgment for alleged violations of §§ 38.2-502, et al. of the Code of Virginia 148

- K -

Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.
Settlement for alleged violations of §§ 38.2-206, et al. of the Code of Virginia 126

KDL of Virginia, Inc.
For certificates to provide local exchange and interexchange telecommunications services 243

Kelco Viatical Services, Inc.
Take Notice Order of license revocation pursuant to § 38.2-6002 G of the Code of Virginia 100
License revocation pursuant to § 38.2-6002 G of the Code of Virginia 101

Kentucky Utilities Company, d/b/a Old Dominion Power Company
For authority to acquire interest in four 152-megawatt combustion turbine generating units pursuant to Chapter 4 of Title 56 of the Code of Virginia 418
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 468, 577
For approval of a Tax Allocation Agreement with its parent company pursuant to Chapter 4 of Title 56 of the Code of Virginia 505

Keystone Insurance Company
Settlement for alleged violations of §§ 38.2-305, et al. of the Code of Virginia 108

Killen, Bill, d/b/a "Kwik Kash"
For license to engage in business as a payday lender 20

Kinder Morgan Virginia, LLC
For authority to construct and operate an electric generating facility in Cumberland County 362

King's Ca\$h Advance\$, DL King, LLC, d/b/a
For license to engage in business as a payday lender 29
For authority to rent and/or sell personal property from its payday lending offices 31

Kleinke, Norma M.
License revocation pursuant to § 38.2-1831 of the Code of Virginia 179

KMC Data Holdco, LLC
For authority to transfer control of KMC Telecom V, Inc., from KMC Data Holdco, LLC, to KMC Data Sub Holdings I LLC 259
For authority to transfer control of KMC Data, LLC, from KMC Data Holdco, LLC, to KMC Data Sub Holdings IV LLC 260

KMC Data Sub Holdings I LLC
For authority to transfer control of KMC Telecom V, Inc., from KMC Data Holdco, LLC, to KMC Data Sub Holdings I LLC 259

KMC Data Sub Holdings IV LLC
For authority to transfer control of KMC Data, LLC, from KMC Data Holdco, LLC, to KMC Data Sub Holdings IV LLC 260

KMC Data, LLC For authority to transfer control of KMC Data, LLC, from KMC Data Holdco, LLC, to KMC Data Sub Holdings IV LLC.....	260
KMC Telecom of Virginia, Inc. For review and correction of assessment of the value of property subject to local taxation-Tax Year 2002.....	183
KMC Telecom V., Inc. For authority to transfer control of KMC Telecom V, Inc., from KMC Data Holdco, LLC, to KMC Data Sub Holdings I LLC	259
Kreider, Brian W. Judgment for alleged violations of the Virginia Securities Act.....	608
"Kwik Kash", Bill Killen, d/b/a For license to engage in business as a payday lender.....	20
- L -	
Ladysmith Water Company, Caroline Water Company, Inc., d/b/a For Failure to File Annual Report for Tax Year 2003.....	184
Lantz, Harry M. Objection to proposed rate increase of Montvale Water Company, Inc.	425
Lapinski, James F., et al For review of the Bureau of Insurance's approval of certain rate increases filed by Penn Treaty Network America Insurance Company	103
Lehman Brothers Inc. Consent Order	653
Level 3 Communications of Virginia, Inc. For certificates to provide local exchange and interexchange telecommunications services	238
Order Denying Reconsideration.....	241
Lexington Retirement Community, Inc. Settlement for alleged violation of § 38.2-4904 of the Code of Virginia	170
Liberty Life Insurance Approval of a regulatory settlement agreement by and between Liberty Life Insurance Company, and the Director of Insurance for the State of South Carolina, for an on behalf of the State of South Carolina, the Virginia Bureau of Insurance and the Insurance Regulators of the affected states in the United States and the District of Columbia.....	149
Life Settlements International, LLC Take Notice Order of license suspension pursuant to § 38.2-5701 of the Code of Virginia	147
License suspension pursuant to § 38.2-5701 of the Code of Virginia.....	147
Lincoln Memorial Life Insurance Company, CompBenefits Insurance Company, formerly Final Order	64
LMI Insurance Company Take Notice Order of license revocation pursuant to § 38.2-1040 of the Code of Virginia	64
License revocation pursuant to § 38.2-1040 of the Code of Virginia	65
London Pacific Life & Annuity Company Take Notice Order of license revocation pursuant to § 38.2-1040 of the Code of Virginia	98
License revocation pursuant to § 38.2-1040 of the Code of Virginia	99
Long-Term Care Insurance, In the matter of Adopting Revisions to the Rules Governing Order Adopting Revisions to Rules	89
Loredo, Javier and Veronica For review of HOW Insurance Company, Home Warranty Corporation and Home Owners Warranty Corporation Deputy Receiver's Determination of Appeal.....	91

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Lucas, Solomon Russell, Jr., d/b/a Q Gardens Realty & Associates License revocation pursuant to § 6.1-413 of the Code of Virginia	48
Lutheran Church Extension Fund - Missouri Synod For Order of Exemption pursuant to § 13.1-514.1 B of the Code of Virginia.....	711
- M -	
Magsamen Incorporated, d/b/a Covington Cash For license to engage in business as a payday lender.....	31
MAMSI Life and Health Insurance Company Settlement for alleged violations of § 38.2-3405 B of the Code of Virginia	142
Correcting Order	143
Mariners Landing Water & Sewer Company, Inc. For authority to acquire and dispose of utility assets pursuant to the Utility Transfers Act and for the issuance of a certificate pursuant to Va. Code §§ 56-265.2 and 56-265.3	373
Marshall, Gordon B., Jr. License revocation pursuant to § 38.2-1831 of the Code of Virginia	106
To vacate Order Revoking License entered January 10, 2003.....	107
Maryland Gas & Electric, Ltd., t/a Operators Energy Services, LLP For license to conduct business as a natural gas competitive service provider	406
Mason, Jennifer W. To vacate Order Revoking License entered December 18, 2002.....	102
Mass Mutual Life Insurance Company Settlement for alleged violations of § 38.2-610 of the Code of Virginia.....	164
Massanutten Public Service Corporation For amendment of its certificates pursuant to Va. Code § 56-265.3 D.....	419
MCI WorldCom Communications of Virginia, Inc. Order of Dismissal	191
To accept tariff filing	194
MCI WorldCom Network Services of Virginia, Inc. Order of Dismissal	191
Meadowood Farms Service Corporation For certificate to provide sewerage service	306
Mecklenburg Electric Cooperative For authority to issue long-term debt.....	576
Amending Order	576
Memorandum of agreement between the State Water Control Board and the State Corporation Commission, Receiving comments on a draft Order Distributing Memorandum of Agreement.....	474
Mercantile Bankshares Corporation Proposed acquisition of Townsend Bank	30
To acquire F&M Corporation	33
MetEther Communications of Virginia, Inc. For certificates to provide local exchange and interexchange telecommunications services	210
For cancellation of certificates to provide interexchange and local exchange telecommunications services	289
Metromedia Energy, Inc. Regarding Washington Gas Light Company's Plan to Return Customers to Sales Service Effective February 1, 2003.....	455

Metromedia Fiber Network, Inc. For approval of transfer of control pursuant to Chapter 5 of Title 56 of the Code of Virginia	275
MFN of VA L.L.C. For approval of transfer of control pursuant to Chapter 5 of Title 56 of the Code of Virginia	275
To cancel existing certificates to provide local exchange and interexchange telecommunications services and to reissue certificates reflecting the corporate name change	290
Midas Mortgage, Faithloan, Inc., d/b/a License revocation pursuant to § 6.1-413 of the Code of Virginia	47
Order Reinstating a License	50
Mid-Century Insurance Company Settlement for alleged violations of §§ 38.2-304, <u>et al.</u> of the Code of Virginia	161
MIIX Insurance Company Take Notice Order of license suspension pursuant to §§ 38.2-1038 and 38.2-1040 of the Code of Virginia	173
License suspension pursuant to § 38.2-1040 of the Code of Virginia.....	174
Mike Atkins Excavating, Michael L. Atkins, t/a Final Order	308
Mikrotec Communications of Virginia, LLC For certificates to provide local exchange and interexchange telecommunications services	211
Minutemen Payday Loans, Atlantic Cash Group, Inc., d/b/a For license to engage in business as a payday lender	16
For authority to conduct tax preparation business in its payday lending office(s)	16
Mirant Danville, LLC For approval of a certificate pursuant to Va. Code § 56-265.2, an exemption from Chapter 10 of Title 56 and interim approval to make financial commitments and undertake preliminary construction work.....	333
Mission Investment Fund of the Evangelical Lutheran Church in America For Order of Exemption under § 13.1-514.1 B of the Code of Virginia, as amended	704
Monitor Life Insurance Company of New York To eliminate impairment in its surplus and restore same to minimum amount required by law	132
License suspension pursuant to § 38.2-1040 of the Code of Virginia.....	133
Montvale Water Company, Inc. Proposed rate increase	425
Monumental Life Insurance Company Approval of a regulatory Consent Order by and between Monumental Life Insurance Company, and the Insurance Commissioner for the Maryland Insurance Administration, for and on behalf of the State of Maryland, the Virginia Bureau of Insurance and the Insurance Regulators of all states in the United States and the District of Columbia.....	158
Morgan Stanley & Co. Incorporated For authority under Chapters 3, 4, and 5 of Title 56 of the Code of Virginia.....	276
Consent Order	662
Morris, Robert Lee, Individually, and t/a Ellicott City Underground, Inc. Order Establishing Payment Plan	475
Mortgage Finders of Virginia, Inc., d/b/a Excel Mortgage Bankers License revocation pursuant to § 6.1-413 of the Code of Virginia	49
Mount Vernon Park Associates, Inc. For Order of Exemption pursuant to § 13.1-514.1 B of the Code of Virginia	707
Mountain Communications of Virginia, LLC For certificate to provide local exchange telecommunications services	223, 280

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- N -

NA Communications, Inc. Dismissal Order.....	189
National Council on Compensation Insurance, Inc. For revision of voluntary loss costs and assigned risk workers' compensation insurance rates	94
To vacate Final Order entered January 30, 2003.....	95
Final Order	96
National Covenant Properties For Order of Exemption under § 13.1-514.1 B of the Code of Virginia, as amended.....	703
National Health Insurance Company To eliminate impairment in its surplus and restore same to minimum amount required by law.....	171
National Warranty Insurance Risk Retention Group Order to Take Notice.....	168
Permanent Injunction	168
Nationwide Assurance Company Settlement for alleged violations of §§ 38.2-305, <u>et al.</u> of the Code of Virginia.....	110
Nationwide General Insurance Company Settlement for alleged violations of §§ 38.2-305, <u>et al.</u> of the Code of Virginia.....	110
Nationwide Mutual Fire Insurance Company Settlement for alleged violations of §§ 38.2-304, <u>et al.</u> of the Code of Virginia.....	110
Nationwide Mutual Insurance Company Settlement for alleged violations of §§ 38.2-305, <u>et al.</u> of the Code of Virginia.....	110
Near North Insurance Brokerage of Virginia, Inc. License revocation pursuant to § 38.2-1831 of the Code of Virginia	173
Network Access Solutions, LLC For cancellation of certificates to provide local exchange and interexchange telecommunications services in Virginia	285
Network Funding, L.P. For license to engage in business as a mortgage lender	15
Network One, CRG International of Virginia, Inc., d/b/a For discontinuance of local exchange telecommunications services and cancellation of certificate	202
New Century Telecom, Inc. Dismissal Order.....	206
New Century Telecom, Inc., d/b/a CLM Telecom, LLC Dismissal Order.....	209
New Jersey Life Insurance Company Take Notice Order of license revocation pursuant to § 38.2-1040 of the Code of Virginia.....	61
License revocation pursuant to § 38.2-1040 of the Code of Virginia	62
New Life Metropolitan Community Church of Hampton Roads For Order of Exemption pursuant to § 13.1-514.1 B of the Code of Virginia.....	711
New York Life and Health Insurance Company To vacate Order Suspending License entered April 16, 2002.....	88
Nextel Communications of the Mid-Atlantic, Inc. For abatement or exoneration of penalty	184
Nonprofits Insurance Company To vacate Order Suspending License entered November 21, 2002	103

North American Company for Life and Health Insurance Settlement for alleged violations of §§ 38.2-608 D, <u>et al.</u> of the Code of Virginia	152
Northern Neck Electric Cooperative For authority to issue long-term debt.....	552
Northern Star Credit Union, Incorporated In the matter of merger of The Portsmouth Post Office Credit Union, Incorporated	47
Northern Virginia Electric Cooperative For authority to issue long-term debt.....	495
Northern Virginia Utility Protection Service, Inc. For waiver and extension of time.....	407
For approval of notification call center performance standards	407
NOVEC Energy Solutions, Inc. For licenses to conduct business as an electric and natural gas competitive service provider and aggregator	334
NOW Communications, Inc. Dismissal Order.....	190
NTELOS Communications Inc. For authority to transfer common stock ownership and control.....	295
NTELOS Inc. For authority to guarantee obligations and execute security agreements.....	248
For authority to transfer common stock ownership and control.....	295
NTELOS Inc., Debtor in Possession For authority to continue arrangements under Chapter 4 of Title 56 of the Code of Virginia	257
For approval of amendments to credit agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia.....	266
For authority under Chapters 3, 4, and 5 of Title 56 of the Code of Virginia.....	276
NTELOS Subsidiaries For authority under Chapters 3, 4, and 5 of Title 56 of the Code of Virginia.....	276
NTELOS Telephone Company For authority to guarantee obligations and execute security agreements.....	248
NTELOS Telephone Inc. For approval of certain transactions pursuant to Chapter 4 of Title 56 of the Code of Virginia	241
For authority to continue arrangements under Chapter 4 of Title 56 of the Code of Virginia	257
For approval of amendments to credit agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia.....	266
For authority under Chapters 3, 4, and 5 of Title 56 of the Code of Virginia.....	276
For approval to enter into an amended affiliates agreement	281
For authority to transfer common stock ownership and control.....	295
NTELOS Telephone LLC For approval of certain transactions pursuant to Chapter 4 of Title 56 of the Code of Virginia	241
For authority to continue arrangements under Chapter 4 of Title 56 of the Code of Virginia	257
NUI Corporation For approval of application for permission to distribute costs from parent holding company to subsidiary and affiliates under Chapter 4 of Title 56 of the Code of Virginia	491
NUI Energy Brokers, Inc. For approval of application to renew affiliate agreement for successive terms pursuant to Chapter 4 of Title 56 of the Code of Virginia.....	547, 549
For approval of an agreement for firm gas storage service between affiliated entities pursuant to Chapter 4 of Title 56 of the Code of Virginia	589

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- O -

Oceana Cash Advance, LLC	
For license to engage in business as a payday lender.....	18
For authority to allow a third party to conduct the business of a ceramic tile retailer and installer from the licensee's payday lending office(s).....	19
OceanTrust Mortgage Corp.	
License revocation pursuant to § 6.1-413 of the Code of Virginia.....	56
O'Donohue, Lawrence J., Jr.	
License revocation pursuant to § 38.2-1831 of the Code of Virginia.....	144
To vacate Order Revoking License entered May 21, 2003.....	145
Odyssey Telecorp, Inc.	
For approval of transfer of control of Progress Telecom Virginia, LLC, to Telecorp, Inc.	296
Old Dominion Power Company, Kentucky Utilities Company, d/b/a	
For authority to acquire interest in four 152-megawatt combustion turbine generating units pursuant to Chapter 4 of Title 56 of the Code of Virginia.....	418
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.....	468, 577
For approval of a Tax Allocation Agreement with its parent company pursuant to Chapter 4 of Title 56 of the Code of Virginia.....	505
Olympia Mortgage Group, Inc., formerly known as Olympic Mortgage Group, Inc.	
License revocation pursuant to § 6.1-418 of the Code of Virginia.....	52
OneStar Communications, LLC	
For an Order Directing Verizon Virginia Inc. to Cease and Desist from Disconnecting Service.....	273
For approval to discontinue local exchange telecommunications services in Virginia and cancel certificate.....	297
OpenBand of Virginia, Inc.	
Dismissal Order.....	195, 196
Operators Energy Services, LLP, Maryland Gas & Electric, Ltd., t/a	
For license to conduct business as a natural gas competitive service provider.....	406
Optimum Choice, Inc.	
Settlement for alleged violations of § 38.2-3405 B of the Code of Virginia.....	141
Owens, Kevin J.	
License revocation pursuant to § 38.2-1831 of the Code of Virginia.....	112
To vacate Order Revoking License entered February 3, 2003.....	113

- P -

Park Holdings Group, LLC	
For authorization to transfer utility stock pursuant to the Utility Transfers Act.....	450
Partlow, Michael David	
License revocation pursuant to § 38.2-1831 of the Code of Virginia.....	161
To vacate Order Revoking License entered June 26, 2003.....	162
Partners National Health Plans of North Carolina, Inc.	
Settlement for alleged violations of 38.2-508, <u>et al.</u> of the Code of Virginia.....	90
Consent Order.....	169
Payday lenders, Annual fees for licensed	
Order to Take Notice.....	54
Order Adopting a Regulation.....	54
Payday lending offices, Proposed regulation relating to conduct of other business in	
Order to Take Notice.....	55

Paymasters, D & Q Enterprises, Inc., d/b/a For license to engage in business as a payday lender	22
Peerless Insurance Company Settlement for alleged violations of §§ 38.2-304, <u>et al.</u> of the Code of Virginia	134
Pelham Manor Water Supply Company, Inc. To extend time for filing plans directed in Case No. PUE960129	306
Penn Mutual Insurance Company To vacate Impairment Order entered September 3, 2002	97
Penn Treaty Network America Insurance Company To vacate Consent Order entered April 17, 2001	76
Final Order	107
Pennsylvania Casualty Company To vacate Order Suspending License entered September 14, 2001	82
Peoples Bonding, Inc. License revocation pursuant to § 38.2-1831 of the Code of Virginia	143
Pepco Holdings, Inc. For approval of the Federal and State Income Tax Allocation Agreement between Pepco Holdings, Inc., and its subsidiaries under Chapter 4 of Title 56 of the Code of Virginia	486
Performance Assurance Plan for Verizon Virginia Inc., Establishment of a Order Modifying and Approving Revisions to the Performance Assurance Plan of Verizon Virginia Inc. Filed March 7, 2003	198
Order on Verizon Virginia Inc.'s Petition for Waiver of Certain Service Quality Results Measured Under the Performance Assurance Plan	200
Perry, James C. Judgment for alleged violations of the Virginia Securities Act	609
Persepolis, Inc., d/b/a Cash In A Flash For license to engage in business as a payday lender	35
PHICO Insurance Company Take Notice Order of license revocation pursuant to § 38.2-1040 of the Code of Virginia	83
Philadelphia Suburban Corporation For approval under the Utility Transfers Act	414
Phillieco, L.P. Dismissal Order	193
Piedmont Community Healthcare, Inc. Settlement for alleged violations of §§ 38,20316 A, <u>et al.</u> of the Code of Virginia	91
Pitts, Michael, d/b/a Economic Computer Systems, Inc. Dismissal Order	213
Plantation Pipe Line Company For relief from excessive charges by Rappahannock Electric Cooperative	572
Portsmouth Post Office Credit Union, Incorporated, The In the matter of merger into Northern Star Credit Union, Incorporated	47
Potomac Edison Company, The For approval to enter into tax allocation agreement under Chapter 4, Title 56 of the Code of Virginia	567
Potomac Edison Company, The, d/b/a Allegheny Power To revise its cogeneration tariff pursuant to PURPA § 210	381
For authority to enter into a tax allocation agreement among affiliates	469

For waiver of provision of the Rules Governing Retail Access to Competitive Energy Services	508
For a determination that the Commission's July 11, 2000, Order Approving Phase I Transfers of Allegheny Power's functional separation plan covers the December 22, 2000, Release and Guarantee Agreement between Allegheny Power, Allegheny Energy Supply Company, LLC and the Holders of Certain Pollution Control Notes, or in the alternative, for approval of the said Agreement Nunc Pro Tunc	526
Potts Creek Exchange Customers	
For Extended Local Service from NTELOS Telephone Inc.'s Potts Creek Exchange to Verizon Virginia Inc.'s Crows-Hematite Exchange	212
PPL Prism, LLC	
For certificate to provide local exchange telecommunications services and for interim operating authority	244
Final Order	246
PPL Telcom, LLC	
For certificate to provide interexchange telecommunications services	272
Premier Alliance Insurance Company	
Take Notice Order of license revocation pursuant to § 38.2-1040 of the Code of Virginia	62
License revocation pursuant to § 38.2-1040 of the Code of Virginia	63
Prince George Electric Cooperative	
For authority to issue long-term debt	552, 577
For review of tariffs and terms and conditions of service	563
For authority to incur long-term debt	601
Prince George Sewerage and Water Company	
For authorization to transfer utility stock pursuant to the Utility Transfers Act	450
Prince George Wastewater, LLC	
For authorization to transfer utility stock pursuant to the Utility Transfers Act	450
Principal Life Insurance Company	
Settlement for alleged violations of §§ 38.2-3407.15 B 1, <u>et al.</u> of the Code of Virginia	145
Prism Virginia Operations, LLC	
For cancellation of certificates to provide local exchange and interexchange telecommunications services	291
Pro Med Casualty Insurance Company, Ltd.	
Settlement for alleged violations of §§ 38.2-1024, <u>et al.</u> of the Code of Virginia	172
Progress Telecom Virginia, LLC	
For approval of transfer of control of Progress Telecom Virginia, LLC, to Odyssey Telecorp, Inc.	296
Progress Telecom, LLC	
For approval of transfer of control of Progress Telecom Virginia, LLC, to Odyssey Telecorp, Inc.	296
Progress Telecommunications Corporation	
For approval of transfer of control of Progress Telecom Virginia, LLC, to Odyssey Telecorp, Inc.	296
Promark Utility Locators, Inc.	
Settlement for alleged violations of the Underground Utility Damage Prevention Act	411
Pulaski Exchange Customers	
For Extended Local Service from Verizon Virginia Inc.'s Pulaski Exchange to its Blacksburg and Christiansburg Exchanges	201
- Q -	
Q Gardens Realty & Associates, Solomon Russell Lucas, Jr., d/b/a	
License revocation pursuant to § 6.1-413 of the Code of Virginia	48
Quality Settlements, Inc.	
Settlement for alleged violations of §§ 6.1-2.26, <u>et al.</u> of the Code of Virginia	171

Quantrex Communications, Inc. For cancellation of certificate to provide local exchange telecommunications services in Virginia.....	286
Qwest Communications Corporation of Virginia To Discontinue Certain Telecommunications Services in Virginia	269
Qwest Interprise America, Inc. of Virginia To Discontinue Certain Telecommunications Services in Virginia	269
- R -	
R&B Telephone LLC For approval of certain transactions pursuant to Chapter 4 of Title 56 of the Code of Virginia	241
For authority to continue arrangements under Chapter 4 of Title 56 of the Code of Virginia	257
Rappahannock Electric Cooperative For Approval of an Electricity Retail Access Program	307
For authority to issue long-term debt.....	469, 559
For authority to sell public service corporation property	507, 508
Rates for credit life and credit accident and sickness insurance pursuant to Code of Virginia §§ 38.2-3725, 38.2-3726, 38.2-3727, and 38.2-3730, In the matter of adoption of adjusted prima facie Order to Take Notice.....	113
Order Adopting Adjusted Prima Facie Rates for the Triennium Commencing January 1, 2004	113
Realty Title Take Notice Order of Judgment Order	148
Judgment for alleged violations of §§ 38.2-502, <u>et al.</u> of the Code of Virginia.....	148
Reciprocal Alliance, The, RRG, In Receivership Final Order	140
Reciprocal Group, The Order in Aid of Receivership.....	114
Order of Liquidation With a Finding of Insolvency and Directing the Cancellation of Direct Insurance Policies	116
Order Setting Final Bar Date and Granting Deputy Receiver Continuing Authority to Liquidate Companies	117
Order.....	118, 125
Reciprocal of America Order in Aid of Receivership.....	114
Order of Liquidation With a Finding of Insolvency and Directing the Cancellation of Direct Insurance Policies	116
Order Setting Final Bar Date and Granting Deputy Receiver Continuing Authority to Liquidate Companies	117
Order.....	118, 125
Regulation relating to bank acquisitions of real estate brokerage subsidiaries, Proposed Dismissal Order.....	38
Regulation relating to conduct of other business in payday lending offices, Proposed Order to Take Notice.....	55
Regulation, Proposed Credit Union Order to Take Notice.....	56
Regulations governing competitive local exchange carriers, localities as competitive local exchange carriers, and local inter-carrier matters, In the matter of Order Adopting Rules	205
Reliance Insurance Company Take Notice Order of license revocation pursuant to § 38.2-1040 of the Code of Virginia.....	81
License revocation pursuant to § 38.2-1040 of the Code of Virginia	82
Reliance Universal Insurance Company Take Notice Order of license revocation pursuant to § 38.2-1040 of the Code of Virginia	138
License revocation pursuant to § 38.2-1040 of the Code of Virginia'	138

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Relocation Financial Services, Inc.
 License revocation pursuant to § 6.1-413 of the Code of Virginia 53

RLI Mortgage Services, LLC
 License revocation pursuant to § 6.1-418 of the Code of Virginia 52

Roanoke & Botetourt Telephone Company
 For approval of certain transactions pursuant to Chapter 4 of Title 56 of the Code of Virginia 241
 For authority to guarantee obligations and execute security agreements..... 248
 For authority to continue arrangements under Chapter 4 of Title 56 of the Code of Virginia 257
 For approval of amendments to credit agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia..... 266
 For authority under Chapters 3, 4, and 5 of Title 56 of the Code of Virginia 276
 For approval to enter into an amended affiliates agreement 282

Roanoke Gas Company
 Order Vacating Directive to Pay the Balance of Penalty and Dismissing the Procedure 329
 For Annual Informational Filings 335
 For general increase in rates 392
 For authority to issue short-term debt..... 485
 For expedited increase in rates..... 584
 Settlement for alleged violations of the Gas Pipeline Safety Act 592

Rocuda Fast Cash, Inc.
 For license to engage in business as a payday lender..... 32

Romweber, Paul G.
 Order to Dismiss 704
 Settlement for alleged violations of the Virginia Securities Act..... 704

Rose, Noel S.
 License revocation pursuant to § 38.2-1831 of the Code of Virginia 177

Rule Governing Utility Customer Deposits, In the Matter of Adopting Revised
 Order Establishing Investigation and Inviting Comments 524
 Final Order 525

Rules and regulations pursuant to the Virginia Electric Utility Restructuring Act for competitive metering services, In the matter of establishing
 Order Adopting Rules 319

Rules Governing Actuarial Opinions and Memoranda, In the matter of Adopting Revisions to the
 Order to Take Notice..... 164
 Order Adopting Revisions to Rules 165

Rules Governing Annual Audited Financial Reports, In the matter of Adopting Revisions to the
 Order to Take Notice..... 129
 Order Adopting Revisions to Rules 130

Rules Governing Long-Term Care Insurance, In the matter of Adopting
 Order Adopting Revisions to Rules 89

Rules Governing Trademarks and Service Marks, In the matter of Adopting A Revision to the
 Order to Take Notice..... 705
 Order Adopting Amended Rules 706

Rules Governing Viatical Settlement Providers and Viatical Settlement Brokers, In the matter of Adopting Revisions to the
 Order to Take Notice..... 153
 Order Adopting Revisions to Rules 154
 Correcting Order 155

Rules, In Re Amendments to Securities Act
 Order Adopting Amended Rules 616

- S -

Salomon Smith Barney, Inc., Citigroup Global Markets, Inc., formerly known as Consent Order	670
Saltville Gas Storage Company, L.L.C. For approval of transaction between affiliates.....	187
For certificate under the Utility Facilities Act	338
For authority to receive initial capital contributions from an affiliated entity	429
For authority to incur indebtedness from affiliates under Chapters 3 and 4 of Title 56 of the Code of Virginia	551
For approval of agreements for firm and interruptible gas storage service between affiliated entities pursuant to Chapter 4 of Title 56 of the Code of Virginia	558
For approval of an agreement for firm gas storage service between affiliated entities pursuant to Chapter 4 of Title 56 of the Code of Virginia	589
Sayland, Lou and Judith E. For approval of the purchase of the stock of Trails End Utility Company, Inc., pursuant to Chapter 5 of Title 56 of the Code of Virginia.....	531
Securities Act Rules, In Re Amendments to Order Adopting Amended Rules.....	616
Segal, Michael Consent Order	176
Senior Retirement Services, Inc. Judgment for alleged violations of §§ 38.2-502 1, <u>et al.</u> of the Code of Virginia.....	133
Judgment for alleged violations of the Virginia Securities Act.....	613
ServiMex, Inc. Settlement for alleged violation of § 6.1-370 of the Code of Virginia.....	53
Shannon Forest Water Corporation For failure to file an annual report for Tax Year 2003	184
Shawnee Land Utilities Company Dismissal Order.....	302
Shenandoah Gas Division of Washington Gas Light Company For general increase in natural gas rates and charges and approval of performance-based rate regulation methodology pursuant to Va. Code § 56-235.6.....	383
Shenandoah Valley Electric Cooperative For approval of retail access tariffs and terms and conditions of service for retail access	423
For authority to issue long-term debt.....	518
Shoneys of Richmond, Inc. Settlement for alleged violations of 14 VAC 5-410-40 D.....	170
SK Realty, LLC Order Nullifying a Merger	59
Skyline Water Co., Inc. For authority to acquire and to dispose of utility assets and for certificates authorizing it to provide water service	529
Southern Title Company of South Carolina, LLC License revocation pursuant to § 38.2-1831 of the Code of Virginia	155
Southside Electric Cooperative For revision of certificates under the Utility Facilities Act.....	450
For review of tariffs and terms and conditions of service	512
For authority to issue long-term debt.....	584
For authority to incur long-term debt.....	595
Southside Settlements LLC License revocation pursuant to § 38.2-1831 of the Code of Virginia	175

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Southwestern Virginia Gas Company
 For expedited increase in rates..... 412
 For approval of an increase in rates and to initiate a weather normalization adjustment..... 586

Speedy Cash, Barehut, Inc., d/b/a
 For authority to sell in its payday lending office(s) cellular telephones and cellular telephone service offered by a third party 20

Spitzli, Donald H.
 Dismissal Order..... 606

Sprint Spectrum, L.P.
 Dismissal Order..... 193

SprintCom, Inc.
 Dismissal Order..... 193

Stand Energy Corporation
 For license to conduct business as a natural gas competitive service provider 440

Standards for Verizon Virginia Inc., Establishment of Carrier Performance
 Order Approving Revisions to VA Guidelines Filed December 9, 2002 197

State Water Control Board and the State Corporation Commission, Receiving comments on a draft memorandum of agreement between the
 Order Distributing Memorandum of Agreement..... 474

Stickdog Telecom, Inc.
 Regarding Notification of Disconnection from Verizon Virginia Inc. 230
 Order Denying Reconsideration and Granting Clarification..... 232

Strock, Terry L., et al.
 Petition objecting to B&J Enterprises, L.C., rate increase 350
 Order on Motion..... 361
 Order on Reconsideration 361

Summit National Life Insurance Company
 Final Order 63

Sunesys of Virginia, Inc.
 For approval of transfer of control..... 283

Superior Insurance Company
 To eliminate impairment in its surplus and restore same to minimum amount required by law..... 86
 Order Denying Petition for Reconsideration 86
 Take Notice Order of license suspension pursuant to § 38.2-1040 of the Code of Virginia 87
 License suspension pursuant to § 38.2-1040 of the Code of Virginia 88
 Settlement for alleged violations of §§ 38.2-510 A 3, et al. of the Code of Virginia 136
 Settlement for alleged violation of § 38.2-1904 of the Code of Virginia 157

Sutton, Ernest R.
 Order..... 58

- T -

21st Century Technologies Escrow
 Judgment for alleged violations of the Virginia Securities Act 610

21st Century Technologies Funding, LLC
 Judgment for alleged violations of the Virginia Securities Act 610

21st Century Technologies Funding, LPs
 Judgment for alleged violations of the Virginia Securities Act 610

T. Byrd, Inc., d/b/a Instant Money Service	
For authority to conduct business as an agent of a money order seller/money transmitter in its payday lending offices	15
Tanner, David R.	
Judgment for alleged violations of the Virginia Securities Act.....	606
Amending Order.....	607
TCF Financial Corporation	
To acquire 9.99 percent of the voting shares of TransCommunity Bankshares Incorporated.....	26
TCG Virginia, Inc.	
Dismissal Order.....	207
TeleCents of Virginia, Inc.	
To cancel certificate to provide local exchange telecommunications services.....	267
Telecommunications Act of 1996	
Orders Approving Agreements and Amendments.....	298
TeleConex of Virginia, Inc.	
For certificate to provide local exchange telecommunications services	208
Telera Communications of Virginia, Inc.	
For cancellation of certificates to provide interexchange and local exchange telecommunications services	228
Teligent Services, Inc.	
For approval to discontinue local exchange telecommunications services in the Richmond Standard Metropolitan Statistical Area.....	195
Tenaska Virginia II Partners, L.P.	
For approval of a certificate pursuant to Va. Code § 56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work.....	330
Tenaska Virginia Partners, L.P.	
For authority to enter into affiliate transactions under Chapter 4 of Title 56 of the Code of Virginia.....	472
Tidewater Restaurants, Inc.	
Settlement for alleged violations of 14 VAC 5-410-40 D.....	170
Tosh of Utah, Inc. (Used in Virginia By: Tosh, Inc.), d/b/a Check City Check Cashing	
For license to engage in business as a payday lender.....	16
For authority to conduct business as an agent of a money order seller/money transmitter in its payday lending offices	17
Total Insurance Marketing, LLC	
License revocation pursuant to § 38.2-1831 of the Code of Virginia	144
To vacate Order Revoking License entered May 21, 2003	145
Town of Front Royal, The	
For certificate to provide local exchange telecommunications services	220
Trademarks and Service Marks, In the matter of Adopting A Revision to the Rules Governing	
Order to Take Notice.....	705
Order Adopting Amended Rules.....	706
Trendmaker Homes, Centennial Homes, Inc., d/b/a	
For review of HOW Insurance Company, Home Warranty Corporation and Home Owners Warranty Corporation Deputy Receiver's Determination of Appeal.....	78
TXU Energy Services	
For waiver of licensing requirements	310
- U -	
UBS PaineWebber Inc.	
Consent Order	688

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

UBS Warburg LLC Consent Order	688
United American Insurance Company Settlement for alleged violations of § 38.2-610 of the Code of Virginia.....	169
United Bank To merge with Sequoia Bank.....	34
United Bankshares, Inc. To acquire Sequoia Bancshares, Inc.	34
United Benefit Life Insurance Company Final Order	66
United Cities Gas Company, Atmos Energy Corporation, d/b/a For approval of the condemnation of an easement across the property and/or right-of-way at Norfolk Southern Railway Company.....	307
United Cities Gas Company-Virginia, Atmos Energy Corporation, d/b/a For Annual Informational Filing.....	363
United Healthcare Insurance Company Settlement for alleged violations of §§ 38.2-510 A 15, <u>et al.</u> of the Code of Virginia.....	158
UnitedHealthcare of the Mid-Atlantic, Inc. Settlement for alleged violations of §§ 38.2-316 B, <u>et al.</u> of the Code of Virginia	152
United Telephone-Southeast, Inc. Dismissal Order..... 189, 190, 192, 193, 194, 195, 196, 197, 207 For Extended Local Service from United Telephone-Southeast, Inc.'s Saltville Exchange to its Glade, Spring, Meadowview, and Abingdon Exchanges..... 201 For Extended Local Service between United's Sylvatus and Max Meadows Exchanges..... 211 For approval of modification to the Companies' Alternative Regulatory Plan..... 250	
Universal Access, Inc. For authority for transfer of control.....	265
Universal Bonding Insurance Company To vacate Order Suspending License entered September 13, 2002.....	98
Universal Credit Corporation of VA, d/b/a The Cash Company of Bristol, VA For authority to conduct tax preparation business in its payday lending office(s)	17
Unum Life Insurance Company Settlement for alleged violations of §§ 38.2-316 B, <u>et al.</u> of the Code of Virginia	105
USA Check Cashers, Inc. For license to engage in business as a payday lender.....	35
U.S. Bancorp Piper Jaffray Inc. Consent Order	696
US LEC of Virginia, LLC Dismissal Order.....	190
U S West Enterprise America of Virginia, Inc. To cancel existing certificates and reissue certificates reflecting new name.....	291
Utiliquist, LLC Settlement for alleged violations of the Underground Utility Damage Prevention Act ... 416, 428, 445, 463, 471, 496, 511, 528, 547, 568, 582, 597 Amending Order Nunc Pro Tunc..... 471	

Utility Customer Deposits, In the Matter of Adopting Revised Rule Governing	
Order Establishing Investigation and Inviting Comments	524
Final Order	525
- V -	
Verizon Advanced Data-Virginia Inc.	
For approval for Verizon Advanced Data-Virginia Inc. to transfer its remaining assets to Verizon Virginia Inc.....	284
For cancellation of certificates to provide local exchange and interexchange telecommunications services in Virginia.....	289
Verizon Global Networks Inc.	
For such relief as may be required under the Utility Facilities Act, Va. Code §§ 56-265.1 <u>et seq.</u> , for expedited consideration and interim authority.....	227
Verizon Global Networks Virginia Inc.	
For such relief as may be required under the Utility Facilities Act, Va. Code §§ 56-265.1 <u>et seq.</u> , for expedited consideration and interim authority.....	227
Verizon Select Services of Virginia, Inc.	
For certificate to provide local exchange telecommunications services	249
Verizon South Inc.	
For approval of its Tariff Filing to Introduce Collocation Service	191
To expand local calling between various exchanges.....	192
Dismissal Order.....	193, 195, 206
For exemption from physical collocation of its Skyline remote office.....	221
Order Establishing Investigation.....	267
To withdraw its request for exemption from physical collocation at its Dulles central office.....	287
Verizon Virginia Inc.	
Dismissal Order.....	189, 190, 196, 198, 209, 213
To expand local calling between various exchanges.....	192
Order Approving Revisions to VA Guidelines Filed December 9, 2002.....	197
Establishment of a Performance Assurance Plan for.....	198
Order on Verizon Virginia Inc.'s Petition for Waiver of Certain Service Quality Results Measured Under the Performance Assurance Plan.....	200
For enforcement of interconnection agreement.....	203
To withdraw its request for exemption from physical collocation at its Lewinsville and Sterling Park central offices.....	235
To withdraw its request for exemption from physical collocation at its Madison, Remington, and The Crossings central offices.....	235
To withdraw its request for exemption from physical collocation at its Bethia central office.....	244
Investigation of revision to Verizon Virginia Inc.'s Network Service Interconnection Tariff S.C.C. Va.-No. 218.....	247
Order Establishing Investigation.....	267
For approval for Verizon Advanced Data-Virginia Inc. to transfer its remaining assets to Verizon Virginia Inc.....	284
Viatical Settlement Providers and Viatical Settlement Brokers, In the matter of Adopting Revisions to the Rules Governing	
Order to Take Notice.....	153
Order Adopting Revisions to Rules	154
Correcting Order	155
Victoria Automobile Insurance Company	
Settlement for alleged violations of §§ 38.2-610, <u>et al.</u> of the Code of Virginia.....	137
Victoria Fire & Casualty Company	
Settlement for alleged violations of §§ 38.2-510 A 1, <u>et al.</u> of the Code of Virginia.....	137
Victoria Select Insurance Company	
Settlement for alleged violations of §§ 38.2-510 A 1, <u>et al.</u> of the Code of Virginia.....	137
Virginia-American Water Company	
For general increase in rates.....	393
Final Order	399
Virginia Bankers Association	
For an expanded field of membership	38
Opinion	41

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Virginia Cash Advance, Gulfport Financial, L.L.C., d/b/a For license to engage in business as a payday lender.....	18
Virginia Electric and Power Company	
For approval of affiliate transactions with Virginia Power Energy Marketing, Inc.	186
For approval of affiliate transactions with Virginia Power Services, Inc.	186
For authority to extend time to file annual report of affiliated transactions for year 2000.....	187
In the matter of considering an electricity retail access pilot program	305
For exemption of agreement for wholesale sales of power from the filing and prior approval requirements of Chapter 4, Title 56 of the Code of Virginia or, in the alternative, for approval of wholesale power service agreement under Chapter 4, Title 56 of the Code of Virginia, and for expedited consideration	372
For exemption of transfers of equipment between affiliated generation companies from the filing and prior approval requirements of Chapter 4, Title 56 of the Code of Virginia or, in the alternative, prior approval of such transfers	420
For exemption from the filing and prior approval requirements of Chapter 4 of Title 56 of the Code of Virginia or, in the alternative, approval of the transfer of inventory and Parts Reimbursement Agreement	421
For approval of a pipeline construction contract and pipeline operation and maintenance agreement under Chapter 4, Title 56 of the Code of Virginia	436
For exemption from the prior approval and filing requirements of the Affiliates Act or, in the alternative, for approval of transfer of furniture and office equipment pursuant to Chapter 4, Title 56 of the Code of Virginia	437
For exemption from the filing and prior approval requirements of Chapter 4 of Title 56 of the Code of Virginia or, in the alternative, approval of a parent company guaranty, and for expedited consideration	454
For certificate for facilities in the City of Chesapeake: Virginia portion of Fentress-Shawboro 230 kV Transmission Line.....	464
For approval of transactions with an affiliate	486
For exemption of a Tax Allocation Agreement and a Cash Contribution 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 and Cash Contribution.....	488
For exemption from the filing and prior approval requirements of Chapter 4 of Title 56 of the Code of Virginia or, in the alternative, approval of transfers of inventory	498
For authority to establish credit facility	504
For authority to sell public service corporation property	507, 508
For authority to establish a credit facility	509
For authority to establish an inter-company credit agreement	519
To revise its fuel factor pursuant to Va. Code § 56-249.6	542
For certificate to operate generating facilities pursuant to Virginia Code § 56-580 D, and such other approvals as may be necessary for the purchase of qualifying facility generating assets and for expedited consideration.....	569
For approval of extension of existing affiliate agreement.....	595
For authority to issue inter-company securities.....	598
Virginia Electric and Power Company, d/b/a Dominion Virginia Power	
In the matter concerning the application of Virginia Electric and Power Company d/b/a Dominion Virginia Power for approval of a plan to transfer functional and operational control of certain transmission facilities to a Regional Transmission Entity.....	310
For certificate of public convenience and necessity for facilities in Loudoun County: Beaumeade-Beco 230 kV Transmission Line and Beaumeade-Greenway 230 kV Transmission Line	314
For a certificate for facilities in Fluvanna County: Two parallel 500 kV transmission lines to provide service to Tenaska Virginia Partners, L.P.'s electric generating facility	348
For revision of certificates under the Utility Facilities Act.....	450
For approval of retail access pilot programs.....	478
Virginia Electric Utility Restructuring Act for competitive metering services, In the matter of establishing rules and regulations pursuant to the Order Adopting Rules	319
Virginia Electric Utility Restructuring Act, In the matter concerning the aggregation of retail electric customers under the provisions of the Order Adopting Revised Regulations	371
Virginia Electric Utility Restructuring Act, In the matter concerning the provision of default service to retail customers under the provisions of the Order.....	430, 432
Virginia Electric Utility Restructuring Act, In the matter of considering requirements relating to wires charges pursuant to the Final Order	321
Virginia Gas Company	
For approval of application for permission to distribute costs from parent holding company to subsidiary and affiliates under Chapter 4 of Title 56 of the Code of Virginia.....	491

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Virginia Gas Distribution Company	
For an Annual Informational Filing	325, 447
For approval of application for permission to distribute costs from parent holding company to subsidiary and affiliates under Chapter 4 of Title 56 of the Code of Virginia	491
For approval of agreements for firm and interruptible gas storage service between affiliated entities pursuant to Chapter 4 of Title 56 of the Code of Virginia	558
Virginia Gas Pipeline Company	
For approval of transaction between affiliates	187
For an Annual Informational Filing	328, 448
For approval of application for permission to distribute costs from parent holding company to subsidiary and affiliates under Chapter 4 of Title 56 of the Code of Virginia	491
For approval of application to renew affiliate agreement for successive terms pursuant to Chapter 4 of Title 56 of the Code of Virginia	547
Virginia Gas Storage Company	
For an Annual Informational Filing	326, 446
For approval of application for permission to distribute costs from parent holding company to subsidiary and affiliates under Chapter 4 of Title 56 of the Code of Virginia	491
For approval of application to renew affiliate agreement for successive terms pursuant to Chapter 4 of Title 56 of the Code of Virginia	549
Virginia Global Communications Systems, Inc.	
Dismissal Order	194
For suspension of requirement to file a continuous performance or surety bond	290
Virginia Independent Telephone Alliance, L.C.	
For authority to continue arrangements under Chapter 4 of Title 56 of the Code of Virginia	257
Virginia Natural Gas, Inc.	
For Annual Informational Filing	322, 451
Order Suspending Remainder of Fine and Dismissing Proceeding	405
For waiver of gas pipeline safety requirements of 49 C.F.R. Part 193	435
For approval of a liquefied natural gas transportation agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia	438
For authority to issue short-term debt, long-term debt, and common stock to an affiliate	601
Virginia Pilots Association	
To revise rates of pilotage and other charges	557
Virginia Premier Health Plan, Inc.	
Settlement for alleged violations of §§ 38.2-510 A 5, <u>et al.</u> of the Code of Virginia	163
Virginia Underground Utility Protection Service, Inc.	
For approval of notification call center performance standards	407
For waiver and extension of time	407
Settlement for alleged violations of the Underground Utility Damage Prevention Act	440
Voight, Howard, Courthouse Cheque Exchange, d/b/a	
For a License to engage in business as a payday lender	35

- W -

Washington Gas Light Company	
For general increase in natural gas rates and charges and approval of performance-based rate regulation methodology pursuant to Va. Code § 56-235.6	383
Settlement for alleged violations of the Underground Utility Damage Prevention Act	417, 462
For Amendment of Certificates Pursuant to Virginia Code § 56-265.3	434
For authority to participate in a tax sharing agreement between WGL Holdings, Inc., and its subsidiaries under Chapter 4 of Title 56 of the Code of Virginia	434
For authority to enter into billing system access agreements pursuant to Chapter 4 of Title 56 of the Code of Virginia	441
For an exemption under Virginia Code § 56-77 B from the filing and prior approval requirements of the Affiliates Act for certain construction contracts with a affiliate	463
For approval of amendments to its gas tariff, Va. S.C.C. No. 9, to implement daily balancing for gas suppliers serving interruptible customers	495
For authority to receive cash capital contributions from an affiliate	562
For authority to borrow up to \$300 million in short-term indebtedness	563
Settlement for alleged violations of the Gas Pipeline Safety Act	594, 597

Weingarten, Robert For Payment of Interest.....	74
West Rockingham Water Company, Inc. Dismissal Order.....	306
White Oak Power Company For authority to construct and operate an electric generating facility.....	377
Williams Communications of Virginia, Inc. For approval of the transfer of ownership of Williams Communications, LLC, from Williams Communications Group, Inc., to WilTel Communications Group, Inc.....	226
Williamsburg Court Water Company For failure to file an annual report for Tax Year 2003.....	185
Willy, Donald and Susan For review of HOW Insurance Company, Home Warranty Corporation and Home Owners Warranty Corporation Deputy Receiver's Determination of Appeal.....	83
Wing and a Prayer, LLC, A Settlement for alleged violations of the Virginia Securities Act.....	709
Wires charges pursuant to the Virginia Electric Utility Restructuring Act, In the matter of considering requirements relating to Final Order.....	321

- X -

XO Long Distance Services (Virginia), LLC For cancellation of certificate to provide interexchange telecommunications services in Virginia.....	244
Xspedius Management Co. of Virginia, LLC To substitute continuous performance or surety bond.....	292

- Y - Z -

Yipes Enterprise Services, Inc. For approval of transfer of control.....	225
Yipes Transmission of Virginia, Inc. To cancel existing certificates and reissue certificates reflecting new name.....	234
Yipes Transmission, Inc. For approval of transfer of control.....	225

LIST OF CASES ESTABLISHED IN 2003

BAN/BFI: BUREAU OF FINANCIAL INSTITUTIONS

BAN20030001 FFSl, Inc. (Used in VA by: First Financial Services, Inc.) - To relocate mortgage lender's office from 1515 O Street, N.W., Washington, DC to 1101 Vermont Avenue, NW, Suite 501, Washington, DC

BAN20030002 Morgan-Daniels-Leszczak, Inc. - For a mortgage broker's license

BAN20030003 Mortgage Credit Corporation - To open a mortgage lender and broker's office at 1769-122 Jamestown Road, Williamsburg, VA

BAN20030004 Statewide Mortgage Corporation - To relocate mortgage broker's office from The Parkview Office Building,, Chesapeake, VA to WynnGate Business Park, 508 BaylorCourt, Suite B, Chesapeake, VA

BAN20030005 Edward D. Jones & Co., L.P. d/b/a EdwardJones - To open a mortgage broker's office at 913 First Colonial Road, Suite 104, Virginia Beach, VA

BAN20030006 SGB Corporation - For a mortgage lender's license

BAN20030007 D.L. King, LLC d/b/a Colortyme - To open a check casher at 422 Furr Street, South Hill, VA

BAN20030008 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 3787 Blue Sulphur Road, Ona, WV to 2540 East Alaska Street, West Covina, CA

BAN20030009 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 42-34 College Point Boulevard Suite B, Flushing, NY to 146-02 Hillside Avenue, 2nd Floor, Jamaica, NY

BAN20030010 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 185 Southampton Drive, Harrisonburg, VA to 2321 Breckenridge Court, Harrisonburg, VA

BAN20030011 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 5345 Kindewood Drive, Virginia Beach, VA to 18 Barrymore Court, Hampton, VA

BAN20030012 Kim's Cash & Carry, Inc. d/b/a Chantilly Cash & Carry - To open a check casher at 13941 Lee Jackson Memorial Highway, Chantilly, VA

BAN20030013 Chelsea, Inc. d/b/a Foto Studio Chelsea - To open a check casher at 3903 Mt. Vernon Avenue, Alexandria, VA

BAN20030014 F.I.F.S. Corporation - For a mortgage broker's license

BAN20030015 Montgomery Capital Mortgage Corporation (Used in VA By: Montgomery Capital Corporation) - For a mortgage broker's license

BAN20030016 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 305 West Mountain Street, Suite H, Kernersville, NC

BAN20030017 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 1074 S. Main Street Suite 205, Heber City, UT

BAN20030018 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 3107 Monument Avenue Suite 4, Richmond, VA

BAN20030019 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 8104 Valley Lane, Ellicott City, MD

BAN20030020 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 6307 Executive Boulevard, Rockville, MD

BAN20030021 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 506 South Independence Boulevard, Suite 200, Virginia Beach, VA

BAN20030022 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 10111 Martin Luther King Jr. Blvd., Suite 200-K, Bowie, MD

BAN20030023 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 5821 Fairview Road, Charlotte, NC

BAN20030024 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 604 1/2 High Street Suite 100, Portsmouth, VA

BAN20030025 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 8280 Greensboro Drive Suite 105, McLean, VA

BAN20030026 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 1001 Fairlawn Avenue, Virginia Beach, VA

BAN20030027 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 2423 Maryland Avenue Suite 300, Baltimore, MD

BAN20030028 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 5533 NC Highway 42 West, Garner, NC

BAN20030029 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 3407 Rickey Avenue, Temple Hills, MD

BAN20030030 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 3311 Toledo Terrace Suite B-203, Hyattsville, MD

BAN20030031 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 1701 Edmondson Avenue, Suite 207, Baltimore, MD

BAN20030032 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 7900 Sudley Road, Suite 214, Manassas, VA

BAN20030033 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 206 Wakely Terrace, Bel Air, MD

BAN20030034 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 1216 King Street, 2nd Floor, Alexandria, VA

BAN20030035 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 8555 16th Street, Suite 205, Silver Spring, MD

BAN20030036 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 7023 Little River Turnpike, Suite 310, Annandale, VA

BAN20030037 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 705 Danbury Road, Suite 101, Ridgefield, CT

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20030038	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 509 S. Kings Point Road, Virginia Beach, VA
BAN20030039	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 530 E. Main Street, Richmond, VA
BAN20030040	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 3051 Sleepy Hollow Road, Falls Church, VA
BAN20030041	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 1037 Mansfield Crossing Road, Richmond, VA
BAN20030042	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 250 Gateway Drive, Suite 9-10C, Bel Air, MD
BAN20030043	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 6895 Washington Boulevard, Elkridge, MD
BAN20030044	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 14456 Old Mill Road, Suite 101, Upper Marlboro, MD
BAN20030045	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 1500 Rainbow Drive, Silver Spring, MD
BAN20030046	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 9526 BelAir Road, Perry Hall, MD
BAN20030047	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 7004-M Little River Turnpike, Annandale, VA
BAN20030048	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 6767 Forest Hill Avenue, Suite 305-M, Richmond, VA
BAN20030049	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 9400 Livingston Road, Suite 318, Washington, MD
BAN20030050	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 5343 Kindlewood Drive, Virginia Beach, VA
BAN20030051	Rams Associates Inc. - To open a check casher at 7853 Sudley Road, Manassas, VA
BAN20030052	Summit Mortgage Corporation d/b/a Summit Home Mortgage Inc. - To open a mortgage lender and broker's office at 3060 Mitchellville Road, Suite 217, Bowie, MD
BAN20030053	Aames Funding Corporation d/b/a Aames Home Loan - To open a mortgage lender and broker's office at 8160 Baymeadows Way, West, Suite 320, Jacksonville, FL
BAN20030054	All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 2121 W. Galena Boulevard, Aurora, IL
BAN20030055	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 5808 S. 900 East, Suite B, Murray, UT
BAN20030056	Condor Financial Group Incorporated - To open a mortgage broker's office at 504 South Main Street, Culpeper, VA
BAN20030057	Sterling Mortgage Corporation - To relocate mortgage lender broker's office from 910 Littlepage Street, Suite A, Fredericksburg, VA to 401 and 405 William Street, Fredericksburg, VA
BAN20030058	Credit Solution and Financial Services Inc. - For a mortgage broker's license
BAN20030059	All American Mortgage Corporation - To relocate mortgage broker's office from 9412 Michelle Place, Richmond, VA to 1100 Welborne Drive, Suite 204, Richmond, VA
BAN20030060	Bi-Coastal Mortgage, Inc. - To relocate mortgage broker's office from 312 W. Chesapeake Avenue, 2nd Floor, Towson, MD to 3 Talbott Avenue, 1st Floor, Suite 101, Timonium, MD
BAN20030061	Liberty American Mortgage Co. - To open a mortgage lender and broker's office at 263 McLaws Circle, Suite 103, Williamsburg, VA
BAN20030062	Heartland Home Finance, Inc. - To open a mortgage lender and broker's office at 6425 Power Ferrys Road, Suite 250, Atlanta, GA
BAN20030063	Sky Financial, Inc. - To open a check casher at 8328 Richmond Highway, Alexandria, VA
BAN20030064	Loren W. Robinson, Inc. d/b/a Nationwide Mortgage Group - For a mortgage lender and broker license
BAN20030065	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1078 Welsh Run Road, Ruckersville, VA
BAN20030066	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1401 Mercer Road, Haymarket, VA
BAN20030067	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1553 Brownsville Drive, Herndon, VA
BAN20030068	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1800 East Main Street, Radford, VA
BAN20030069	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 25 Huntley Court, Potomac Falls, VA
BAN20030070	Sun Mortgage, Inc. - To relocate mortgage broker's office from 1604 Hilltop West Executive Center, Virginia Beach, VA to 621 Lynnhaven Parkway, Suite 251, Virginia Beach, VA
BAN20030071	Digital Concepts Inc. - To open a check casher at 5027 Columbia Pike, Arlington, VA
BAN20030072	First Choice Financial Corporation of Georgia (Used in VA By: First Choice Financial Corporation) - For a mortgage broker's license
BAN20030073	Core Mortgage Connection, L.P. - For a mortgage lender and broker license
BAN20030074	Madison Financial Corporation - To relocate mortgage broker's office from 1738 Elton Road, Suite 123, Silver Spring, MD to 401 North Washington Street, Suite 680, Rockville, MD
BAN20030075	A. Anderson Scott Mortgage Group, Incorporated - To open a mortgage broker's office at 7360 Guilford Drive, Suite 103, Frederick, MD
BAN20030076	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 520 Fellowship Road, Suite A-101, Mt. Laurel, NJ
BAN20030077	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 500 Highway 33, Millstone Township, NJ
BAN20030078	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To relocate a payday lender's office from 5224 Oaklawn Boulevard, Hopewell, VA to 5224 Oaklawn Boulevard, Suite B-03, Hopewell, VA
BAN20030079	Pico Funding, Inc. - For a mortgage broker's license
BAN20030080	First Mutual Corp. - To relocate mortgage lender broker's office from 14800 Conference Center Drive, Chantilly, VA to 4511 Singer Court, Suite 201, Chantilly, VA
BAN20030081	ATS, L.L.C. - To relocate mortgage broker's office from #12 Rockfish Valley Highway, Nellysford, VA to 8413 Patterson Avenue, Richmond, VA
BAN20030082	1st American Mortgage, Inc. d/b/a CU Mortgage Group - To open a mortgage lender and broker's office at 2000 Holiday Drive, Suite 101, Charlottesville, VA
BAN20030083	1st American Mortgage, Inc. d/b/a CU Mortgage Group - To open a mortgage lender and broker's office at 605 N. Courthouse Road, Suite 202, Richmond, VA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20030084 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 100 Round Hill Road, Kennett Square, PA

BAN20030085 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 912 Artisan Avenue, Chesapeake, VA

BAN20030086 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1312 Littlefield Drive, Bel Air, MD

BAN20030087 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 2901-2A Lake Point Drive, Midlothian, VA

BAN20030088 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 3022 Kings Village Road, Alexandria, VA

BAN20030089 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 3820 Thoroughbred Lane, Owings Mills, MD

BAN20030090 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 5252 Daybreak Lane, Woodbridge, VA

BAN20030091 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 10430 Fair Oaks, Columbia, MD

BAN20030092 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 14810 Hancock Court, Centreville, VA

BAN20030093 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 44082 Natalie Terrace, Suite 302, Ashburn, VA

BAN20030094 Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 415 North Military Highway, Suite 26, Norfolk, VA

BAN20030095 Beneficial Mortgage Co. of Virginia - To relocate mortgage lender broker's office from Tanglewood West Office Building, Roanoke, VA to 4208 Franklin Road, Hunting Hills, SC, Roanoke, VA

BAN20030096 Beneficial Discount Co. of Virginia - To relocate mortgage lender's office from Tanglewood West Office Building, Roanoke, VA to 4208 Franklin Road, Hunting Hills, SC, Roanoke, VA

BAN20030097 Beneficial Virginia Inc. - To relocate consumer finance office from Tanglewood West Office Building, Roanoke, VA to Hunting Hills Shopping Center, 4208 Franklin Road, Roanoke, VA

BAN20030098 Barehut, Inc. d/b/a Speedy Cash - To relocate a payday lender's office from 853 West Stuart Drive, Hillsville, VA to 16266 Fancy Gap Highway, Cana, VA

BAN20030099 MortgageStar, Inc. - To open a mortgage lender and broker's office at 2770 Broadland Way, Sandy Hook, VA

BAN20030100 Challenge Financial Investors Corp. - To open a mortgage broker's office at 2309 Rosebay Court, Virginia Beach, VA

BAN20030101 Option One Mortgage Corporation - To open a mortgage lender and broker's office at 1600 Parkwood Circle, SE, Suite 645, Atlanta, GA

BAN20030102 Mason Dixon Funding, Inc. - To open a mortgage lender and broker's office at 233 South Royal Avenue, Front Royal, VA

BAN20030103 A. Anderson Scott Mortgage Group, Incorporated - To open a mortgage broker's office at 8812 Monard Drive, Silver Spring, MD

BAN20030104 Choice 1 Mortgage, Inc. - For a mortgage broker's license

BAN20030105 Gassan Kassira d/b/a Kassira Financial - For a mortgage broker's license

BAN20030106 Commonwealth Home Loans, LLC - For a mortgage broker's license

BAN20030107 Reliable Mortgage, Inc. - For a mortgage broker's license

BAN20030108 Primerica Financial Services Home Mortgages, Inc. - To relocate mortgage broker's office from 12608 A Lake Ridge Drive, Woodbridge, VA to 13512 Minnieville Road, Suite 220, Woodbridge, VA

BAN20030109 Superior Home Mortgage Corporation (Used in VA by: Superior Mortgage Corporation) - To open a mortgage lender and broker's office at 251 Bellevue Avenue, Hammonton, NJ

BAN20030110 All Fund, Inc. d/b/a All Fund Mortgage - To relocate mortgage lender broker's office from 13100 Cog Hill Way, Orlando, FL to 1752 Branchwater Trail, Orlando, FL

BAN20030111 All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 3831 Old Forest Road, Suite 6, Lynchburg, VA

BAN20030112 Cresleigh Financial Services LLC - To open a mortgage lender and broker's office at 450 Carillon Parkway Suite 130, St. Petersburg, FL

BAN20030113 Cresleigh Financial Services LLC - To open a mortgage lender and broker's office at 10151 Deerwood Park Blvd., Bldg. 100, Suite 130, Jacksonville, FL

BAN20030114 Cresleigh Financial Services LLC - To open a mortgage lender and broker's office at 1408 N. Westshore Blvd., Suite 706, Tampa, FL

BAN20030115 Buckeye Check Cashing of Virginia, Inc. d/b/a Check\$mart - To open a payday lender's office at 3301 W. Mercury Boulevard, Hampton, VA

BAN20030116 Buckeye Check Cashing of Virginia, Inc. d/b/a Check\$mart - To open a payday lender's office at 1501 E. Little Creek Road, Norfolk, VA

BAN20030117 Bill Killen d/b/a "Kwik Kash" - For a payday lender license

BAN20030118 1st American Banc Corporation - For a mortgage broker's license

BAN20030119 Barehut, Inc. d/b/a Speedy Cash - To conduct payday lending business where prepaid phone service will be sold

BAN20030120 Regal Online Mortgage.com, Inc. (Used in Virginia by: Regal Mortgage Company) - For a mortgage broker's license

BAN20030121 Capetown Mortgage Corp. - For a mortgage broker's license

BAN20030122 Check-N-Hold, Inc. d/b/a Capital Cash Advance - For a payday lender license

BAN20030123 1st Choice Mortgage/Equity Corporation of Lexington - To relocate mortgage lender's office from 704-M Plaza Boulevard, Kingston, NC to 2506 North Herritage Street, Suite B, Kinston, NC

BAN20030124 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 12000 Thornbrooke Court, Bristow, VA to 12115 Greenway Court, Suite 102, Fairfax, VA

BAN20030125 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 200 Spruce Court, Sterling, VA

BAN20030126 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 5225 Pooks Hill Road, 1825 South, Bethesda, MD

BAN20030127 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 5515 Irving Ruby Road, Eldersburg, MD

BAN20030128 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 6026 Stoddard Court, Suite 301, Alexandria, VA

BAN20030129 Check First, Inc. - For a payday lender license

BAN20030130 KSF Mortgage, LLC - For a mortgage lender's license

BAN20030131 The Mortgage Exchange Service, LLC - For a mortgage broker's license

BAN20030132 Service 1 Mortgage Corporation - For a mortgage lender and broker license

BAN20030133 Nassau Mortgage LLC - For additional mortgage authority

BAN20030134 Lincoln Mortgage, LLC - To open a mortgage broker's office at 465 Lee Highway, Suite 103, Verona, VA

BAN20030135 Aadvantage Plus Financial, Inc. d/b/a A.A.A. Aadvantage Plus Financial - To open a mortgage broker's office at 4010 Old Gun Road, East, Midlothian, VA

BAN20030136 Fidelity First Home Mortgage Company - To open a mortgage broker's office at 707 Bestgate Road, Annapolis, MD

BAN20030137 Atlantic Bay Mortgage Group, L.L.C. - To relocate mortgage lender broker's office from 20347-B Timberlake Road, Lynchburg, VA to 302 Enterprise Drive, Forest, VA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20030138	Service 1st Mortgage, Inc. - To relocate mortgage broker's office from 8258 Veterans Highway, Suite 2, Millersville, MD to 1415 Madison Park Drive, Glen Burnie, MD
BAN20030139	Select Mortgage Group, Ltd., LLC (Used in VA By: Select Mortgage Group, Ltd.) - For a mortgage lender and broker license
BAN20030140	Optimal Funding, Inc. - For a mortgage broker's license
BAN20030141	Equistar Financial Corporation - For a mortgage lender's license
BAN20030142	Dynamic Capital Mortgage, Inc. - For a mortgage lender and broker license
BAN20030143	Potomac Bank of Virginia - To open a branch at 9910 Main Street, Fairfax, VA
BAN20030144	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 4931 Oriskany Drive, Annandale, VA
BAN20030145	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 5750 Drake Court, Apt. 273, Alexandria, VA
BAN20030146	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 13400 Kerrydale Road, Dale City, VA
BAN20030147	Independent Realty Capital Corporation - To open a mortgage lender and broker's office at 1590 North Robberts Road, Suite 307, Kennesaw, GA
BAN20030148	Primary Residential Mortgage, Inc. - To open a mortgage lender and broker's office at 14518 Delmar Drive, Woodbridge, VA
BAN20030149	Streamline Holding, LLC d/b/a Streamline Mortgage & Financial of VA - To open a mortgage broker's office at 6 South 3rd Street, Suite 302A, Easton, PA
BAN20030150	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 6360 West Oakland Park Boulevard, Sunrise, FL
BAN20030151	Catamount Mortgage Group, Inc. - To relocate mortgage broker's office from 40 Park Street, Essex Junction, VT to 137 Iroquois Avenue, Essex Junction, VT
BAN20030152	U.S. Mortgage Capital, Inc. d/b/a Worldwide Financial Resources - To relocate mortgage lender broker's office from 12230 Rockville Pike, Suite 200, Rockville, MD to 700 King Farm Boulevard, Suite 125, Rockville, MD
BAN20030153	Millennium Lending Group, Inc. - To relocate mortgage broker's office from 920 Providence Road, Suite 200, Baltimore, MD to 1 West Pennsylvania Avenue, Suite 95, Towson, MD
BAN20030154	MSEG Mortgage Services, LLC d/b/a Eastern Seaboard Financial - To relocate mortgage broker's office from 34 W. Main Street, Westminster, MD to 15 East Main Street, Suite 102, Westminster, MD
BAN20030155	Alliance Bank Corporation - To open a branch at 4501 North Fairfax Drive, Arlington County, VA
BAN20030156	United Capital Mortgage Corporation - For a mortgage lender's license
BAN20030157	Service First Mortgage, L.C. - For a mortgage lender and broker license
BAN20030158	James River Mortgage, LLC - For a mortgage broker's license
BAN20030159	Charles C. Frey d/b/a Approved 1st Mortgage - For a mortgage broker's license
BAN20030160	Stanley D. Rosow d/b/a Equity South Mortgage - For a mortgage broker's license
BAN20030161	BLS Funding Corp. - To relocate mortgage lender broker's office from 1101 Stewart Avenue, Garden City, NY to 125 Jericho Turnpike, Jericho, NY
BAN20030162	Superior Home Mortgage Corporation (Used in VA by: Superior Mortgage Corporation) - To open a mortgage lender and broker's office at 9811 Mallard Drive, Suite 209, Laurel, MD
BAN20030163	First Mortgage Group, Inc. - To open a mortgage broker's office at 3937-C University Drive, Fairfax, VA
BAN20030164	UMS, Inc. d/b/a Urgent Money Service - To open a payday lender's office at 4220 Williamson Road, Roanoke, VA
BAN20030165	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 391 Nostrand Avenue, Brooklyn, NY
BAN20030166	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 4110 Westman Court, Alexandria, VA
BAN20030167	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 6709 Hanson Lane, Lorton, VA to 6218 A Old Franconia Road, Alexandria, VA
BAN20030168	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 3311 Toledo Terrace, Suite 105, Hyattsville, MD to 19317 Clubhouse Road, Suite 302, Gaithersburg, MD
BAN20030169	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 41C Mount Vernon Drive, Hurricane, WV to 2732 2nd Street, Hurricane, WV
BAN20030170	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 634 Evening Star Place, Mitchellville, MD to 9500 Arena Drive, Suite 470, Largo, MD
BAN20030171	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 221 N. Shore Drive, Oakwood Hills, IL
BAN20030172	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 237 Roanoke Drive, SE, Leesburg, VA
BAN20030173	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1825 T Street, NW, Suite 103, Washington, DC
BAN20030174	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 425 Wadsworth Drive, Richmond, VA
BAN20030175	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 7862 Tidewater Drive, Suite 7, Norfolk, VA
BAN20030176	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 10027 Wheatfield Court, Fairfax, VA
BAN20030177	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 11668 Mediterranean Court, Reston, VA
BAN20030178	Global Finance Company - To open a mortgage broker's office at 8840 Columbia 100 Parkway, Suite 120, Columbia, MD
BAN20030179	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 28202 Cabot Road, Suite 255B, Laguna Niguel, CA
BAN20030180	MorEquity of Nevada, Inc. (Used in VA by: MorEquity, Inc.) - To open a mortgage lender and broker's office at 100 Constitution Drive, Suite 126, Virginia Beach, VA
BAN20030181	Excel Mortgage & Investment Services, Inc. - To open a mortgage broker's office at 5 Choke Cherry Road, Suite 378, Rockville, MD
BAN20030182	Superior Home Mortgage Corporation (Used in VA by: Superior Mortgage Corporation) - To open a mortgage lender and broker's office at 10268 Baltimore National Pike, Ellicott City, MD
BAN20030183	Mid-States Financial Group, Inc. - To open a mortgage broker's office at 39 West Jubal Early Drive, Winchester, VA
BAN20030184	Arisen Mortgage Corporation - To open a mortgage lender and broker's office at 362 McLaws Circle, Williamsburg, VA
BAN20030185	Paul Douglas Jackson d/b/a Check Holders - For a payday lender license
BAN20030186	Paul Douglas Jackson d/b/a Check Holders - To conduct payday lending business where a pawn brokering business will also be conducted
BAN20030187	T & H, Inc. d/b/a H & H Grocery - To open a check casher at 1622 South Street, Portsmouth, VA
BAN20030188	Home Lending Partners L.L.C. - For a mortgage broker's license
BAN20030189	Manhattan Mortgage of Central Florida, Inc. - For a mortgage broker's license
BAN20030190	First Citizens Mortgage Corp. - To open a mortgage broker's office at 10803 Main Street, Suite 700, Fairfax, VA
BAN20030191	Jerbec Enterprises, Inc. d/b/a Express Money Service - To open a payday lender's office at 3700 Candler's Mountain Road, Unit 1-C, Lynchburg, VA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20030192	Equity Management Mortgage Corporation - To relocate mortgage broker's office from 1515 Mockingbird Lane, Suite 710, Charlotte, NC to 1515 Mockingbird Lane, Suite 820, Charlotte, NC
BAN20030193	Cornerstone Mortgage, Inc. - To open a mortgage broker's office at 5673 Columbia Pike, Suite 200, Falls Church, VA
BAN20030194	Security Federal Mortgage & Financial Services, Incorporated - To relocate mortgage broker's office from 3505 B-1 Ellicott Mills Drive, Ellicott City, MD to 5126 Dorsey Hall Drive, Suite 202, Ellicott City, MD
BAN20030195	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 1023 Pittsburgh Road, Uniontown, PA
BAN20030196	Sunset Mortgage Company L.P. - To relocate mortgage lender broker's office from 1993 Moreland Parkway, Suite 104, Annapolis, MD to 1994 Moreland Parkway, Suite 2B, Annapolis, MD
BAN20030197	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 225 Sunnyside Plaza, Winchester, VA
BAN20030198	Nations Home Funding, Inc. - To relocate mortgage broker's office from 6832 Old Dominion Drive, Suite 203, McLean, VA to 1925 Isaac Newton Square, Suite 100, Reston, VA
BAN20030199	MortgageIT, Inc. - To open a mortgage lender and broker's office at 120 West 45th Street, 5th Floor, New York, NY
BAN20030200	TransLand Financial Services, Inc. - To open a mortgage lender's office at 137 Laxton Road, Suite 100, Lynchburg, VA
BAN20030201	Ryland Mortgage Company - To relocate mortgage lender broker's office from 11212 Waples Mill Road, Suite 102, Fairfax, VA to 4100 Monument Corner Drive, Suite 300, Fairfax, VA
BAN20030202	Heartland Home Finance, Inc. - To open a mortgage lender and broker's office at 2370 Route 70, Suite 308, Cherry Hill, NJ
BAN20030203	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 607 William Street, Suite 212, Fredericksburg, VA
BAN20030204	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 2503B West Ash Street, Columbia, MO
BAN20030205	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 511 East Bexley Lane, Highlands Ranch, CO
BAN20030206	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 19405 Helenberg Road, Suite 202, Covington, LA
BAN20030207	Lincoln Mortgage, LLC - To open a mortgage broker's office at 102 Ginger Street, Winchester, VA
BAN20030208	Lincoln Mortgage, LLC - To open a mortgage broker's office at 1167 Runnymede Road, Bunker Hill, WV
BAN20030209	Lincoln Mortgage, LLC - To open a mortgage broker's office at 3038 Valley Avenue, Winchester, VA
BAN20030210	Lincoln Mortgage, LLC - To open a mortgage broker's office at 7538 Diplomat Drive, Suite 201, Ambassador Square, Manassas, VA
BAN20030211	Lincoln Mortgage, LLC - To open a mortgage broker's office at 156 Tammys Way, Elkton, VA
BAN20030212	Lincoln Mortgage, LLC - To open a mortgage broker's office at 56 Hunter Ridge Drive, Front Royal, VA
BAN20030213	Primerica Financial Services Home Mortgages, Inc. - To open a mortgage broker's office at 6455 Maddox Boulevard, Suite 3, Chincoteague, VA
BAN20030214	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 5313 Williamson Road, NW, Roanoke, VA
BAN20030215	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 2155 Bennington Avenue, SE, Roanoke, VA
BAN20030216	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 1011 A West Little Creek Road, Norfolk, VA
BAN20030217	GMAC Mortgage Corporation d/b/a Ditech.Com - To open a mortgage lender and broker's office at 15200 Shady Grove Road, Rockville, MD
BAN20030218	Fortune Mortgage Company - To open a mortgage broker's office at 451 Hungerford Drive, Suite 608, Rockville, MD
BAN20030219	Monumental Finance, LLC - For a mortgage broker's license
BAN20030220	Southside Bank - To open a branch at east side of U.S. Route 360 at State Route 662, King William County, VA
BAN20030221	D & Q Enterprises, Inc. d/b/a Paymasters - For a payday lender license
BAN20030222	Lees Mortgage Company, L.L.C. - For a mortgage broker's license
BAN20030223	Realty Mortgage Corporation d/b/a RealNET Financial - For a mortgage lender's license
BAN20030224	Bycos LLC - For a mortgage broker's license
BAN20030225	Lee's Supermarket, Inc. - To open a check casher at 1820 Elm Avenue, Portsmouth, VA
BAN20030226	Darlene G. Meredith - To acquire 25 percent or more of Mortgage Resource Group, Inc.
BAN20030227	Superior Home Mortgage Corporation (Used in VA by: Superior Mortgage Corporation) - To open a mortgage lender and broker's office at 4860 Cox Road, Suite 200, Glen Allen, VA
BAN20030228	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 25448 Brickell Drive, South Riding, VA
BAN20030229	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1736 Whitewood Lane, Herndon, VA
BAN20030230	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 11778 Indian Ridge Road, Reston, VA
BAN20030231	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 4741 Bay Quarter Court, Virginia Beach, VA to 812 14th Street, Apt. D, Virginia Beach, VA
BAN20030232	Eagle Financial of Maryland, Inc. d/b/a Eagle Check Cashing - To conduct payday lending business where a money transmission business will also be conducted
BAN20030233	Eagle Financial of Maryland, Inc. d/b/a Eagle Check Cashing - To conduct payday lending business where a retail sales business will also be conducted
BAN20030234	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 1300 Oliver Road, Suite 105, Fairfield, CA
BAN20030235	Encore Credit Corp. - To open a mortgage lender and broker's office at 4860 Cox Road, Suite 200, Glen Allen, VA
BAN20030236	Community First Bank - To relocate office from 69 Callohill Road, Lovingson, VA to 150 Front Street, Lovingson, VA
BAN20030237	A Better Mortgage, Inc. - For a mortgage broker's license
BAN20030238	Potomac Valley Bank - To open a branch at 7430 Spring Village Drive, Springfield, VA
BAN20030239	Centex Home Equity Company, LLC - To relocate mortgage lender broker's office from 100 West Road, Towson, MD to 3 Bethesda Metro Center, Office 760, Bethesda, MD
BAN20030240	First Community Mortgage Inc. - For a mortgage broker's license
BAN20030241	Grow International, Inc. - For a mortgage broker's license
BAN20030242	Community Home Mortgage, LLC d/b/a Community Mortgage Group, LLC - To open a mortgage broker's office at 712 Sunset Lane, Culpeper, VA
BAN20030243	Community Home Mortgage, LLC d/b/a Community Mortgage Group, LLC - To open a mortgage broker's office at 119 Creekside Lane, Winchester, VA
BAN20030244	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 3527 13th Street, NW, Washington, DC

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20030245 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 12219 Bushey Drive, Silver Spring, MD
 BAN20030246 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 13587 Gelding Place, Gainesville, VA
 BAN20030247 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 91 Ridgewood Avenue, Keene, NH to 800 Park Avenue, Keene, NH
 BAN20030248 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 177 Greencrest Drive, Ponte Verda Beach, FL to 200 Executive Way, Suite 107, Ponte Verda Beach, FL
 BAN20030249 W. R. Clouse & Associates Mortgage Company - For a mortgage broker's license
 BAN20030250 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 10951 Hampshire Avenue, Bloomington, MN
 BAN20030251 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 2085 Ellis Avenue, Saint Paul, MN
 BAN20030252 MortgageStar, Inc. - To open a mortgage lender and broker's office at 300 Riverwood Court, Suite 202, Virginia Beach, VA
 BAN20030253 MortgageStar, Inc. - To open a mortgage lender and broker's office at 17-G Bells Cove Drive, Poquoson, VA
 BAN20030254 Benchmark Mortgage Inc. - To relocate mortgage lender broker's office from 4667 Haygood Road, Suite 503, Virginia Beach, VA to 4521 E. Honeygrove Road, Suite 101, Virginia Beach, VA
 BAN20030255 Allstate Mortgage, Inc. - To relocate mortgage broker's office from 7417 Reservation Drive, Springfield, VA to 8996 Fern Park Drive, Burke, VA
 BAN20030256 AEGIS Funding Corporation d/b/a AEGIS Home Equity - To relocate mortgage lender's office from 11111 Wilcrest Green, Suite 250, Houston, TX to 3250 Briarpark Drive, 4th Floor, Houston, TX
 BAN20030257 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 14221 Dove Creek Way, Suite 301, Sparks, MD
 BAN20030258 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 6301 Ivy Lane, Suite 700, Greenbelt, MD
 BAN20030259 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1112 Huntmaster Terrace, NE, Leesburg, VA
 BAN20030260 Check into Cash of Virginia, LLC d/b/a Check into Cash - To open a payday lender's office at 8284 Shoppers Square, Manassas, VA
 BAN20030261 Check into Cash of Virginia, LLC d/b/a Check into Cash - To open a payday lender's office at 5053 Jefferson Davis Highway, Fredericksburg, VA
 BAN20030262 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 11460 Crownridge Drive, Suite 124, Owings Mills, MD
 BAN20030263 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 7900 West Park Drive, Suite T-103, McLean, VA
 BAN20030264 United California Systems International, Inc. - To relocate mortgage lender's office from 12233 W. Olympic Boulevard, Los Angeles, CA to 11755 Wilshire Boulevard, Suite 2100, Los Angeles, CA
 BAN20030265 Pinnacle Mortgage Corporation - To relocate mortgage broker's office from 3913 McTyres Cove Court, Midlothian, VA to 3226 Shallowford Landing Terrace, Midlothian, VA
 BAN20030266 MountainBank Financial Corporation - To acquire Cardinal Bankshares Corporation, VA
 BAN20030267 MountainBank Financial Corporation - To acquire CNB Holdings, Inc., VA
 BAN20030268 Americor Lending Group, Inc. - For a mortgage broker's license
 BAN20030269 Loan Warehouse Corp. - For a mortgage broker's license
 BAN20030270 Lili Ann, Inc. d/b/a Best Rate Mortgage On-Line - For a mortgage broker's license
 BAN20030271 NewVision Mortgage, Inc. - For a mortgage broker's license
 BAN20030272 Newport Shores Mortgage, Inc. - For a mortgage broker's license
 BAN20030273 New Providence Mortgage, LLC - To open a mortgage lender and broker's office at 544 Newtown Road, Suite 154, Virginia Beach, VA
 BAN20030274 CTX Mortgage Company, LLC - To open a mortgage lender and broker's office at 65 Deane Road, Ruckersville, VA
 BAN20030275 Allied Home Mortgage Capital Corporation - To open a mortgage lender and broker's office at 1727 W. Main Street, Rapid City, SD
 BAN20030276 U.S. Mortgage Corporation of Virginia (Used in VA by: U.S. Mortgage Corporation) - To open a mortgage lender and broker's office at 7900 Sudley Road, Suite 214, Manassas, VA
 BAN20030277 Sunset Mortgage Company L.P. - To open a mortgage lender and broker's office at 1523 McDaniel Drive, West Chester, PA
 BAN20030278 AEGIS Funding Corporation d/b/a AEGIS Home Equity - To open a mortgage lender's office at 999 Executive Parkway, Suite 104, Creve Coeur, MO
 BAN20030279 Sigma Integrated Systems Inc. - t/a Sigma Financial Services - To relocate mortgage broker's office from 1092 Fairbank Street, Great Falls, VA to 5600 Fenwick Street, Bryans Road, MD
 BAN20030280 1st Liberty Mortgage Company - To open a mortgage broker's office at 401 East Jefferson Street, Suite 206, Rockville, MD
 BAN20030281 Challenge Financial Investors Corp. - To open a mortgage broker's office at 3107 Creek Meadow Circle, Richmond, VA
 BAN20030282 Streamline Holding, LLC d/b/a Streamline Mortgage & Financial of VA - To open a mortgage broker's office at 6 South 3rd Street, Suite 203, Easton, PA
 BAN20030283 Beneficial Discount Co. of Virginia - To relocate mortgage lender's office from 500 Foxcroft Avenue, Martinsburg, WV to 702 Foxcroft Avenue North Mall Plaza, Martinsburg, WV
 BAN20030284 Beneficial Mortgage Co. of Virginia - To relocate mortgage lender broker's office from 500 Foxcroft Avenue, Martinsburg, WV to 702 Foxcroft Avenue North Mall Plaza, Martinsburg, WV
 BAN20030285 Express Mortgage Corp. of Virginia - To open a mortgage lender and broker's office at 6239 Executive Boulevard, Rockville, MD
 BAN20030286 Express Mortgage Corp. of Virginia - To open a mortgage lender and broker's office at 1075 Cranbury-South River Rd., Suite 9, Jamesburg, NJ
 BAN20030287 Express Mortgage Corp. of Virginia - To open a mortgage lender and broker's office at 18000 Horizon Way, Suite 100, Mount Laurel, NJ
 BAN20030288 Express Mortgage Corp. of Virginia - To open a mortgage lender and broker's office at 1415 Route 70 East, Suite 311, Cherry Hill, NJ
 BAN20030289 Express Mortgage Corp. of Virginia - To open a mortgage lender and broker's office at 377 Route 17 South, Suite 410, Hasbrouck Heights, NJ
 BAN20030290 Express Mortgage Corp. of Virginia - To open a mortgage lender and broker's office at 10800 Main Street, Suite 150, Fairfax, VA
 BAN20030291 Express Mortgage Corp. of Virginia - To open a mortgage lender and broker's office at 262 Chapman Road, Suite 104, Newark, DE
 BAN20030292 Mortgage Access Corp. d/b/a Weichert Financial Services - To open a mortgage lender's office at 5609 Patterson Avenue, Richmond, VA
 BAN20030293 Mortgage Access Corp. d/b/a Weichert Financial Services - To relocate mortgage lender's office from 990 Bragg Road, Fredericksburg, VA to 1955 Jefferson Davis Highway, Suite 201, Fredericksburg, VA
 BAN20030294 InterServ Services Corporation - For a mortgage broker's license
 BAN20030295 Pinnacle Mortgage Company - For a mortgage lender's license

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20030296	L.A.P. Holdings LLC - For a mortgage broker's license
BAN20030297	ComUnity Lending, Incorporated d/b/a Virginia Community Lending (McLean) - For a mortgage lender and broker license
BAN20030298	America's Best Mortgage, Inc. - For a mortgage broker's license
BAN20030299	Ralph H. Pecoral d/b/a New Age Capital - For a mortgage broker's license
BAN20030300	Bentham K. Chow - To be an exclusive agent for Primerica Financial Services Home Mortgages, Inc.
BAN20030301	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 9700 Counsellor Drive, Vienna, VA
BAN20030302	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 40125 Little Oatlands Lane, Leesburg, VA
BAN20030303	All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 5339 Virginia Beach Boulevard, Virginia Beach, VA
BAN20030304	Capital Financial Home Equity, LLC - To open a mortgage broker's office at 5304 Creekwood Lane, Gloucester, VA
BAN20030305	Robert Musseman d/b/a Potomac Mortgage Bank - To open a mortgage broker's office at 585 Grove Street, Suite 350, Herndon, VA
BAN20030306	The Cash Company of Virginia d/b/a The Cash Company of Weber City - For a payday lender license
BAN20030307	The Cash Company of Virginia d/b/a The Cash Company of Weber City - To conduct payday lending business where a tax preparation business will also be conducted
BAN20030308	The Cash Company of Virginia d/b/a The Cash Company of Weber City - To conduct payday lending business where a electronic tax filing business will also be conducted
BAN20030309	James J. Guzanick - To acquire 25 percent or more of Paragon Home Lending, LLC
BAN20030310	Creative Mortgage Resources, LLC - For a mortgage broker's license
BAN20030311	Valley Bank - To open a branch at 3850 Keagy Road, Roanoke, VA
BAN20030312	Exclusive Bancorp Inc. - To open a mortgage broker's office at 6551 Loisdale Court, Suite 525, Springfield, VA
BAN20030313	Sable Enterprises, Corp. d/b/a City Finance Corp.Com - To relocate mortgage broker's office from 9310 Fairfax Street, Alexandria, VA to 4203 Kimbrelee Court, Alexandria, VA
BAN20030314	Weststar Mortgage, Inc. - To open a mortgage lender and broker's office at First Union Center, Suite 200, 11742 Jefferson Avenue, Newport News, VA
BAN20030315	CapitalBanc Mortgage Corporation - To open a mortgage lender and broker's office at 3905 National Drive, Suite 270, Burtonsville, MD
BAN20030316	United Financial Mortgage Corp. of Virginia - To relocate mortgage lender's office from 600 Enterprise Drive, Suite 206, Oak Brook, IL to 815 Commerce Drive, Suite 100, Oak Brook, IL
BAN20030317	Nationwide Lending Corporation - To open a mortgage lender and broker's office at 700 Burning Tree Road, Fullerton, CA
BAN20030318	Nationwide Lending Corporation - To open a mortgage lender and broker's office at 2101 Business Center Drive, Suite 100, Irvine, CA
BAN20030319	Nationwide Lending Corporation - To open a mortgage lender and broker's office at 2101 Business Center Drive, Suite 210, Irvine, CA
BAN20030320	Chong Y. Lee d/b/a Franklin Supermarket - To open a check casher at 1711 E. Franklin Street, Richmond, VA
BAN20030321	Fortune Mortgage Company - To open a mortgage broker's office at 5500 Cherokee Avenue, Bldg. A, Suite 210, Alexandria, VA
BAN20030322	MortgageStar, Inc. - To open a mortgage lender and broker's office at 2822 Solomons Island Road, Edgewater, MD
BAN20030323	Colonial 1st Mortgage, Inc. - To relocate mortgage broker's office from 3709 Tiffany Lane, Virginia Beach, VA to 580 Lynnhaven Parkway, Suite 103, Virginia Beach, VA
BAN20030324	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 9418 Annapolis Road, Suite 101, Lanham, MD
BAN20030325	MFS/TA, Inc. - For a mortgage broker's license
BAN20030326	Buckeye Check Cashing of Virginia, Inc. d/b/a Check\$mart - To conduct payday lending business where a money transmission business will also be conducted
BAN20030327	New Peoples Bank, Inc. - To open a branch at west side of U. S. Route 460 at the southern town limit, Grundy, VA
BAN20030328	Fidelity & Trust Mortgage, Inc. - To open a mortgage lender's office at 1912 Liberty Road, Building #1, 2nd Floor, Eldersburg, MD
BAN20030329	William J. Ridge d/b/a Ridge Mortgage Services Co. - For a mortgage broker's license
BAN20030330	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 118 Duchess Way, Suffolk, VA
BAN20030331	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1717 K Street, NW, Suite 600, Washington, DC
BAN20030332	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 2600 Buckner Court, Temple Hills, MD
BAN20030333	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 3465 Woodbaugh Drive, Chesapeake, VA
BAN20030334	Option Mortgage Inc. - For a mortgage broker's license
BAN20030335	USA Lending, L.L.C. (Used in VA by: 1st Federal Funding, L.L.C.) - For a mortgage lender and broker license
BAN20030336	Check into Cash of Virginia, LLC d/b/a Check into Cash - To open a payday lender's office at 4738 Finlay Street, Richmond, VA
BAN20030337	Check into Cash of Virginia, LLC d/b/a Check into Cash - To open a payday lender's office at 364 Towne Center Drive, Abingdon, VA
BAN20030338	Check into Cash of Virginia, LLC d/b/a Check into Cash - To relocate payday lender's office from 7461 Midlothian Turnpike, Richmond, VA to 7601 West Broad Street, Richmond, VA
BAN20030339	Check into Cash of Virginia, LLC d/b/a Check into Cash - To open a payday lender's office at 12367 Dillingham Square, Lake Ridge, VA
BAN20030340	Check into Cash of Virginia, LLC d/b/a Check into Cash - To open a payday lender's office at 400 Old Franklin Turnpike, Suite 106, Rocky Mount, VA
BAN20030341	Primary Residential Mortgage, Inc. - To open a mortgage lender and broker's office at 2027 Cherri Drive, Falls Church, VA
BAN20030342	Primary Residential Mortgage, Inc. - To open a mortgage lender and broker's office at 110 West Road, Suite 216, Towson, MD
BAN20030343	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 310 Ritchie Highway, Suite 806, Glen Burnie, MD
BAN20030344	Choice Finance Corporation - To relocate mortgage broker's office from 6001 Montrose Road, Suite 504, Rockville, MD to 6001 Montrose Road, Suite 704, Rockville, MD
BAN20030345	American Cash Exchange Enterprise of Virginia, L.L.C. d/b/a 1st Choice Cash Advance - To open a payday lender's office at 1836 Euclid Avenue, Bristol, VA
BAN20030346	CashNet, Inc. d/b/a Cash Advance Centers - To relocate payday lender's office from 5706 Hopkins Road, Richmond, VA to 2828 West Broad Street, Richmond, VA
BAN20030347	CashNet, Inc. d/b/a Cash Advance Centers - To relocate payday lender's office from 9554 Old Keene Mill Road, Burke, VA to 2035 East Market Street, Suite 55, Harrisonburg, VA
BAN20030348	Merit Mortgage, Inc. d/b/a Central Virginia Mortgage - For a mortgage broker's license
BAN20030349	Celsius Mortgage LLC - For a mortgage broker's license

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20030350	Challenge Financial Investors Corp. - To open a mortgage broker's office at 802 East Martintown Road, Suite 162-A, North Augusta, SC
BAN20030351	Primary Residential Mortgage, Inc. - To relocate mortgage lender broker's office from 53 Summer East, Williamsburg, VA to 491 McLaws Circle, Suite 3A, Williamsburg, VA
BAN20030352	Allied Home Mortgage Capital Corporation - To open a mortgage lender and broker's office at 6110 Pinemont Drive, Suite 105, Houston, TX
BAN20030353	M-Point Mortgage Services, LLC - To open a mortgage broker's office at 2 Colgate Drive, Suite 202, Forest Hill, MD
BAN20030354	Atlantic Bay Mortgage Group, L.L.C. - To open a mortgage lender and broker's office at 3959 Electric Road, Suite 101, Roanoke, VA
BAN20030355	First Community Bancshares, Inc. - To acquire The CommonWealth Bank
BAN20030356	HomeGold, Inc. - To relocate mortgage lender's office from 113 Reed Avenue, Lexington, SC to 1021 Briargate Circle, Suite B, Columbia, SC
BAN20030357	Primary Residential Mortgage, Inc. - To open a mortgage lender and broker's office at 100 Cheyenne Drive, Louisburg, NC
BAN20030358	American Nationwide Mortgage Company, Inc. - To open a mortgage lender and broker's office at 1216 Granby Street, Suite 21, Norfolk, VA
BAN20030359	AEGIS Funding Corporation d/b/a AEGIS Home Equity - To open a mortgage lender's office at Three Parkway Center, Suite 325, Pittsburgh, PA
BAN20030360	Frontline Financial, LLC - For a mortgage lender's license
BAN20030361	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 1505 E. 17th Street, Suite 225, Santa Ana, CA to 1666 North Main Street, 2nd Floor, Santa Ana, CA
BAN20030362	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 417 Oella Avenue, 1st Floor, Catonsville, MD
BAN20030363	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 17934 Brennan Avenue, Prairieville, LA to 11550 New Castle, Baton Rouge, LA
BAN20030364	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 12555 Orange Drive, Suite 215, Davie, FL
BAN20030365	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 532 Broadhollow Road, Suite 117, Melville, NY
BAN20030366	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 21308 Pathfinder Road, Suite 117, Diamond Bar, CA to 595 West Lambert Road, Suite 200, Brea, CA
BAN20030367	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 1425 East Lincoln Avenue, Suite L, Anaheim, CA
BAN20030368	The First Bank and Trust Company - To merge into it First Commonwealth Bank
BAN20030369	First Bancorp, Inc. - To acquire First Commonwealth Bank
BAN20030370	Wilmington Finance, Inc - For a mortgage lender's license
BAN20030371	Saab Financial Corp. d/b/a Saab Mortgage - To open a mortgage broker's office at 2070 Chain Bridge Road, Suite G40, Vienna, VA
BAN20030372	Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 2211 South Military Highway, Chesapeake, VA
BAN20030373	Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 5160 Nine Mile Road, Richmond, VA
BAN20030374	Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 1314 South Memorial Boulevard, Martinsville, VA
BAN20030375	Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 829 Lynnhaven Parkway, Virginia Beach, VA
BAN20030376	Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 546 Cummings Street, Abingdon, VA
BAN20030377	Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 713 South College Avenue, Bluefield, VA
BAN20030378	Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 2019 South Crater Road, Petersburg, VA
BAN20030379	Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 1226 Whitmarsh Road, Unit 204, Suffolk, VA
BAN20030380	Harris Financial Services, Inc. d/b/a Cash Now - Hampton Roads - For a payday lender license
BAN20030381	American Residential Funding, Inc. - To open a mortgage lender and broker's office at 711 Buckingham Circle, Salisbury, MD
BAN20030382	Worth Funding Incorporated - To relocate mortgage lender's office from 26679 W. Agoura Road, Suite 200, Calabasas, CA to 18400 Von Karman, Suite 1000, Irvine, CA
BAN20030383	America's MoneyLine, Inc. - To open a mortgage lender's office at 6305 Ivy Lane, Suite 120, Greenbelt, MD
BAN20030384	Donald O. King d/b/a Access Mortgage Kod - To open a mortgage broker's office at 1600 East Little Creek Road, Suite 346, Norfolk, VA
BAN20030385	Potomac Valley Bank - To open a branch at 8229 Boone Boulevard, Vienna, VA
BAN20030386	The Fidelity Bank - To open a branch at 3300 Virginia Avenue, Collinsville, VA
BAN20030387	The Fidelity Bank - To open a branch at 231 East Church Street, Martinsville, VA
BAN20030388	Financial Resources & Assistance of the Lakes Region, Inc. - For a mortgage broker's license
BAN20030389	TNT Mortgage, LLC - For a mortgage broker's license
BAN20030390	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 502 Foster Knoll Drive, Joppa, MD
BAN20030391	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1909 King Mill Pike, Bristol, VA
BAN20030392	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 3305 Jermantown Road, Fairfax, VA
BAN20030393	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 6095 Indian River Road, Suite 201, Virginia Beach, VA
BAN20030394	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 12213 Firth of Tae Drive, Fort Washington, MD
BAN20030395	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 21081 Stanford Square, Suite 203, Dulles, VA
BAN20030396	American Home Mortgage Corp. d/b/a MortgageSelect - To open a mortgage lender and broker's office at 7 Old Solomons Island Road, Annapolis, MD
BAN20030397	American Home Mortgage Corp. d/b/a MortgageSelect - To open a mortgage lender and broker's office at 512 Township Line Road, 3 ValleySquare, Suite 102, Blue Bell, PA
BAN20030398	Benchmark Mortgage Inc. - To open a mortgage lender and broker's office at 11551 Nuckols Road, Glen Allen, VA
BAN20030399	Guidance Residential, LLC - To open a mortgage lender and broker's office at 5203 Leesburg Pike, 2 Skyline Place, Suite 705, Falls Church, VA
BAN20030400	American Residential Funding, Inc. - To open a mortgage lender and broker's office at 12 Hughes, Suite D-106, Irvine, CA
BAN20030401	American Residential Funding, Inc. - To open a mortgage lender and broker's office at 965 Mission Street, Suite 640, San Francisco, CA
BAN20030402	American Residential Funding, Inc. - To open a mortgage lender and broker's office at 2131 Park Street, Columbia, SC
BAN20030403	Mercantile Mortgage Company of Virginia (Used in VA by: Mercantile Mortgage Company) - To open a mortgage lender's office at 70 Mansell Court, Suite 105, Roswell, GA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20030404 Sunset Mortgage Company L.P. - To relocate mortgage lender broker's office from 18221 D. Flowerhill Way, Gaithersburg, MD to 110 S. Washington Street, Rockville, MD

BAN20030405 Primerica Financial Services Home Mortgages, Inc. - To open a mortgage broker's office at 11141 Georgia Avenue, Suite 207, Wheaton, MD

BAN20030406 All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 547 W. 3900 South, Suite D, Salt Lake City, UT

BAN20030407 Oak Street Mortgage LLC - To open a mortgage lender and broker's office at 4343 North Scottsdale Road, Suite 390, Scottsdale, AZ

BAN20030408 Buckeye Check Cashing of Virginia, Inc. d/b/a CheckSmart - To open a payday lender's office at 159 East Belt Boulevard, Richmond, VA

BAN20030409 Washington Home Mortgage, LLC - To relocate mortgage broker's office from 7850 Wisconsin Avenue, Bethesda, MD to 4825 Bethesda Avenue, Suite 220, Bethesda, MD

BAN20030410 First Citizens Mortgage Corp. - To open a mortgage broker's office at 10711 Spotsylvania Avenue, 2nd Floor, Fredericksburg, VA

BAN20030411 Encore Credit Corp. - To relocate mortgage lender broker's office from 5850 Canoga Avenue, Suite 400, Woodland Hills, CA to 21800 Oxnard Street, Suite 800, Woodland Hills, CA

BAN20030412 Allied Cash Advance Virginia LLC d/b/a Allied Cash Advance - For a payday lender license

BAN20030413 Mortgage Virginia LLC - To open a mortgage lender's office at 11936 Centre Street, Suite A, Chester, VA

BAN20030414 Mortgage Virginia LLC - For additional mortgage authority

BAN20030415 Metropolis Funding, Inc. - For a mortgage broker's license

BAN20030416 Everett Gerald Warren - To be an exclusive agent for Primerica Financial Services Home Mortgages, Inc.

BAN20030417 Churchill Mortgage Company - For a mortgage broker's license

BAN20030418 USLoans.net, Inc. - To open a mortgage broker's office at 19 S. Church Street, West Chester, PA

BAN20030419 New Century Mortgage Corporation - To open a mortgage lender and broker's office at 5340 W. Kennedy Blvd., Suite 215, Tampa, FL

BAN20030420 Amerisave Mortgage Corporation - To relocate mortgage broker's office from 3400 Peachtree Road, Suite 1311, Atlanta, GA to 3525 Piedmont Road, 6 Piedmont Center, Suite 710, Atlanta, GA

BAN20030421 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 189 East Big Beaver Road, Suite 211, Troy, MI

BAN20030422 Allied Home Mortgage Capital Corporation - To open a mortgage lender and broker's office at 18065 Georgia Avenue, 2nd Floor, Olney, MD

BAN20030423 Prospex Mortgage Corporation - To relocate mortgage broker's office from 101 East Holly Avenue, Suite 4, Sterling, VA to 45150 Russell Branch Drive, Ashburn, VA

BAN20030424 Taylor, Bean & Whitaker Mortgage Corp. - To open a mortgage lender's office at 1831 Veterans Memorial Hwy., Suite 101, Austell, GA

BAN20030425 Key Financial Corporation - To relocate mortgage broker's office from 3631 131st Avenue North, Clearwater, FL to 8550 Ulmerton Road, Suite 132, Largo, FL

BAN20030426 Garden State Consumer Credit Counseling, Inc. - To open an additional debt counseling office at 4917 Waters Edge Drive, Suite 240, Raleigh, NC

BAN20030427 Diverse Mortgage Services, Inc. - For a mortgage broker's license

BAN20030428 Corridor Mortgage Group, Inc. - For a mortgage broker's license

BAN20030429 Ficohsa Express Virginia, LLC - For a money order license

BAN20030430 Consumer Credit Counseling Service of Virginia and Southeast Maryland Inc. d/b/a Credit Counselors of Virginia - To open an additional debt counseling office at 728 Thimble Shoals Boulevard, Suite A, Newport News, VA

BAN20030431 Waterford Financial Services, Incorporated d/b/a First Commonwealth Funding - To open a mortgage broker's office at 18 South George Street, Suite 228, York, PA

BAN20030432 CashNet, Inc. d/b/a Cash Advance Centers - To open a payday lender's office at 760 J. Clyde Morris Boulevard, Newport News, VA

BAN20030433 First Wholesale Mortgage Corporation - To open a mortgage broker's office at 6928 Knoll Crest Way, Pendleton, IN

BAN20030434 C.M.A. Mortgage, Inc. d/b/a HomeLand Mortgage Company - To relocate mortgage lender broker's office from 184 W. Carmel Drive, Carmel, IN to 600 E. Carmel Drive, Suite 110, Carmel, IN

BAN20030435 Mortgage and Equity Funding Corporation - To open a mortgage lender and broker's office at 20251 Century Boulevard Suite 125, Germantown, MD

BAN20030436 Equus Mortgage of Virginia LLC d/b/a Equus Mortgage - To relocate mortgage broker's office from 1834-B Kalorama Road, NW, Washington, DC to 6830 Elm Street, McLean, VA

BAN20030437 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 3000 Gulf-to-Bay Boulevard, Suite 304, Clearwater, FL

BAN20030438 TCF Financial Corporation - To acquire TransCommunity Bankshares Incorporated, Powhatan, VA

BAN20030439 Community Credit Counseling Corp. - To open an additional debt counseling office at 5 Professional Circle, Route 34, Colts Neck, NJ

BAN20030440 MortgageStar, Inc. - To open a mortgage lender and broker's office at 1206 Laskin Road, Suite 201, Virginia Beach, VA

BAN20030441 Challenge Financial Investors Corp. - To open a mortgage broker's office at 820 Curry Ford Lane, Gaithersburg, MD

BAN20030442 First Guaranty Mortgage Corporation - To open a mortgage lender and broker's office at 150 Tequesta Drive, Suite 200, Tequesta, FL

BAN20030443 MTGE Solutions Ltd. d/b/a Mortgage Solutions - For a mortgage broker's license

BAN20030444 Professional Mortgage Group, LLC - For a mortgage broker's license

BAN20030445 NovaStar Mortgage, Inc. - For additional mortgage authority

BAN20030446 Robert A. Mikelskas, Jr. - To acquire 25 percent or more of Frank J. Weaver, Inc.

BAN20030447 NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 2611 Dumbarton Street NW, Washington, DC to 1055 Thomas Jefferson Street, NW, Suite L-9, Washington, DC

BAN20030448 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1 Russell Court, Baltimore, MD

BAN20030449 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 4119 Chowan Avenue, Chesapeake, VA

BAN20030450 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 43101 Gatwick Square, Ashburn, VA

BAN20030451 First-Citizens Bank & Trust Company - To open a branch at 524 North Main Street, Emporia, VA

BAN20030452 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 27601 Forbes Road, #52, Laguna Niguel, CA

BAN20030453 Primerica Financial Services Home Mortgages, Inc. - To relocate mortgage broker's office from 7686 Richmond Highway, Suite 109, Alexandria, VA to 7686 Richmond Highway, Suite 108, Alexandria, VA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20030454 New Century Mortgage Corporation - To relocate mortgage lender broker's office from 26679 W. Agoura Road, Suite 200, Calabasas, CA to 21600 Oxnard Street, Woodland Hills, CA

BAN20030455 Chris B. Collingwood - To acquire 25 percent or more of Prospex Mortgage Corporation

BAN20030456 Jim C. Hodge - To acquire 25 percent or more of Allied Home Mortgage Capital Corporation

BAN20030457 Appomattox Mortgage, LLC - For a mortgage broker's license

BAN20030458 Anderson Funding, LLC - For a mortgage broker's license

BAN20030459 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 129 Main Street, Prince Frederick, MD

BAN20030460 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To relocate mortgage broker's office from 7004-M Little River Turnpike, Annandale, VA to 6601 Little River Turnpike, Suite 140, Alexandria, VA

BAN20030461 Check into Cash of Virginia, LLC d/b/a Check into Cash - To open a payday lender's office at 10394 Portsmouth Road, Manassas, VA

BAN20030462 Check into Cash of Virginia, LLC d/b/a Check into Cash - To open a payday lender's office at 1630 General Booth Boulevard, Virginia Beach, VA

BAN20030463 Bridge Capital Corporation - To open a mortgage lender and broker's office at 27285 Las Ramblas, Mission Viejo, CA

BAN20030464 Bridge Capital Corporation - To open a mortgage lender and broker's office at 5200 Warner Avenue, Suite 107, Huntington Beach, CA

BAN20030465 Bridge Capital Corporation - To open a mortgage lender and broker's office at 92 Corporate Park, #C204, Irvine, CA

BAN20030466 Bridge Capital Corporation - To open a mortgage lender and broker's office at 10333 Longdale Place, San Diego, CA

BAN20030467 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 4612 Sutton Oaks Drive, Chantilly, VA to 11805 Carol Avenue, Manassas, VA

BAN20030468 Infiniti Mortgage, LLC - To open a mortgage broker's office at 2 Professional Drive, Suite 234, Gaithersburg, MD

BAN20030469 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 1326 Skyline Drive, Laguna Beach, CA

BAN20030470 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 1100 Reistertown Road, Suite 100, Baltimore, MD

BAN20030471 Advance Financial Services, LLC - To conduct payday lending business where a tax preparation business will also be conducted

BAN20030472 DuPont Community Credit Union - To relocate credit union office from 2813 North Augusta St., Staunton, VA to 315 Lee Highway, Verona, VA

BAN20030473 First-Citizens Bank & Trust Company - To open a branch at 524 N. Main Street, Greensville County, VA

BAN20030474 Able Mortgage Services LLC - For a mortgage broker's license

BAN20030475 1st Potomac Mortgage, Inc. - For a mortgage broker's license

BAN20030476 United Financial Mortgage Corp. of Virginia - For additional mortgage authority

BAN20030477 Millennium Mortgage Bankers, Inc. - To relocate mortgage broker's office from 2000 L Street, NW, Suite 200, Washington, DC to 2000 L Street, NW, Suite 508, Washington, DC

BAN20030478 Al Karim, Inc. d/b/a Horizons Food Stores 3 - To open a check casher at 13152 Mountain Road, Glen Allen, VA

BAN20030479 Cheque Cashing, Inc. d/b/a Ace America's Cash Express - To conduct payday lending business where a prepaid credit card sales business will also be conducted

BAN20030480 First Financial Mortgage Corp. - To relocate mortgage broker's office from 1735 Oakland Road, Reisterstown, MD to 9921 Reisterstown Road, Owings Mills, MD

BAN20030481 The Business Bank - To open a branch at 133 Maple Avenue, Unit 100, Vienna, VA

BAN20030482 Infinity Funding Group, Inc. - To relocate mortgage broker's office from 5411 Patterson Avenue, Suite 200, Richmond, VA to 9003 Quioccasin Road, Suite 100, Richmond, VA

BAN20030483 Sterling Mortgage Corporation - To relocate mortgage lender broker's office from 2148 Berkmar Drive, Charlottesville, VA to 2119 Berkmar Drive, Charlottesville, VA

BAN20030484 AEGIS Lending Corporation - To relocate mortgage lender broker's office from 65 Main Street, Dover, NH to 3 Front Street, Suite 321, Salmon Falls Lower Mill, Rollinsford, NH

BAN20030485 Pinnacle Financial Corporation d/b/a Tristar Lending Group (In Certain Offices) - To open a mortgage lender and broker's office at 7600 North 16th Street, Suite 202, Phoenix, AZ

BAN20030486 New Century Mortgage Corporation - To open a mortgage lender and broker's office at 4349 Easton Way, Suite 110, Columbus, OH

BAN20030487 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 3901 English Oak Circle, Lexington, KY

BAN20030488 Aames Funding Corporation d/b/a Aames Home Loan - To relocate mortgage lender broker's office from 8003 Franklin Farms Drive, Suite 102, Richmond, VA to 4805 Lake Brook Drive, Suite 130, Glen Allen, VA

BAN20030489 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 128 Merry Hill Drive, Raleigh, NC

BAN20030490 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1220 L Street, NW, Suite 100-179, Washington, DC

BAN20030491 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 3620 Dewing Drive, Raleigh, NC

BAN20030492 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 13917 Castle Boulevard, Suite 23, Silver Spring, MD

BAN20030493 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 14857 Bolton Road, Centreville, VA

BAN20030494 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 21406 Hunter Circle North, Taylor, MI

BAN20030495 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 5127 East Virginia Beach Boulevard, Norfolk, VA to 983 Ingleside Road, Suite 5, Norfolk, VA

BAN20030496 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 6801 Red Maple Court, Forestville, MD to 3724 12th Street NE, Washington, DC

BAN20030497 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 6495 New Hampshire Ave., Suite 101B, Takoma Park, MD to 6495 New Hampshire Ave., Suite 318, Hyattsville, MD

BAN20030498 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 5844 Wyndham Circle, Suite 101, Columbia, MD to 10390 Swift Stream Place, Suite 110, Columbia, MD

BAN20030499 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 11700 N 58th Street, Suite C, Temple Terrace, FL to 17815B Sailfish Drive, Lutz, FL

BAN20030500 American Home Mortgage Corp. d/b/a MortgageSelect - To open a mortgage lender and broker's office at 244 Main Street, Gaithersburg, MD

BAN20030501 Primary Residential Mortgage, Inc. - To open a mortgage lender and broker's office at 6925 Irongate Drive, Richmond, VA

BAN20030502 All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 309 Tramore Court, Sterling, VA

BAN20030503 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 1200 N. Jefferson Street, Suite C, Anaheim, CA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20030504	Edward D. Jones & Co., L.P. d/b/a EdwardJones - To open a mortgage broker's office at 3464 Lauderdale Drive, Richmond, VA
BAN20030505	Mortgage International, Inc. - For a mortgage broker's license
BAN20030506	DSW Lending, LLC - For a mortgage broker's license
BAN20030507	MNET Mortgage, Inc. (Used in VA by: Mortgage Network, Inc.) - For a mortgage lender's license
BAN20030508	Just Seconds, Inc. - For a mortgage broker's license
BAN20030509	Farbod Smith Zohouri - To acquire 25 percent or more of Znet Financial, LLC
BAN20030510	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 2401 Liberty Heights Avenue, Suite 1111, Baltimore, MD
BAN20030511	Westminster Mortgage Corporation - To relocate mortgage lender broker's office from 3103 Philmont Avenue, Huntingdon Valley, PA to 4800 Street Road, Trevose, PA
BAN20030512	Innovative Mortgage Corporation - To open a mortgage broker's office at 118 Leigh Street, Cameron, NC
BAN20030513	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 13 Main Street, Franklin, MA
BAN20030514	Sunset Mortgage Company L.P. - To open a mortgage lender and broker's office at 1064 Commodore Drive, Virginia Beach, VA
BAN20030515	All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 18313 El Dorado Way, Leesburg, VA
BAN20030516	All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 416 N. West Street, Ahoskie, NC
BAN20030517	All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 4701 Willard Avenue, Apt. 322, Chevy Chase, MD
BAN20030518	Chaihyung Na and Taesun Na d/b/a Gibson's Grocery - To open a check casher at 703 Hinton Avenue, Charlottesville, VA
BAN20030519	Fidelity Mortgage of Virginia Inc. (Used in VA by: Fidelity Mortgage Inc.) - For a mortgage lender and broker license
BAN20030520	First Bank - To open a branch at 5304 Main Street, Mt. Jackson, VA
BAN20030521	T&B Mortgage Corporation - For a mortgage lender and broker license
BAN20030522	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 445 Porterfield Highway, Southwest, Suite E, Abingdon, VA
BAN20030523	American Residential Funding, Inc. - To open a mortgage lender and broker's office at 314 Main Street, Clayton, NC
BAN20030524	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 102 SE 4th Street, Lee's Summit, MO
BAN20030525	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 213 Pinecrest Drive, Monroe, GA
BAN20030526	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 408 Appletree Drive, N.E., Leesburg, VA
BAN20030527	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1331 Park Road, NW, Washington, DC
BAN20030528	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1701 Palmetto Drive, Mitchellville, MD
BAN20030529	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1800 Diagonal Road, Suite 600, Alexandria, VA
BAN20030530	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 2700 Proctor Lane, Baltimore, MD
BAN20030531	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 3134 Barkley Drive, Fairfax, VA
BAN20030532	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 4003 Stowaway Lane, Portsmouth, VA
BAN20030533	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 6606 Woodstream Drive, Seabrook, MD
BAN20030534	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 9353 Rivercrest Road, Manassas, VA
BAN20030535	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 12148 Chesire Court, Bristow, VA
BAN20030536	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 13658 Hawthorne Boulevard, Suite 301, Hawthorne, CA
BAN20030537	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 2504 Hampton Meadows Lane, Cramerton, NC to 605 Gaston Avenue, Belmont, NC
BAN20030538	Consumer Education Services, Inc. - To open an additional debt counseling office at 3035 Boone Trail, Suite M, Fayetteville, NC
BAN20030539	Potomac Lending LLC - To open a mortgage broker's office at 43422 Turnberry Isle Court, Leesburg, VA
BAN20030540	Potomac Lending LLC - To open a mortgage broker's office at 20235 Catlett Place, Ashburn, VA
BAN20030541	First Choice Mortgage Inc. - To open a mortgage broker's office at 5201 Swifthill Lane, Sandston, VA
BAN20030542	First Choice Mortgage Inc. - To open a mortgage broker's office at 3706 Pinoak Road, Richmond, VA
BAN20030543	Atlantic Funding Corporation of VA (Used in Va by: Atlantic Funding Corporation) - To relocate mortgage broker's office from 26 US Highway 70 W, Suite B, Garner, NC to 1027 US Highway 70 West, Suite 109, Garner, NC
BAN20030544	American Cash Exchange Enterprise of Virginia, L.L.C. d/b/a 1st Choice Cash Advance - To open a payday lender's office at 234 East Main Street, Suite B, Marion, VA
BAN20030545	American Cash Exchange Enterprise of Virginia, L.L.C. d/b/a 1st Choice Cash Advance - To open a payday lender's office at 613 East Main Street, Abingdon, VA
BAN20030546	All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 3705 S.E. 165th Avenue, Vancouver, WA
BAN20030547	Potomac Bank of Virginia - To relocate main office from 133 Maple Avenue East, Vienna, VA to 414 Maple Avenue East, Vienna, VA
BAN20030548	UMS, Inc. d/b/a Urgent Money Service - To open a payday lender's office at 1801 Boulevard-Roanoke, Salem, VA
BAN20030549	SIRVA Mortgage, Inc. - To relocate mortgage lender's office from 2441 Warrenville Road, Suite 610, Lisle, IL to 700 Oakmont Lane, Westmont, IL
BAN20030550	American Residential Funding, Inc. - To open a mortgage lender and broker's office at 7940 Harford Road, Suite B, Baltimore, MD
BAN20030551	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 206 Desellum Avenue, Gaithersburg, MD
BAN20030552	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 5736 North Tryon St., Suite 203A, Charlotte, NC
BAN20030553	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 14802 N. Dale Mabry Hwy., 2nd Floor, Tampa, FL
BAN20030554	Centex Home Equity Company, LLC - To open a mortgage lender and broker's office at 4940 South Wendler, Suite 210, Tempe, AZ
BAN20030555	Norcapital Funding Corporation - For a mortgage broker's license
BAN20030556	Mortgage Sense, Inc. - For a mortgage broker's license
BAN20030557	Potomac Mortgage Capital, Inc. - For a mortgage broker's license
BAN20030558	Evergreen Services, Inc. - To open a check casher at 3335 Fall Hill Avenue, Fredericksburg, VA
BAN20030559	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 791 East Main Street, Wytheville, VA
BAN20030560	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 12480-B Warwick Boulevard, Newport News, VA
BAN20030561	Guardian Funding Inc. - To open a mortgage broker's office at 8035 H Snouffer School Road, Gaithersburg, MD

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20030562	First Savings Mortgage Corporation d/b/a Portfolio Funding Group - To relocate mortgage lender broker's office from 100 West Washington Street, Middleburg, VA to 105 West Washington Street, Suite 2, Middleburg, VA
BAN20030563	First Savings Mortgage Corporation d/b/a Portfolio Funding Group - To relocate mortgage lender broker's office from 6862 Elm Street, Suite 210, McLean, VA to 6861 Elm Street, Suite 110, McLean, VA
BAN20030564	Mountain Valley Mortgage Corporation - For a mortgage broker's license
BAN20030565	Quality Mortgage and Financial Services Corporation - For a mortgage broker's license
BAN20030566	Alta Financial Corporation - For additional mortgage authority
BAN20030567	Jefferson Mortgage Group, Ltd. - For a mortgage lender's license
BAN20030568	Kim C. Davis - For a payday lender license
BAN20030569	Ameripath Mortgage Corporation - For a mortgage lender and broker license
BAN20030570	Towne Bank - To relocate office from 4216 Virginia Beach Boulevard, Virginia Beach, VA to 297 Constitution Drive, Virginia Beach, VA
BAN20030571	Rockingham Heritage Bank - To open a branch at 309 North Main Street, Bridgewater, VA
BAN20030572	BB&T Corporation - To acquire First Virginia Banks, Inc., Falls Church, VA
BAN20030573	All Fund, Inc. - d/b/a All Fund Mortgage - To relocate mortgage lender broker's office from 6005 West Grove Circle, Gibsonia, PA to 604 Fryar Place, Chesapeake, VA
BAN20030574	World Lending Group, Inc. - To open a mortgage lender and broker's office at 7777 Leesburg Pike, Suite 206S, Falls Church, VA
BAN20030575	American Residential Funding, Inc. - To open a mortgage lender and broker's office at 545 2nd Street, Suite 1, Encinitas, CA
BAN20030576	Primerica Financial Services Home Mortgages, Inc. - To open a mortgage broker's office at 9400 Livingston Road, Suite 110, Fort Washington, MD
BAN20030577	HomeAmerican Mortgage Corporation - To open a mortgage lender and broker's office at 7595 Technology Way, Suite 120, Denver, CO
BAN20030578	Quicken Loans Inc. - To open a mortgage lender's office at 4208 Normandy Court, Royal Oak, MI
BAN20030579	Chesapeake 1st Mortgage Corporation (Used in VA by: Chesapeake Mortgage Corporation) - To open a mortgage broker's office at 2140 Lakeside Drive, Suite B 002, Lynchburg, VA
BAN20030580	Greenwood Properties, LLC d/b/a Greenwood Lending - To open a mortgage broker's office at One Boars Head Place, Charlottesville, VA
BAN20030581	H&R Block Mortgage Corporation - To open a mortgage lender and broker's office at 3976 Powell Road, Powell, OH
BAN20030582	Independent Realty Capital Corporation - To open a mortgage lender and broker's office at 920 West Broad Street, Falls Church, VA
BAN20030583	Superior Home Mortgage Corporation (Used in VA by: Superior Mortgage Corporation) - To relocate mortgage lender broker's office from 10268 Baltimore National Pike, Ellicott City, MD to 9810 Patuxent Woods Drive, Suite A, Columbia, MD
BAN20030584	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1655 Tappahannock Boulevard, Tappahannock, VA
BAN20030585	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 4481 Oakdale Crescent Court, Apt. 618, Fairfax, VA
BAN20030586	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 330 Jasper Drive, Beckley, WV to 111 Morningstar Lane, Beckley, WV
BAN20030587	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 1172 Matteson Lake, Bronson, MI to 850 S. Werners Landing, Bronson, MI
BAN20030588	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 501 Westview Road, Keswick, VA to 1110 Rose Hill Drive, Suite 101, Charlottesville, VA
BAN20030589	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 2928 Meadowood Drive, Jackson, MI to 1915 Springport Road, Suite 5, Jackson, MI
BAN20030590	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 9732 Shenandoah Path, Catlett, VA to 4225 Lawnvale Drive, Gainesville, VA
BAN20030591	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 1007 Fountain Street, Ann Arbor, MI to 5593 Red Bud Court, Ypsilanti, MI
BAN20030592	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 18 Barrymore Court, Hampton, VA to 12388 Warwick Boulevard, Newport News, VA
BAN20030593	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 29212 Fairfax, Southfield, MI to 18452 Hartwell, Detroit, MI
BAN20030594	J.K. Enterprizes, Inc. d/b/a E-Z Stop and Go Food Mart - To open a check casher at 7600 Lee Highway, Falls Church, VA
BAN20030595	CashNet, Inc. d/b/a Cash Advance Centers - To conduct payday lending business where a money transmission business will also be conducted
BAN20030596	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 12717 Inkster Road, Livonia, MI to 36500 Ford Road, Suite 356, Westland, MI
BAN20030597	Mortgagebot LLC - To open a mortgage broker's office at 6531 N. Sidney Place, Milwaukee, WI
BAN20030598	Money Tree Funding, L.L.C. - To open a mortgage broker's office at 342 Hungerford Drive, Rockville, MD
BAN20030599	Freedom Plus Mortgage Corporation - To relocate mortgage broker's office from 28362 Vincent Moraga, Suite F, Temecula, CA to 43053 Margarita Road, Suite B108, Temecula, CA
BAN20030600	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 1880 Howard Avenue, Suite 101, Vienna, VA
BAN20030601	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 522A Arbor Hill Road, Kernersville, NC
BAN20030602	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 139 Monroe Street, Petersburg, VA
BAN20030603	Deidre A. Connor - To acquire 25 percent or more of Carnegie Financial Group, Incorporated
BAN20030604	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 4641 Montgomery Avenue, Bethesda, MD
BAN20030605	First Home Mortgage Corporation - To open a mortgage lender and broker's office at 10440 Little Patuxent Parkway, Columbia, MD
BAN20030606	American Residential Funding, Inc. - To open a mortgage lender and broker's office at 2805 East Cammelback Road, Suite 200, Phoenix, AZ
BAN20030607	Main Street Mortgage, LLC - To relocate mortgage broker's office from 209 B North Rowland Street, Richmond, VA to 2119 W. Main Street, Richmond, VA
BAN20030608	Roy D. Hansen Mortgage Company, Inc. - To open a mortgage broker's office at 6504 Virginia Hills Avenue, Alexandria, VA
BAN20030609	Primary Residential Mortgage, Inc. - To relocate mortgage lender broker's office from 491 McLaws Circle, Suite 3B, Williamsburg, VA to 491 McLaws Circle, Suite 3A, Williamsburg, VA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20030610 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 312 Cedar Lakes Drive, Suite 202, Chesapeake, VA
 BAN20030611 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 2104 Commissary Circle, Odenton, MD
 BAN20030612 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 8006 Sandburg Court, Vienna, VA
 BAN20030613 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 10506 Taryn Court, Mitchellville, MD
 BAN20030614 Monday Mortgage Corporation - For a mortgage broker's license
 BAN20030615 U.B. Incorporated d/b/a Super Mart - To open a check casher at 7032 Commerce Street, Springfield, VA
 BAN20030616 Michael O. Crawford d/b/a Michael O. Crawford Financial Resources - To relocate mortgage broker's office from 957 Swan Lane, Ruther Glen, VA to 17484 Center Drive, Suite 2B, Ruther Glen, VA
 BAN20030617 Sunset Mortgage Company L.P. - To open a mortgage lender and broker's office at 505 Arnett Boulevard, Danville, VA
 BAN20030618 QC Financial Services, Inc. d/b/a Quik Cash - To open a payday lender's office at 5977 E. Virginia Beach Boulevard, Norfolk, VA
 BAN20030619 CTX Mortgage Company, LLC. - To open a mortgage lender and broker's office at 385 Douglas Avenue, Suite 3000, Altamonte Spring, FL
 BAN20030620 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 405 Oak Mears Crescent, Suite 1, Virginia Beach, VA
 BAN20030621 Capital Financial Inc. - For a mortgage lender and broker license
 BAN20030622 Gulfport Financial, L.L.C. d/b/a Virginia Cash Advance - To relocate payday lender's office from 6916 N. Military Highway, Norfolk, VA to 6914 N. Military Highway, Norfolk, VA
 BAN20030623 MortgageStar, Inc. - To open a mortgage lender and broker's office at 623 Genessee Street, Annapolis, MD
 BAN20030624 Pinnacle Mortgage Corporation of Maryland (Used in VA by: Pinnacle Mortgage Corporation) - To relocate mortgage broker's office from 10409 47th Avenue, Beltsville, MD to 12510 Prosperity Drive, Suite 275, Silver Spring, MD
 BAN20030625 Mason Dixon Funding, Inc. - To open a mortgage lender and broker's office at 14225 Sullyfield Circle, Suite D, Chantilly, VA
 BAN20030626 Jams-01, Inc. d/b/a Home Savings & Trust Mortgage - To open a mortgage lender and broker's office at 15885 Kings Highway, Montross, VA
 BAN20030627 Accredited Home Lenders, Inc. - To open a mortgage lender's office at 3440 Preston Ridge Road, Suite 325, Alpharetta, GA
 BAN20030628 Superior Home Mortgage Corporation (Used in VA by: Superior Mortgage Corporation) - To relocate mortgage lender broker's office from 361 Midland Avenue, Saddlebrook, NJ to 201 Route 17 North, Rutherford, NJ
 BAN20030629 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 4608 Cedar Avenue, Suite 114, Wilmington, NC
 BAN20030630 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 2915 L.B.J. Freeway, Suite 254, Dallas, TX
 BAN20030631 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 4407 San Carlos Drive, Fairfax, VA
 BAN20030632 CUNA Mutual Mortgage Corporation - To relocate mortgage lender's office from 9500 Cleveland Avenue, Rancho Cucamonga, CA to 9500 Cleveland Avenue, Suite 210, Rancho Cucamonga, CA
 BAN20030633 Global Mortgage Group, Inc. - For a mortgage broker's license
 BAN20030634 All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 3755 E. Desert Inn Road, Las Vegas, NV
 BAN20030635 All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 11505 Amherst Avenue, Suite 203, Wheaton, MD
 BAN20030636 Fidelity First Mortgage, Inc. - To open a mortgage broker's office at 2801 Boulevard, Suite E, Colonial Heights, VA
 BAN20030637 PowerPlus Mortgage, Inc. - To open a mortgage broker's office at 13921 Park Center Road, Suite 200, Herndon, VA
 BAN20030638 Arlington Capital Mortgage Corporation - To open a mortgage lender's office at 33 Witherspoon Street, Princeton, NJ
 BAN20030639 Arlington Capital Mortgage Corporation - To open a mortgage lender's office at 771 E. Lancaster Avenue, Villanova, PA
 BAN20030640 Trustworthy Mortgage Corporation - To open a mortgage broker's office at 15800 Crabbs Branch Way, Suite 260, Rockville, MD
 BAN20030641 Beacon Credit Union, Incorporated - To open a credit union service office at Amelon Plaza at the intersection of State Route 130 and US Route 29 North, Madison Heights, VA
 BAN20030642 BancFinancial Mortgage Inc. - For a mortgage broker's license
 BAN20030643 Equity One Consumer Loan Company, Inc. - To open a consumer finance office at 305 N and portion of 305-M E Market St., Toll Shopping Center, Route 7, Leesburg, VA
 BAN20030644 Equity One Consumer Loan Company, Inc. - To conduct consumer finance business where mortgage lending will also be conducted
 BAN20030645 Equity One Consumer Loan Company, Inc. - To conduct consumer finance business where property insurance business will also be conducted
 BAN20030646 Equity One Consumer Loan Company, Inc. - To conduct consumer finance business where sales finance business will also be conducted
 BAN20030647 The Infinity Funding Group, Inc. - For a mortgage broker's license
 BAN20030648 Flex Funding, LLC - For a mortgage broker's license
 BAN20030649 Independent Realty Capital Corporation - To open a mortgage lender and broker's office at 1881 Campus Common Drive, Suite 204, Reston, VA
 BAN20030650 Primary Residential Mortgage, Inc. - To open a mortgage lender and broker's office at 745 Fort Street Mall, Suite 200, Topa Financial Center, West Tower, Honolulu, HI
 BAN20030651 Nations Lending, L.L.C. - To open a mortgage broker's office at 1420 Spring Hill Road, Suite 600, McLean, VA
 BAN20030652 Check into Cash of Virginia, LLC d/b/a Check into Cash - To open a payday lender's office at 8702 Richmond Highway, Alexandria, VA
 BAN20030653 Genesis Mortgage Company LLC - To relocate mortgage broker's office from 5300 Glenside Drive, Suite 105, Richmond, VA to 6010 West Broad Street, Suite 201, Richmond, VA
 BAN20030654 All Fund, Inc. d/b/a All Fund Mortgage - To relocate mortgage lender broker's office from 3164 E. La Palma Avenue, Suite 0, Anaheim, CA to 3920 E. Coronado Street, Suite 101, Anaheim, CA
 BAN20030655 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 7405 Hogarth Court, Beltsville, MD
 BAN20030656 MortgageIT, Inc. - To open a mortgage lender and broker's office at 300 E. Business Way, Cincinnati, OH
 BAN20030657 MortgageIT, Inc. - To open a mortgage lender and broker's office at 2375 E. Camelback Road, Phoenix, AZ
 BAN20030658 Valley Team Mortgage, Inc. - To open a mortgage broker's office at 490 Comstock Drive, Richmond, VA
 BAN20030659 Primary Residential Mortgage, Inc. - To open a mortgage lender and broker's office at 7703 Newmarket Drive, Bethesda, MD
 BAN20030660 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 12529 Bailey Drive, NE, Lowell, MI
 BAN20030661 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 105 N. Virginia Avenue, Suite 307, Falls Church, VA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20030662 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 916 S. Ivey Lane, Orlando, FL
 BAN20030663 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 10400 Swift Stream Place, Suite 407, Columbia, MD
 BAN20030664 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 125 Southlake Court, Alpharetta, GA
 BAN20030665 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 779 Barley Lane, Winchester, VA
 BAN20030666 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 2931 Hunters Glen Way, Fairfax, VA
 BAN20030667 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 4402 Lord Loudon Court, Upper Marlboro, MD
 BAN20030668 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 14061 Lotus Lane, Suite 1022, Centreville, VA
 BAN20030669 Eastern Residential Mortgage, LLC - For a mortgage broker's license
 BAN20030670 Axis Point LLC - For a mortgage lender and broker license
 BAN20030671 Wal-Mart Stores, Inc. - To open a check casher at 1941 Neeley Road, Big Stone Gap, VA
 BAN20030672 Christian Financial Ministries, Inc. - To open a debt counseling office
 BAN20030673 Tan D. Nguyen d/b/a TXT Mortgage - For a mortgage broker's license
 BAN20030674 First Commonwealth Mortgage Corp. - For a mortgage broker's license
 BAN20030675 Primerica Financial Services Home Mortgages, Inc. - To relocate mortgage broker's office from 10 North Hill Drive, Suite 1-2B, Warrenton, VA to 98 Alexandria Pike, Suite 24, Warrenton, VA
 BAN20030676 American Mortgage Solutions, LLC - To open a mortgage lender and broker's office at 1452 William Street, Baltimore, MD
 BAN20030677 P & P Financial Group, Inc. - To relocate mortgage broker's office from 13312 Sturno Drive, Clifton, VA to 5900 Centreville Road, Suite 308, Centreville, VA
 BAN20030678 Candant Mortgage Corporation d/b/a Instamortgage.com - To open a mortgage lender and broker's office at 4802 Deer Lake Drive, East, Jacksonville, FL
 BAN20030679 Stephanie Steinkraus - To acquire 25 percent or more of Center Street Mortgage, LLC
 BAN20030680 NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 3131 Turtle Creek Blvd., Suite 222, Dallas, TX to 3131 Turtle Creek Blvd., Suite 400, Dallas, TX
 BAN20030681 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 103 Periwinkle Court, Greenbelt, MD
 BAN20030682 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 312 Cedar Lakes Drive, Suite 202, Chesapeake, VA
 BAN20030683 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 7478 Katesbridge Court, Dublin, OH
 BAN20030684 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 10708 Chancellorsville Drive, Spotsylvania, VA
 BAN20030685 American General Financial Services (DE), Inc. (Used in VA by: American General Financial Services, Inc.) - To relocate mortgage lender broker's office from 1272 Concord Avenue, Richmond, VA to 5664 Brook Road, Richmond, VA
 BAN20030686 Loan Express, Inc. - To open a mortgage broker's office at 508 Three Oaks Drive, Chesapeake, VA
 BAN20030687 James River Mortgage, LLC - To relocate mortgage broker's office from 1708 Almond Creek Place, Richmond, VA to 1517 Huguenot Road, Suite 201, Midlothian, VA
 BAN20030688 Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 575 West Monroe Street, Wytheville, VA
 BAN20030689 Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 6341 Jahnke Road, Richmond, VA
 BAN20030690 Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 327 Cavalier Square, Hopewell, VA
 BAN20030691 Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 1082 Temple Avenue, Colonial Heights, VA
 BAN20030692 American Nationwide Mortgage Company, Inc. - To open a mortgage lender and broker's office at 8148A Electric Avenue, Vienna, VA
 BAN20030693 Jerbec Enterprises, Inc. d/b/a Express Money Service - To open a payday lender's office at 3325 Brambleton Avenue, Roanoke, VA
 BAN20030694 Greystone Financial Services, Inc. - For a mortgage broker's license
 BAN20030695 Kaah Express, F.S., Inc. - For a money order license
 BAN20030696 Bonview Mortgage Corporation - For a mortgage broker's license
 BAN20030697 American General Financial Services of America, Inc. - To relocate consumer finance office from 1272 Concord Avenue, Richmond, VA to 5664 Brook Road, Henrico County, VA
 BAN20030698 Buckingham Mortgage Corporation - For additional mortgage authority
 BAN20030699 Vipul Inc. d/b/a Vipul Checks Cashed - To open a check casher at 3085 Polansky Boulevard, Woodbridge, VA
 BAN20030700 Adkins Associates, Inc. d/b/a Your Store - To open a check casher at 740 Adkins Road, Richmond, VA
 BAN20030701 L&S Mortgage Group, Inc. - For a mortgage broker's license
 BAN20030702 First Fidelity Mortgage, Inc. - To relocate mortgage lender broker's office from 3959 Electric Road, Suite 190, Roanoke, VA to 3959 Electric Road, Suite 330, Roanoke, VA
 BAN20030703 Buckeye Check Cashing of Virginia, Inc. d/b/a Check\$mart - To conduct payday lending business where a lottery sales business will also be conducted
 BAN20030704 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 22 East Street, Suite 105, Pittston, PA
 BAN20030705 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 2661-C Commercial Street, S.E., Salem, OR
 BAN20030706 America's Mortgage Broker, L.L.C. d/b/a Affordable Home Funding - To relocate mortgage lender broker's office from 4833 Eastview Drive, Independence, OH to 10950 Pearl Road, Suite A1, Strongsville, OH
 BAN20030707 Goran Marich - To acquire 25 percent or more of Equity Consultants, LLC
 BAN20030708 Phil Romero - To acquire 25 percent or more of Loan Link Financial Services, Inc.
 BAN20030709 Michael Scott Prior d/b/a Tailwind Mortgage - For a mortgage broker's license
 BAN20030710 Availent Mortgage Inc. - For a mortgage lender and broker license
 BAN20030711 New Logic Mortgage, LLC - For a mortgage broker's license
 BAN20030712 MortgageEase.Com, LLC - For a mortgage broker's license
 BAN20030713 Primary Residential Mortgage, Inc. - To open a mortgage lender and broker's office at 6001 Brick Court, Suite 201, Winter Park, FL
 BAN20030714 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 315 Highway 82 East, Suite 30, Indianola, MS
 BAN20030715 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 2656 Fallow Hill Lane, Jamison, PA
 BAN20030716 LoanCity.Com, Inc. (Used in VA by: LoanCity.Com) - To open a mortgage lender's office at 2310 Route 34, Suite 1A, Manassquan, NJ
 BAN20030717 Southern Trust Mortgage, LLC d/b/a Middleburg Mortgage (2 Norfolk Offices) - To open a mortgage lender and broker's office at 106 Catoctin Circle, SE, Leesburg, VA
 BAN20030718 Capital Finance Corp. - To relocate mortgage broker's office from 810 Gleneagles Court, Suite 110, Towson, MD to 810 Gleneagles Court, Suite 302, Towson, MD
 BAN20030719 Bancstar Mortgage LLC - For a mortgage broker's license
 BAN20030720 First Ohio Banc & Lending, Inc. - For a mortgage broker's license
 BAN20030721 Coast Mortgage Corporation - For a mortgage lender and broker license

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20030722	Citizens Community Bank - To open a branch at 581 Madison Street, Boynton, VA
BAN20030723	Southern Community Bank & Trust - To open a branch at 4221 West Hundred Road, Chester, VA
BAN20030724	Allied Home Mortgage Capital Corporation - To relocate mortgage lender broker's office from 9601 Winchester Avenue, Bunker Hill, WV to 1107 Winchester Ave, Martinsburg, WV
BAN20030725	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 13007 Taxi Drive, Prince William, VA
BAN20030726	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 35 Monish Drive, Palmyra, VA
BAN20030727	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 71 Grace Street, Cranston, MA
BAN20030728	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 20378 Rupert Island Place, Potomac Falls, VA to 8127 Wilshire Lakes Boulevard, Naples, FL
BAN20030729	Revox Mortgage Services LLC - To open a mortgage lender and broker's office at 59 Wilton Road, 3rd. Floor, Westport, CT
BAN20030730	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 1150 South Street, Noblesville, IN
BAN20030731	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 28202 Cabot Road, Suite 255B, Laguna Niguel, CA to 28202 Cabot Road, Suite 300, Laguna Niguel, CA
BAN20030732	The Bank of Marion - To open a branch at 744 Beaver Dam Avenue, Suite A, Damascus, VA
BAN20030733	Lifetime Financial Services, LLC - For a mortgage broker's license
BAN20030734	Chesapeake Commercial Associates, Inc. - To relocate mortgage broker's office from 305 Harrison Street, Leesburg, VA to 107 West Federal Street, Suite 5, Middleburg, VA
BAN20030735	Community Mortgage Services Corporation - To relocate mortgage broker's office from 4905 Radford Avenue, Suite 206, Richmond, VA to The Jefferson Bldg., 8100 Three Chopt Road, Suite 220, Richmond, VA
BAN20030736	Primary Residential Mortgage, Inc. - To open a mortgage lender and broker's office at 1414 Key Highway, Suite H, Baltimore, MD
BAN20030737	American Residential Funding, Inc. - To open a mortgage lender and broker's office at 540 West Golden Circle, Suite 113, Santa Ana, CA
BAN20030738	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 100 West Road, Towson, MD to 100 West Road, Suite 333, Towson, MD
BAN20030739	Eagle Financial of Maryland, Inc. d/b/a Eagle Check Cashing - To conduct payday lending business where a lottery sales business will also be conducted
BAN20030740	Eagle Financial of Maryland, Inc. d/b/a Eagle Check Cashing - To conduct payday lending business where a prepaid phone sales business will also be conducted
BAN20030741	Eagle Financial of Maryland, Inc. d/b/a Eagle Check Cashing - To conduct payday lending business where a prepaid cell phone sales business will also be conducted
BAN20030742	Branch Banking and Trust Company of Virginia - To relocate office from 744 N Lee Highway, Rockbridge County, VA to corner of Hunter Hill Road and Lee Highway, Rockbridge County, VA
BAN20030743	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 1425 East Lincoln Avenue, Suite L, Anaheim, CA to 1240 S. State College Blvd., Suite 185, Anaheim, CA
BAN20030744	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 1101 Stewart Avenue, Suite 303, Garden City, NY
BAN20030745	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 201 Matt Long Road, Donalds, SC
BAN20030746	Allied Home Mortgage Capital Corporation - To relocate mortgage lender broker's office from 105 South Union Street, Suite 600, Danville, VA to 413 Mt. Cross Road, Suite 107, Danville, VA
BAN20030747	Allied Home Mortgage Capital Corporation - To open a mortgage lender and broker's office at 2608 Eastland, Suite 106, Greenville, TX
BAN20030748	Option One Mortgage Corporation - To open a mortgage lender and broker's office at 6591 Irvine Center Drive, Irvine, CA
BAN20030749	Benjamin Financial Consulting Firm, Inc. - For a mortgage broker's license
BAN20030750	Premier Mortgage Group, Inc - For a mortgage broker's license
BAN20030751	Agency Mortgage Corporation - For a mortgage lender's license
BAN20030752	Covenant Mortgage Corporation - To open a mortgage broker's office at 9942 Kentucky Springs Road, Mineral, VA
BAN20030753	Patriot First Mortgage, LLC - For a mortgage broker's license
BAN20030754	AAXA Discount Mortgage, Inc. - For a mortgage broker's license
BAN20030755	MortgageStar, Inc. - To open a mortgage lender and broker's office at 4860 Cox Road, Suite 200, Glen Allen, VA
BAN20030756	MortgageStar, Inc. - To open a mortgage lender and broker's office at 320C Charles H. Dimmock Parkway, Suite 135, Colonial Heights, VA
BAN20030757	River City Mortgage, L.L.C. - To open a mortgage broker's office at Rockwood Office Park, 9507 Hull Street Road, Suite G-1, Richmond, VA
BAN20030758	Linda M. Muse - To be an exclusive agent for Primerica Financial Services Home Mortgages, Inc.
BAN20030759	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 11410 NW 46 Place, Sunrise, FL to 6814 NW 45 Place, Sunrise, FL
BAN20030760	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 8801 Falls Road, Potomac, MD
BAN20030761	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 267 B Main Street, Nyack, NY to 570 Taxter Road, Elmsford, NY
BAN20030762	Justice Financial Corp. - To relocate mortgage broker's office from 8945 Sweetbriar Street, Manassas, VA to 9028 Prince William Street, Manassas, VA
BAN20030763	All Financial Services, Inc. - For a mortgage broker's license
BAN20030764	Semper Mortgage LLC - For a mortgage broker's license
BAN20030765	Royal Mortgage Bankers, Inc. - To relocate mortgage broker's office from 625 Fort Raleigh Drive, Virginia Beach, VA to 1055 Laskin Road, Suite 301, Virginia Beach, VA
BAN20030766	Mary O. Hughes - To acquire 25 percent or more of Valley Broker Services, Inc.
BAN20030767	Gateway Bank & Trust Co. - To open a branch at 713 Independence Boulevard, Virginia Beach, VA
BAN20030768	Gateway Bank & Trust Co. - To open a branch at 3001 Shore Drive, Virginia Beach, VA
BAN20030769	Superior Lending, LLC - For a mortgage broker's license
BAN20030770	Brightway Mortgage Finance Inc. - For a mortgage broker's license
BAN20030771	Veterans First Mortgage Services, Inc. - For a mortgage lender and broker license
BAN20030772	DAVLAW Enterprises, Inc. d/b/a Union First Mortgage - For a mortgage broker's license
BAN20030773	First Magnus Financial Corporation d/b/a Charter Funding - For additional mortgage authority

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20030774 Lois A. Maggio - To acquire 25 percent or more of FSC Corporation
 BAN20030775 Amerigroup Mortgage Corporation (Used in VA by: Mortgage Investors Corporation) - To open a mortgage lender's office at 5960 Central Avenue, St. Petersburg, FL

BAN20030776 Challenge Financial Investors Corp. - To open a mortgage broker's office at 27774 Flora Spring Terrace, Ashburn, VA
 BAN20030777 Brooke Enterprises, Inc. d/b/a Cash Today - To relocate payday lender's office from 121 North Johnson Drive, Pennington Gap, VA to 1546 W. Morgan Avenue, Westgate MiniMall, Pennington Gap, VA

BAN20030778 U.S.A. Financial Services, Inc. d/b/a Progressive Mortgage - To relocate mortgage lender broker's office from 14100 Sullyfield Circle, Suite 500, Chantilly, VA to 10089 Lee Highway, Fairfax, VA
 BAN20030779 IMA, Inc. d/b/a International Mortgage Association - To relocate mortgage broker's office from 1800 Diagonal Road, Suite 600, Alexandria, VA to 7380 Sand Lake Road, Suite 500, Orlando, FL

BAN20030780 Primerica Financial Services Home Mortgages, Inc. - To relocate mortgage broker's office from 3601 W. Hundred Road, Chester, VA to 5309 Commonwealth Centre Parkway, Suite 102, Midlothian, VA

BAN20030781 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 320 E. Virginia Suite B, Evansville, IN
 BAN20030782 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 13810 Mustang Lane, North Potomac, MD
 BAN20030783 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 1909 King Mill Pike, Bristol, VA to 111 Timberbrook Drive, Bristol, VA

BAN20030784 First Magnus Financial Corporation d/b/a Charter Funding - To open a mortgage lender's office at 1819 Thames Street, Baltimore, MD
 BAN20030785 1st Liberty Mortgage Company - To open a mortgage broker's office at 4201 North Damen Avenue, Chicago, IL
 BAN20030786 Community Bank of Northern Virginia - To open a branch at 13986 Metrotech Drive, Chantilly, VA
 BAN20030787 First Bank of Virginia (Used in VA by: First Bank) - To relocate office from 150 West Main Street, Wytheville, VA to Corner of Cardinal St. and Virginia Ave, Wytheville, VA

BAN20030788 First-Citizens Bank & Trust Company - To open a branch at NW quadrant of the intersection of Broad St. and Broadview Lane, Henrico County, VA

BAN20030789 Tidewater Telephone Employees Credit Union, Incorporated - To relocate credit union office from 1128 Big Bethel Road, Hampton, VA to 2130 Cunningham Drive, Hampton, VA

BAN20030790 Community Bank of Northern Virginia - To open a branch at 11932 Democracy Boulevard, Reston, VA
 BAN20030791 Consumer First Mortgage Corporation - For a mortgage broker's license
 BAN20030792 DaimlerChrysler Services North America LLC - To open a consumer finance office
 BAN20030793 Dickinson Mortgage and Associates, Inc. - For a mortgage broker's license
 BAN20030794 Main Street Financial Services, Inc. d/b/a Main Street Mortgage Services - For a mortgage broker's license
 BAN20030795 Euclid Mortgage Services, LLC - For a mortgage broker's license
 BAN20030796 International Mortgage Corporation - To open a mortgage lender and broker's office at 806 East Main Street, Suites 205, 206 and 207, Bedford, VA

BAN20030797 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 3995 Cottage Hill Road, #A, Mobile, AL
 BAN20030798 NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 2700 Newport Boulevard, Suite 164, Newport Beach, CA to 2600 Newport Boulevard, Suite 100, Newport Beach, CA

BAN20030799 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 230 Northland Boulevard, Suite 107, Cincinnati, OH
 BAN20030800 PDQ Cash Advance, Inc. - To open a payday lender's office at 346 U.S. Highway 23, North, Suite III, Weber City, VA
 BAN20030801 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1936 Harper's Ferry Drive, Virginia Beach, VA
 BAN20030802 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 220 Kilgore Court, Joppa, MD
 BAN20030803 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 6802 Hartwood Lane, Centreville, VA
 BAN20030804 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 14380 Seabury Court, Woodbridge, VA
 BAN20030805 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 17294 Fairbourne Drive, Jeffersonton, VA
 BAN20030806 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 20 Irwin Street, Portsmouth, VA to 2234 Angler Lane, Chesapeake, VA

BAN20030807 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 519 Rossmore Road, Richmond, VA to 8229 Chamberlayne Road, Richmond, VA

BAN20030808 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 5000 Terrell Street, Annandale, VA to 8649 Valley Drive, Waldorf, MD

BAN20030809 F. D. B. Mortgage, Inc. - To relocate mortgage broker's office from 111 Warren Road, Suite 113, Hunt Valley, MD to 10610 Beaver Dam Road, Hunt Valley, MD

BAN20030810 Woori America Bank - To open a branch at 4231 Markham Street, Units F and G, Annandale, VA
 BAN20030811 American Eagle Mortgage Corporation - For a mortgage broker's license
 BAN20030812 Jerbec Enterprises, Inc. d/b/a Express Money Service - To relocate payday lender's office from 3158 Halifax Road, South Boston, VA to 3152 Halifax Road, South Boston, VA

BAN20030813 Northern Star Credit Union, Incorporated - To open a credit union service office at 5624 Portsmouth Boulevard, Portsmouth, VA
 BAN20030814 Abacus Funding, Inc. - For a mortgage broker's license
 BAN20030815 MAPCO Express, Inc. - For a money order license
 BAN20030816 Liberty One Capital, Inc. - For a mortgage broker's license
 BAN20030817 Continental Mortgage Corp. - For additional mortgage authority
 BAN20030818 UMS, Inc. d/b/a Urgent Money Service - To open a payday lender's office at 6601 Greensboro Road, Ridgeway, VA
 BAN20030819 UMS, Inc. d/b/a Urgent Money Service - To open a payday lender's office at 509 Hardy Road, Vinton, VA
 BAN20030820 UMS, Inc. d/b/a Urgent Money Service - To open a payday lender's office at 3000 Old Forest Road, Unit D, Lynchburg, VA
 BAN20030821 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 2152 Dupont Drive, Suite 101, Irvine, CA
 BAN20030822 F&M Mortgage Group, L.L.C. - To relocate mortgage broker's office from 11000 Larkmeade Lane, Suite 100, Potomac, MD to 13211 Executive Park Terrace, Germantown, MD

BAN20030823 Mortgage and Equity Funding Corporation - To open a mortgage lender and broker's office at 12602 Lake Ridge Drive, Woodbridge, VA

BAN20030824 Encore Credit Corp. - To relocate mortgage lender broker's office from 4860 Cox Road, Suite 200, Glen Allen, VA to 10900 Nuckols Road, Suite 205, Glen Allen, VA

BAN20030825 America's Mortgage Broker, L.L.C. d/b/a Affordable Home Funding - To relocate mortgage lender broker's office from 2505 Evelyn Byrd Avenue, Suite B, Harrisonburg, VA to 265 E. Market Street, Harrisonburg, VA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20030826	Mortgage America Bankers, LLC - To relocate mortgage broker's office from 8555 16th Street, Silver Spring, MD to 2110 Darcy Green Place, Silver Spring, MD
BAN20030827	Mortgage America Bankers, LLC - To relocate mortgage broker's office from 5625 Allentown Road, Suite 104, Camp Springs, MD to 3006 St. Clair Drive, Marlow Heights, MD
BAN20030828	Northern Star Credit Union, Incorporated - To open a credit union service office at Elmhurst Square S. C., Outparcel5, 600 Block of Portsmouth Boulevard, Portsmouth, VA
BAN20030829	New Millennium Funding, Inc. - For a mortgage broker's license
BAN20030830	Hometown Mortgage Corp. - To open a mortgage broker's office at 522 South Independence Blvd., Suite 100, Virginia Beach, VA
BAN20030831	Archway Mortgage Services, Inc. - To open a mortgage broker's office at 510-A Summit Avenue, Greensboro, NC
BAN20030832	Challenge Financial Investors Corp. d/b/a Challenge Mortgage - To relocate mortgage lender broker's office from One Columbus Center, Suite 612B, Virginia Beach, VA to 1206 Laskin Road, Suite 201, Virginia Beach, VA
BAN20030833	First Wholesale Mortgage Corporation - To relocate mortgage broker's office from 6928 Knoll Crest Way, Pendleton, IN to 14312 Chapelwood Lane, Fishers, IN
BAN20030834	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 4300 North Miller Road, Suite 243, Scottsdale, AZ to 4455 E. Camelback Road, Suite C-140, Phoenix, AZ
BAN20030835	Capital Mortgage Finance Corp. - To open a mortgage broker's office at 3314 Healy Drive, Suite 107, Winston-Salem, NC
BAN20030836	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 8384 Six Forks Road, Suite 101, Raleigh, NC
BAN20030837	Financial Exchange Company of Virginia, Inc. d/b/a Money Mart - To conduct payday lending business where a retail sales business will also be conducted
BAN20030838	Financial Exchange Company of Virginia, Inc. d/b/a Money Mart - To conduct payday lending business where a money transmission business will also be conducted
BAN20030839	360 Enterprises, Inc. - For a mortgage broker's license
BAN20030840	Mortgagesouth LLC - For a mortgage broker's license
BAN20030841	DL King, LLC d/b/a King's Ca\$h Advance\$ - For a payday lender license
BAN20030842	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1024 Palmetto Drive, Richmond, KY
BAN20030843	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 32 Mitchell Store Road, Youngsville, NC
BAN20030844	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 849 Main Avenue, Linthicum, MD
BAN20030845	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 7918 Jones Branch Drive, Suite 750, McLean, VA
BAN20030846	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 11493 Brundidge Terrace, Germantown, MD
BAN20030847	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 11675 Parsons Lane, Waldorf, MD
BAN20030848	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 312 Manning Lane, Hampton, VA to 308 Cedar Lakes Drive, Suite 103, Chesapeake, VA
BAN20030849	Liberty Mortgage Brokers, LLC - For a mortgage broker's license
BAN20030850	New Peoples Bank, Inc. - To open a branch at 2600 North John B. Dennis Highway, Kingsport, TN
BAN20030851	Home Consultants, Inc. d/b/a HCI Mortgage - To open a mortgage lender's office at 281 Independence Blvd., Suite 430, Virginia Beach, VA
BAN20030852	EZ Loans of Virginia, Inc. - To open a payday lender's office at 4376-B Lankford Highway, Exmore, VA
BAN20030853	First Mortgage Masters, Inc. - To relocate mortgage broker's office from 11094-A Lee Highway, Suite 103, Fairfax, VA to 4101 Chain Bridge Road, Suite 104, Fairfax, VA
BAN20030854	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 3000 Gulf to Bay Boulevard, Suite 205, Clearwater, FL
BAN20030855	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 3000 Bethesda Place, Suite 202, Winston-Salem, NC
BAN20030856	American Cash Center, Inc. (Used in VA by: B & L Management, Inc.) - To open a payday lender's office at 18396 Forest Road, Unit C, Forest, VA
BAN20030857	American Cash Center, Inc. (Used in VA by: B & L Management, Inc.) - To open a payday lender's office at 1205 Main Street, Unit B, Altavista, VA
BAN20030858	Yomeka Neshell Southerland d/b/a Cash 4 Checks - To open a check casher at 3311 Jefferson Avenue, Newport News, VA
BAN20030859	Fidelity Home Mortgage Corporation - To relocate mortgage lender's office from 108 West Timonium Road, Suite 202, Timonium, MD to 1012 North Point Road, Baltimore, MD
BAN20030860	Vertical Lend, Inc. /b/a Mortgage Warehouse - To open a mortgage broker's office at 4604 Hero Court, Matoaca, VA
BAN20030861	Vertical Lend, Inc. d/b/a Mortgage Warehouse - To open a mortgage broker's office at 1334 Vanasse Court, Hampton, VA
BAN20030862	Vertical Lend, Inc. d/b/a Mortgage Warehouse - To open a mortgage broker's office at 11829 Brentwood Arbor Court, Room 202, Chester, VA
BAN20030863	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 1308 142nd Street, Lubbock, TX to 8212 Ithaca, Suite C, Lubbock, TX
BAN20030864	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 7147 Redlac Drive, Clifton, VA to 8104 Spruce Valley Lane, Clifton, VA
BAN20030865	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 2037 Royal Fern Court, Suite 2C, Reston, VA
BAN20030866	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 25997 Hartwood Drive, South Riding, VA
BAN20030867	Crusader Cash Advance of Virginia, LLC - To conduct payday lending business where a money transmission business will also be conducted
BAN20030868	1st Nations Mortgage Corporation - To open a mortgage broker's office at 108 South Street, Charlottesville, VA
BAN20030869	Jerbec Enterprises, Inc. d/b/a Express Money Service - To open a payday lender's office at 2362-C Peters Creek Road, Roanoke, VA
BAN20030870	Vertical Lend, Inc. d/b/a Mortgage Warehouse - To open a mortgage broker's office at 208 South Loudoun Street, Winchester, VA
BAN20030871	Vertical Lend, Inc. d/b/a Mortgage Warehouse - To open a mortgage broker's office at 2 Deer Run Lane, Hampton, VA
BAN20030872	Nexstar Financial Corporation - To open a mortgage lender and broker's office at 19 Research Park Court, Weldon Spring, MO
BAN20030873	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 7293 Hanover Green Drive, Mechanicsville, VA
BAN20030874	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 12850 Salmon Run Court, Manassas, VA
BAN20030875	Fidelity & Trust Mortgage, Inc. - To relocate mortgage lender's office from 5235 Westview Drive, Suite 110, Frederick, MD to 203 Broadway Street, Suite A, Frederick, MD
BAN20030876	Check 'n Go of Virginia, Inc. d/b/a Check 'n Go - To open a payday lender's office at 4668 King Street, Suite 2, Alexandria, VA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20030877 Quick Cash, LLC d/b/a Quick Cash - To open a check casher at 11033 Leavells Road, Fredericksburg, VA

BAN20030878 Antje Lucia Ubeda - To be an exclusive agent for Primerica Financial Services Home Mortgages, Inc.

BAN20030879 CFN Licensing LLC - To acquire 25 percent or more of Conesco Finance Servicing Corp.

BAN20030880 Robert E. Liessem, Jr. - To be an exclusive agent for Carolina State Mortgage Corporation

BAN20030881 DeAnna Alston - To acquire 25 percent or more of Highlands Venture Financial, L.L.C.

BAN20030882 American Continental Mortgage, Corp. - For a mortgage broker's license

BAN20030883 Lapreea Gary - To acquire 25 percent or more of 1st Millennium Mortgage, LLC

BAN20030884 Ann D. Hazelwood - To acquire 25 percent or more of Regency Mortgage, Inc.

BAN20030885 Mercantile Bankshares Corporation - To acquire Townsend Bank

BAN20030886 Jerry W. Thornton, Sr. d/b/a Jerry's Payday Loans - To open a payday lender's office at 917 Level Green Boulevard, Virginia Beach, VA

BAN20030887 NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 23046 Avenida de la Carlotta, Laguna Hills, CA to 25520 Commercentre Drive, Lake Forest, CA

BAN20030888 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 1340 SE Maynard Road, Suite 203, Cary, NC

BAN20030889 NovaStar Mortgage, Inc. - To relocate mortgage lender's office from 23046 Avenida de la Carlotta, Laguna Hills, CA to 25520 Commercentre Drive, Lake Forest, CA

BAN20030890 Nationwide Lending Corporation - To relocate mortgage lender broker's office from 2091 Business Center Drive, Suite 230, Irvine, CA to 165 Technology Drive, Irvine, CA

BAN20030891 F & L Marketing Enterprises LLC d/b/a Cash-2-U Payday Loans - To conduct payday lending business where a prepaid phone sales business will also be conducted

BAN20030892 Community Home Mortgage of Virginia, Inc. - To relocate mortgage broker's office from 5222 George Washington Memorial, Gloucester, VA to 6558 Main Street, Suite 1, Gloucester, VA

BAN20030893 Windsor Capital Mortgage Corporation - To open a mortgage broker's office at 17486 Center Road, Suite 1D, Ruther Glen, VA

BAN20030894 Homebuyer's Mortgage, Inc. - To relocate mortgage lender broker's office from 4090-A Lafayette Center Drive, Chantilly, VA to 15200 Avion Parkway, Suite 320, Chantilly, VA

BAN20030895 Life Line Credit Union, Inc. - To relocate credit union office from 5904 Hamptstead Avenue, Richmond, VA to 5855 Breomo Road, Suite 701, Richmond, VA

BAN20030896 Highlands Union Bank - To open a branch at 100 West Main Street, Banner Elk, NC

BAN20030897 Avid Mortgage Corporation - For a mortgage broker's license

BAN20030898 Putnam Mortgage & Finance, LLC - For a mortgage lender and broker license

BAN20030899 1st Financial, Inc. - For a mortgage broker's license

BAN20030900 Greenlight Financial Services, Inc. (Used in VA by: Greenlight Financial Services) - For a mortgage lender's license

BAN20030901 Presidential Mortgage Corporation of Rhode Island (Used in VA by: Presidential Mortgage Corporation) - For a mortgage lender and broker license

BAN20030902 First NLC Financial Services, LLC - To open a mortgage lender and broker's office at 1900 South State College Boulevard, Anaheim, CA

BAN20030903 First NLC Financial Services, LLC - To open a mortgage lender and broker's office at 2121 Towne Centre Place, Suite 100, Anaheim, CA

BAN20030904 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 24 Canterbury Square, Suite 302, Alexandria, VA

BAN20030905 Primerica Financial Services Home Mortgages, Inc. - To open a mortgage broker's office at 281 Independence Boulevard, Suite 442, Virginia Beach, VA

BAN20030906 NovaStar Home Mortgage, Inc - To relocate mortgage lender broker's office from 600-A Rowland Drive, Port Deposit, MD to 5616 Kirkwood Highway, Wilmington, DE

BAN20030907 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 2195 West 5400 South, Suite 170, Taylorsville, UT

BAN20030908 Amerigroup Mortgage Corporation (Used in VA by: Mortgage Investors Corporation) - To relocate mortgage lender's office from West Shore III, 301 Concourse Blvd., Glen Allen, VA to 4101 Cox Road, Suite 301, Glen Allen, VA

BAN20030909 All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 355 A Masters Lane, Taylorsville, KY

BAN20030910 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 1360 Sarno Road, Suite C, Melbourne, FL

BAN20030911 PDQ Cash Advance, Inc. - To relocate payday lender's office from 346 U.S. Highway 23, North, Suite III, Weber City, VA to 170 U.S. Highway 23, North, Gate City, VA

BAN20030912 SunTrust Bank - To open a branch at 12821 Braemar Village Plaza, Bristow, VA

BAN20030913 USA-Mortgage Solutions, Inc. - For a mortgage broker's license

BAN20030914 David Etute d/b/a America Continental Home Loan & Investment - For a mortgage broker's license

BAN20030915 First Dominion Mortgage Corporation - To open a mortgage broker's office at 6381 Thrasher Way, Mechanicsville, VA

BAN20030916 Integrated Mortgage Strategies Ltd. - To open a mortgage broker's office at 1520 Glenwood Avenue, Raleigh, NC

BAN20030917 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 2032 Oak Leaf Lane, Virginia Beach, VA

BAN20030918 America's Mortgage Broker, L.L.C. d/b/a Affordable Home Funding - To open a mortgage lender and broker's office at 1750 Jefferson Highway, Fishersville, VA

BAN20030919 American General Financial Services (DE), Inc. (Used in VA by: American General Financial Services, Inc.) - To relocate mortgage lender broker's office from 2128 Wards Road, Lynchburg, VA to 2144 Wards Road, Lynchburg, VA

BAN20030920 American General Financial Services of America, Inc. - To relocate consumer finance office from 2128 Wards Road, Lynchburg, VA to 2144 Wards Road, Lynchburg, VA

BAN20030921 Express Mortgage Corp. of Virginia - To relocate mortgage lender broker's office from 1415 Route 70, East, Suite 311, Cherry Hill, NJ to 5000 Atrium Way, Mt. Laurel, NJ

BAN20030922 Worth Funding Incorporated - To open a mortgage lender's office at 2601 Walnut Avenue, Tustin, CA

BAN20030923 Sunshine Mortgage Corporation - To relocate mortgage lender broker's office from 1000 Mansell Exchange West, Alpharetta, GA to 1000 Mansell Exchange West, Suite 360, Alpharetta, GA

BAN20030924 NVR Mortgage Finance, Inc. - To relocate mortgage lender broker's office from One Holland Place, 2235 Staples Mill, Richmond, VA to 1001 Boulders Parkway, Suite 101, Richmond, VA

BAN20030925 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 5101 Bartons Enclave Lane, Raleigh, NC

BAN20030926 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 37 Mule Deer Court, Elkton, MD

BAN20030927 Hunter Bloch - To acquire 25 percent or more of Annapolis First Mortgage, LLC

BAN20030928 Prudential Mortgage Services, Inc. - For a mortgage broker's license

BAN20030929 Tosh of Utah, Inc. d/b/a Check City Check Cashing - To open a check casher at 6001 W. Broad Street, Richmond, VA

BAN20030930 Janis J. Crews d/b/a Gold Star Mortgage Services - To open a mortgage broker's office at 2321 Riverside Drive, Suite 30, Danville, VA

BAN20030931 1st Nations Mortgage Corporation - To open a mortgage broker's office at 923 First Colonial Road, Suite 1807, Virginia Beach, VA

BAN20030932 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 6 Gramatan Avenue, Suite 409, Mount Vernon, NY

BAN20030933 Lincoln Mortgage, LLC - To open a mortgage broker's office at 6911 Richmond Highway, Suite 477, Alexandria, VA

BAN20030934 Lincoln Mortgage, LLC - To open a mortgage broker's office at Apple Blossom Mall, 1880 AppleBlossom Drive, Winchester, VA

BAN20030935 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 9152 E. Mountain Springs Road, Scottsdale, AZ

BAN20030936 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 13303 Black Duck Court, Upper Marlboro, MD to 5625 Allentown Road, Suite 104, Camp Springs, MD

BAN20030937 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 9311 Kings Charter Drive, Mechanicsville, VA

BAN20030938 Mortgage Advantage, Inc. - To relocate mortgage broker's office from 15841 Crabbs Branch Way, Suite A, Rockville, MD to 7613 Standish Place, Rockville, MD

BAN20030939 Great Atlantic Mortgage, Inc. - To relocate mortgage broker's office from 4417 King Street, Portsmouth, VA to 4351 Portsmouth Boulevard, Portsmouth, VA

BAN20030940 Hamilton National Mortgage Company - To relocate mortgage lender's office from 500 Lapp Road, Malvern, PA to 1500 Liberty Ridge Drive, Chesterbrook, PA

BAN20030941 Maryland Residential Lending, L.L.C. d/b/a Nationwide Mortgage Services - To relocate mortgage broker's office from 17 West Jefferson Street, Rockville, MD to 4 Research Place, Suite 140, Rockville, MD

BAN20030942 Ever Fund Mortgage LLC - For a mortgage broker's license

BAN20030943 Quintex Consulting Inc. d/b/a Liberty Lending Group - For a mortgage broker's license

BAN20030944 Colonial Virginia Bank - To open a bank at 6720 Sutton Road, Gloucester, VA

BAN20030945 Piedmont Cash Loans, Inc. - To open a check casher at 806 E. Main Street, Suite 103, Bedford, VA

BAN20030946 MJD Diversified Financial Services, Inc. d/b/a Integrity First Mortgage - For a mortgage broker's license

BAN20030947 Progressive Finance Corp. d/b/a PFC Mortgage Group - For a mortgage broker's license

BAN20030948 Southern Trust Mortgage, LLC d/b/a Middleburg Mortgage (2 Norfolk Offices) - To open a mortgage lender and broker's office at 150 Boush Street, Norfolk, VA

BAN20030949 Family Finance Corp. d/b/a Colonial Loans (Fredericksburg only) - To relocate consumer finance office from 410 William Street, Fredericksburg, VA to 1320 Central Park Blvd., Suite 104, Fredericksburg, VA

BAN20030950 Bridge Capital Corporation - To relocate mortgage lender broker's office from 92 Corporate Park, #C204, Irvine, CA to 23072 Lake Center Drive, Suite 202, Lake Forest, CA

BAN20030951 New Freedom Mortgage Corporation - To open a mortgage lender and broker's office at 670 East 3900 South, Suite 302, Salt Lake City, UT

BAN20030952 New Freedom Mortgage Corporation - To open a mortgage lender and broker's office at 684 East Vine Street, Suite 3, Murray, UT

BAN20030953 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 8700 Warner, Suite 100, Fountain Valley, CA

BAN20030954 Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 116 South Independence Boulevard, Suite 104, Virginia Beach, VA

BAN20030955 Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 752 North Lee Highway, Lexington, VA

BAN20030956 Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 829 West Constance Road, Suffolk, VA

BAN20030957 DL King, LLC d/b/a King's Ca\$h Advances - To conduct payday lending business where a rental business will also be conducted

BAN20030958 Windsor Financial Mortgage Corp. - For a mortgage lender and broker license

BAN20030959 Aggressive Mortgage Corp. - To open a mortgage broker's office at 812 Moorefield Park Drive, Moorefield I, Suite 125, Richmond, VA

BAN20030960 CTX Mortgage Company, LLC. - To relocate mortgage lender broker's office from 4975 Preston Park Boulevard, Plano, TX to 4975 Preston Park Boulevard, Suite 800, Plano, TX

BAN20030961 Check into Cash of Virginia, LLC d/b/a Check into Cash - To open a payday lender's office at 642 Highway 58, Norton, VA

BAN20030962 Check into Cash of Virginia, LLC d/b/a Check into Cash - To open a payday lender's office at 2366 George Washington Memorial Hwy., Hayes, VA

BAN20030963 PHH Mortgage Services Corporation - To relocate mortgage lender broker's office from 4802 Deer Lake Drive, East, Jacksonville, FL to 5022 Gate Parkway, Suite 400, Jacksonville, FL

BAN20030964 PHH Mortgage Services Corporation - To open a mortgage lender and broker's office at 5022 Gate Parkway, Suite 100, Jacksonville, FL

BAN20030965 Cendant Mortgage Corporation d/b/a Instamortgage.com - To relocate mortgage lender broker's office from 4802 Deer Lake Drive, East, Jacksonville, FL to 5022 Gate Parkway, Suite 400, Jacksonville, FL

BAN20030966 Cendant Mortgage Corporation d/b/a Instamortgage.com - To open a mortgage lender and broker's office at 5022 Gate Parkway, Suite 100, Jacksonville, FL

BAN20030967 Vision Mortgage, L.L.C. - To relocate mortgage broker's office from 15722 Crabbs Branch Way, Suite 2B, Rockville, MD to 6010 Executive Boulevard, 10th Floor, Rockville, MD

BAN20030968 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 2240 Sanibel Drive, Reston, VA

BAN20030969 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 3800 Powell Lane, Suite 1010, Falls Church, VA

BAN20030970 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1004 Brethour Court, Sterling, VA

BAN20030971 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 10715 Buggs Island Road, Baskerville, VA

BAN20030972 Independent Realty Capital Corporation - To open a mortgage lender and broker's office at 1124 West South Jordan Pkwy., Suite B, South Jordan, UT

BAN20030973 Challenge Financial Investors Corp. d/b/a Challenge Mortgage - To open a mortgage lender and broker's office at 3957 St. Charles Parkway, Unit 1, Waldorf, MD

BAN20030974 Challenge Financial Investors Corp. d/b/a Challenge Mortgage - To open a mortgage lender and broker's office at 530 E. Main Street, Richmond, VA

BAN20030975 Cash Express of Virginia, Inc. - To open a payday lender's office at 5585 Portsmouth Boulevard, Portsmouth, VA

BAN20030976 Allied Home Mortgage Capital Corporation - To open a mortgage lender and broker's office at 1509 W. Cary Street, Richmond, VA

BAN20030977 Allied Home Mortgage Capital Corporation - To open a mortgage lender and broker's office at 3012 Mitchellville Road, Suite 203, Bowie, MD

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20030978	123BORROW.COM, INC. - For additional mortgage authority
BAN20030979	Commonwealth Home Loans, LLC - For additional mortgage authority
BAN20030980	Fast Cash of Virginia Inc. - To open a check casher at 25259 W. Main Street, Onley, VA
BAN20030981	GMAC Mortgage Corporation d/b/a Ditech.Com - To open a mortgage lender and broker's office at 305 Marl Ravine Road, Yorktown, VA
BAN20030982	Wholesale Express Mortgage Corporation, Inc. - To relocate mortgage broker's office from 2661 Riva Road, Suite 621, Annapolis, MD to 1107 Bay Front, North Beach, MD
BAN20030983	Allied Cash Advance Virginia LLC d/b/a Allied Cash Advance - To open a payday lender's office at 9825 Jefferson Avenue, Newport News, VA
BAN20030984	Allied Cash Advance Virginia LLC d/b/a Allied Cash Advance - To open a payday lender's office at 658-B J. Clyde Morris Boulevard, Newport News, VA
BAN20030985	Allied Cash Advance Virginia LLC d/b/a Allied Cash Advance - To open a payday lender's office at 2192 John Wayland Highway, Harrisonburg, VA
BAN20030986	Allied Cash Advance Virginia LLC d/b/a Allied Cash Advance - To open a payday lender's office at 3822 Jefferson Davis Highway, Fredericksburg, VA
BAN20030987	Bol Envia, Inc. - For a money order license
BAN20030988	K. Hovnanian American Mortgage, L.L.C. d/b/a Homebuyer's Mortgage (VA office only) - For a mortgage lender and broker license
BAN20030989	JT&T, LLC d/b/a Meridian Home Loans - For a mortgage lender and broker license
BAN20030990	Accredited Home Lenders, Inc. - To open a mortgage lender's office at 3870 Rosin Court, Suite 150, Sacramento, CA
BAN20030991	Accredited Home Lenders, Inc. - To open a mortgage lender's office at 8150 Perry Highway, Suite 311, Pittsburgh, PA
BAN20030992	Accredited Home Lenders, Inc. - To open a mortgage lender's office at 300 E. Sonterra Boulevard, Suite 250, San Antonio, TX
BAN20030993	Accredited Home Lenders, Inc. - To open a mortgage lender's office at 1130 Northcase Parkway, 2nd Floor, Marietta, GA
BAN20030994	Amerigroup Mortgage Corporation (Used in VA by: Mortgage Investors Corporation) - To open a mortgage lender's office at 5900 Central Avenue, St. Petersburg, FL
BAN20030995	Amerigroup Mortgage Corporation (Used in VA by: Mortgage Investors Corporation) - To open a mortgage lender's office at 6000 Central Avenue, St. Petersburg, FL
BAN20030996	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 4447A Brookfield Corporate Drive, Chantilly, VA to 5436 Chandley Farm Circle, Centreville, VA
BAN20030997	Heartland Home Finance, Inc. - To open a mortgage lender and broker's office at 4231 Postal Court, Suite 204, Pasadena, MD
BAN20030998	Nationwide Advantage Mortgage Company - To open a mortgage lender's office at 7760 Office Plaza Drive, South, West Des Moines, IA
BAN20030999	Pacific Shore Funding Corporation (Used in VA by: Pacific Shore Funding) - To relocate mortgage lender's office from 23101 Lake Center Drive, Suite 200, Lake Forest, CA to 85 Enterprise, Suite 200, Aliso Viejo, CA
BAN20031000	Nelson D. Rodgers t/a All Virginia Mortgage Co. - To relocate mortgage broker's office from 10136-D Hull Street Road, Midlothian, VA to 10519-D Hull Street Road, Midlothian, VA
BAN20031001	MLI Capital Group, Inc. - To relocate mortgage lender broker's office from 2866 Virgil Goode Highway, Rocky Mount, VA to 1409 Motley Road, Chatham, VA
BAN20031002	Prospect Mortgage Corporation - To relocate mortgage broker's office from 101 East Holly Avenue, Suite 4, Sterling, VA to 101 East Holly Avenue, Suite 13, Sterling, VA
BAN20031003	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 918 Holly Creek, Great Falls, VA
BAN20031004	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1126 Mayo Road, Edgewater, MD
BAN20031005	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1537 Caswell Street, Raleigh, NC
BAN20031006	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 2231 Huntington Avenue, Alexandria, VA
BAN20031007	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 5634 Leicester Drive, Corpus Christy, TX
BAN20031008	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 5727 Jonathan Mitchell Road, Fairfax Station, VA
BAN20031009	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 9312 Player Lane, Laurel, MD
BAN20031010	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 12 Cormorant Circle, Daytona Beach, FL
BAN20031011	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 67 Basalt Drive, Fredericksburg, VA
BAN20031012	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 6080 Biggs Farm Place, LaPlata, MD
BAN20031013	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 10739 Brice Court, Fredericksburg, VA
BAN20031014	Fidelity & Trust Mortgage, Inc. - For additional mortgage authority
BAN20031015	Saffire Mortgage, Inc. - For a mortgage broker's license
BAN20031016	A. Anderson Scott Mortgage Group, Incorporated - For additional mortgage authority
BAN20031017	Equix Financial Services, LLC - For a mortgage broker's license
BAN20031018	First Pacific Financial, Inc. - To relocate mortgage lender broker's office from 8840 Stanford Boulevard, Suite 1900, Columbia, MD to 8840 Stanford Boulevard, Suite 2900, Columbia, MD
BAN20031019	Embassy Mortgage, Inc. - To open a mortgage broker's office at 18233-A & 18235-A Flower Hill Way, Gaithersburg, MD
BAN20031020	SAK Mortgage Inc. - To open a mortgage broker's office at 714 Sentinel Drive, Leesburg, VA
BAN20031021	CashNet, Inc. d/b/a Cash Advance Centers - To relocate payday lender's office from 7528 D Midlothian Turnpike, Richmond, VA to 2801-B Hathaway Road, Richmond, VA
BAN20031022	Heritage Mortgage Brokers, L.L.C. - To open a mortgage broker's office at 42783 Middle Ridge Place, Ashburn, VA
BAN20031023	Heritage Mortgage Brokers, L.L.C. - To open a mortgage broker's office at 11268 Shady Lane, King George, VA
BAN20031024	Heritage Mortgage Brokers, L.L.C. - To open a mortgage broker's office at 8721 Plantation Lane, Suite 201, Manassas, VA
BAN20031025	M-Point Mortgage Services, LLC - To relocate mortgage broker's office from 7323 Hanover Parkway, Suite C, Greenbelt, MD to 1655 Crofton Boulevard, Suite 301, Crofton, MD
BAN20031026	International Mortgage Corporation - To open a mortgage lender and broker's office at 100 Downtown Plaza, Suites 204-206, Salisbury, MD
BAN20031027	International Mortgage Corporation - To open a mortgage lender and broker's office at 2183 Fairview Road, Suite 107A, Costa Mesa, CA
BAN20031028	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 6506 Hull Street, Richmond, VA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20031029	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 1407 Old Bridge Road, Unit G, Woodbridge, VA
BAN20031030	New Peoples Bank, Inc. - To open a branch at Main Street, Dungannon, VA
BAN20031031	Christopher J. Bonanti - For a mortgage broker's license
BAN20031032	ESECONDMORTGAGE.COM, INC. d/b/a Dollar Realty Mortgage - For a mortgage lender and broker license
BAN20031033	United Mortgage Lenders, Inc. - For a mortgage lender and broker license
BAN20031034	New Century Mortgage Corporation - To open a mortgage lender and broker's office at 200 Unicorn Park Drive, 3rd Floor, Woburn, MA
BAN20031035	Check into Cash of Virginia, LLC d/b/a Check into Cash - To open a payday lender's office at 812 Commonwealth Boulevard, Martinsville, VA
BAN20031036	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 23422 Millcreek Drive, Suite 205, Laguna Hills, CA
BAN20031037	Challenge Financial Investors Corp. d/b/a Challenge Mortgage - To open a mortgage lender and broker's office at 138 Mariners Way, Moyock, NC
BAN20031038	U.S. Mortgage Brokers, Inc. - For a mortgage broker's license
BAN20031039	Mid-States Financial Group, Inc. - For additional mortgage authority
BAN20031040	Liberty Mortgage Corporation - To open a mortgage lender and broker's office at 2725 Franklin Turnpike, Danville, VA
BAN20031041	Equity Vision Mortgage Corp. - To relocate mortgage broker's office from 1760 Reston Parkway, Suite 312, Reston, VA to 12508 Colewood Street, Oak Hill, VA
BAN20031042	Coastal Mortgage Services, Inc. d/b/a Coastal Funding Group - To relocate mortgage lender broker's office from 17718-A Kings Point Drive, Cornelius, NC to 705 Northeast Drive, Suite 17, Davidson, NC
BAN20031043	Pinnacle Financial Corporation d/b/a Tristar Lending Group (In Certain Offices) - To open a mortgage lender and broker's office at 8230 Boone Boulevard, Suite 125, Vienna, VA
BAN20031044	Pinnacle Financial Corporation d/b/a Tristar Lending Group (In Certain Offices) - To open a mortgage lender and broker's office at 8230 Boone Boulevard, Suite 200, Vienna, VA
BAN20031045	Pinnacle Financial Corporation d/b/a Tristar Lending Group (In Certain Offices) - To open a mortgage lender and broker's office at 11350 Random Hills Road, Suite 800, Fairfax, VA
BAN20031046	Pinnacle Financial Corporation d/b/a Tristar Lending Group (In Certain Offices) - To open a mortgage lender and broker's office at 2000 Glen Echo Road, Suite 211, Nashville, TN
BAN20031047	Vertical Lend, Inc. d/b/a Mortgage Warehouse - To open a mortgage broker's office at 14416 Jefferson Davis Highway, Suite 12, Woodbridge, VA
BAN20031048	Fast Cash of Virginia Inc. - To open a payday lender's office at 25259 West Main Street, Onley, VA
BAN20031049	Allied Cash Advance Virginia LLC d/b/a Allied Cash Advance - To open a payday lender's office at 115 Weems Lane, Winchester, VA
BAN20031050	Quick Cash, LLC - For a payday lender license
BAN20031051	Magsamen Incorporated d/b/a Covington Cash - For a payday lender license
BAN20031052	Interstate Funding Corporation - To open a mortgage broker's office at 217 Baltimore Street, Gettysburg, PA
BAN20031053	Eastern Financial Mortgage Corporation - To open a mortgage broker's office at 4039 Fairfax Center Hunt Trail, Fairfax, VA
BAN20031054	Bristol's E-Z Cash Advance, LLC - To relocate payday lender's office from 1010 W. Main Street, Abingdon, VA to 51 Commonwealth Avenue, Bristol, VA
BAN20031055	Allied Home Mortgage Capital Corporation - To relocate mortgage lender broker's office from 3231 Electric Road, Suite 2B, Roanoke, VA to 4725 Garst Mill Road, Suite 1, Roanoke, VA
BAN20031056	First Homestead Funding Corporation - To open a mortgage broker's office at 6231 Leesburg Pike, Suite 104, Falls Church, VA
BAN20031057	Principal Residential Mortgage, Inc. - To relocate mortgage lender broker's office from 8520 Cliff Cameron Drive, Suite 370, Charlotte, NC to 8520 Cliff Cameron Drive, Suite 420, Charlotte, NC
BAN20031058	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 12316 Arrow Park Drive, Fort Washington, MD to 320 South 23rd Street, Suite 6119, Arlington, VA
BAN20031059	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 12118 Great Bridge Road, Woodbridge, VA
BAN20031060	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 3216 Shore Drive, Virginia Beach, VA
BAN20031061	American Mortgage and Financial Consultants, Inc. - To relocate mortgage broker's office from 117 E. Butler Road, Mauldin, SC to 307 Murray Drive, Mauldin, SC
BAN20031062	ComUnity Lending, Incorporated d/b/a Virginia Community Lending (McLean) - To open a mortgage lender and broker's office at 43 West Fort Dade Avenue, Brooksville, FL
BAN20031063	ComUnity Lending, Incorporated d/b/a Virginia Community Lending (McLean) - To open a mortgage lender and broker's office at 10000 North 31st Avenue, Suite D402, Phoenix, AZ
BAN20031064	Blue Ridge Mortgage, L.L.C. - To open a mortgage lender and broker's office at 1705 Enterprise Drive, Suite 110, Lynchburg, VA
BAN20031065	Capital Financial Home Equity, LLC - To open a mortgage broker's office at 1320 Central Park Blvd., Suite 211, Fredericksburg, VA
BAN20031066	Capital Financial Home Equity, LLC - To open a mortgage broker's office at 2524 George Washington Memorial Hwy., Suite D, Yorktown, VA
BAN20031067	Capital Financial Home Equity, LLC - To open a mortgage broker's office at 1320 Central Park Blvd., Suite 208, Fredericksburg, VA
BAN20031068	Blue Ridge Mortgage, L.L.C. - To relocate mortgage lender broker's office from 45 N. Main Street, Suite 100, Halifax, VA to 5235 Halifax Road, Halifax, VA
BAN20031069	H&R Mortgage & Financial Services Inc. - For a mortgage broker's license
BAN20031070	Citizens and Farmers Bank - To open a branch at 7021 Mechanicsville Turnpike, Mechanicsville, VA
BAN20031071	Thornburg Mortgage Home Loans, Inc. - To open a mortgage lender's office at 700 Cherrington Parkway, Coraopolis, PA
BAN20031072	Thornburg Mortgage Home Loans, Inc. - To open a mortgage lender's office at 4500 Cherry Creek Drive South, Suite 200, Glendale, CO
BAN20031073	Thornburg Mortgage Home Loans, Inc. - To open a mortgage lender's office at 3601 S. Broadway, Suite 1000, Edmond, OK
BAN20031074	Beneficial Virginia Inc - To conduct consumer finance business where an automobile club membership business will also be conducted
BAN20031075	First Residential Mortgage Services Corporation - For a mortgage lender and broker license
BAN20031076	Andrew H. Horowitz - To acquire 25 percent or more of Lighthouse Mortgage Service Co., Inc.
BAN20031077	Century Mortgage Corporation of Georgia (Used in VA by: Century Mortgage Corporation) - To open a mortgage lender's office at 6521 Arlington Boulevard, Suite 201, Falls Church, VA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20031078	American Residential Funding, Inc. - To open a mortgage lender and broker's office at 27635 Forbes Road, Suite Q-1, Laguna Niguel, CA
BAN20031079	Sunset Mortgage Company L.P. - To relocate mortgage lender broker's office from 115 West Main Street, Floyd, VA to 133 Willis Avenue, Floyd, VA
BAN20031080	UBS PaineWebber Mortgage, LLC - To relocate mortgage lender broker's office from 2701 Wells Fargo Way, Minneapolis, MN to 7601 France Avenue, South, Suite 300, Edina, MN
BAN20031081	American Residential Funding, Inc. - To open a mortgage lender and broker's office at 900 Commonwealth Place, Virginia Beach, VA
BAN20031082	Mountain Valley Mortgage Corporation - To open a mortgage broker's office at 590 East Market Street, Harrisonburg, VA
BAN20031083	First Greensboro Home Equity, Inc. d/b/a Homeland Capital Group - To open a mortgage lender and broker's office at 1403 Greenbriar Parkway, Suite 465, Chesapeake, VA
BAN20031084	American General Financial Services of America, Inc. - To relocate consumer finance office from 1023-25 Kempsville Road, Virginia Beach, VA to 5220 Fairfield Shopping Center, Suite 12, Virginia Beach, VA
BAN20031085	American General Financial Services (DE), Inc. (Used in VA by: American General Financial Services, Inc.) - To relocate mortgage lender broker's office from 1023-25 Kempsville Road, Virginia Beach, VA to 5220 Fairfield Shopping Center, Suite 12, Virginia Beach, VA
BAN20031086	Colonial Virginia Bank - To open a branch at 1578 Greate Road, Gloucester Point, VA
BAN20031087	Northern Virginia Family Service - To open an additional debt counseling office at 2200 Opitz Boulevard, Suite 100, Woodbridge, VA
BAN20031088	Northern Virginia Family Service - To open an additional debt counseling office at 10455 White Granite Drive, Oakton, VA
BAN20031089	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 560 North Main Street, Suite 223, Fall River, MA
BAN20031090	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 9371 Ridings Way, Laurel, MD
BAN20031091	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 11615 Stoneview Square, Suite 11C, Reston, VA to 4825 4th Street, NE, Washington, DC
BAN20031092	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 1324 Cedar Hill Drive, Roanoke, VA to 3259 Avenham Avenue, Roanoke, VA
BAN20031093	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 12 Crossbow Trail, Berlin, MD to 44 Duck Cove Circle, Berlin, MD
BAN20031094	Harbour Credit Counseling Services, Inc. d/b/a Harbour Credit Management - To open an additional debt counseling office at 101 N. Lynnhaven Road, Suite 300, Virginia Beach, VA
BAN20031095	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 160 West Carmel Drive, Suite 266, Hamilton, IN
BAN20031096	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 7740 Rosewell Road, Suite 400, Atlanta, GA
BAN20031097	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 501 Prince George Street, Suite 304, Williamsburg, VA
BAN20031098	Addison Mortgage Services, Inc. - For a mortgage broker's license
BAN20031099	FNB Corporation - To acquire Bedford Bancshares, Inc. ,
BAN20031100	Oak Street Mortgage LLC - To open a mortgage lender and broker's office at 750 Executive Center Drive, Suite 101, Greenville, SC
BAN20031101	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 586 Blue Ridge Avenue, Bedford, VA
BAN20031102	Paul Douglas Jackson d/b/a Check Holders - To open a payday lender's office at 38692 Highway 58 East, La Crosse, VA
BAN20031103	G Squared Financial, LLC - For a mortgage broker's license
BAN20031104	Superior Home Loans, Inc. - For a mortgage broker's license
BAN20031105	Patriot Mortgage LLC - For a mortgage broker's license
BAN20031106	Rocuda Fast Cash, Inc. - For a payday lender license
BAN20031107	Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To open a mortgage broker's office at 1021 Caslon Way, Suite 212, Landover, MD
BAN20031108	Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To open a mortgage broker's office at 14657 Woonsocket Drive, Silver Spring, MD
BAN20031109	Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To open a mortgage broker's office at 4228 Seminary Road, Richmond, VA
BAN20031110	Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To open a mortgage broker's office at 8208 Clifton Farm Court, Alexandria, VA
BAN20031111	Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To open a mortgage broker's office at 700 South Highland Street, Arlington, VA
BAN20031112	Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To open a mortgage broker's office at 9 Downing Place, Newport News, VA
BAN20031113	Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To open a mortgage broker's office at 44287 Schehawkin Terrace, Ashburn, VA
BAN20031114	American Residential Funding, Inc. - To open a mortgage lender and broker's office at 9200 Basil Court, Suite 307, Upper Marlboro, MD
BAN20031115	American Residential Funding, Inc. - To open a mortgage lender and broker's office at 8401 Corporate Drive, Suite 130, Landover, MD
BAN20031116	American Residential Funding, Inc. - To relocate mortgage lender broker's office from 711 Buckingham Circle, Salisbury, MD to 1134 York Road, Suite 309, Lutherville, MD
BAN20031117	Newport Shores Mortgage, Inc. - To relocate mortgage broker's office from 1406B Crain Highway, Suite 203B, Glen Burnie, MD to 7440 Ritchie Highway, Suite A, Glen Burnie, MD
BAN20031118	Carol J. Summers t/a Summers Mortgage Services - To relocate mortgage broker's office from 303 Atlantic Avenue, Suite 1503, Virginia Beach, VA to 529 S. Atlantic Avenue, Virginia Beach, VA
BAN20031119	Mortgage Virginia LLC - To relocate mortgage lender broker's office from 11655 Midlothian Turnpike, Suite A, Midlothian, VA to 1700 Huguenot Road, Suite B, Midlothian, VA
BAN20031120	Tidewater Mortgage Services, Inc. - To relocate mortgage lender broker's office from 208 Golden Oak Court, Suite 400, Virginia Beach, VA to 200 Golden Oak Court, Suite 100, Virginia Beach, VA
BAN20031121	The Community Bank of Virginia - To open a bank at 6657 Lake Harbour Drive, Midlothian, VA
BAN20031122	H&R Block Mortgage Corporation - To open a mortgage lender and broker's office at 2110 Newmarket Parkway, SE, Marietta, GA
BAN20031123	Allied Home Mortgage Capital Corporation - To relocate mortgage lender broker's office from 1915 Huguenot Road, Suite 303, Richmond, VA to 10045 Midlothian Turnpike, Richmond, VA
BAN20031124	Money Management International, Inc. d/b/a American Credit Counselors - To open an additional debt counseling office at 4846 Kings Mountain Road, Collinsville, VA
BAN20031125	The Mortgage Depot Inc. - For a mortgage broker's license

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20031126	Efast Funding, L.L.C. - For a mortgage broker's license
BAN20031127	WEI Mortgage Corporation - For a mortgage broker's license
BAN20031128	Check into Cash of Virginia, LLC d/b/a Check into Cash - To open a payday lender's office at 148 Council Road, Franklin, VA
BAN20031129	Molton, Allen & Williams Mortgage Company, L.L.C. - To open a mortgage lender and broker's office at 5201 West Kennedy Boulevard, Suite 610, Tampa, FL
BAN20031130	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 10510 Miller Road, Oakton, VA
BAN20031131	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 5512 Peters Lane, Fredericksburg, VA
BAN20031132	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 21025 Laporte Terrace, Ashburn, VA
BAN20031133	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 8739 Byrnesville Road, Cedar Hill, MO
BAN20031134	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 105 S. Sherrin Avenue, Louisville, KY
BAN20031135	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 550 E. Thornton Parkway, Denver, CO
BAN20031136	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 1220 Prospect Avenue, Suite 200, Melbourne, FL to 494 N. Harbor City Boulevard, Melbourne, FL
BAN20031137	The Mortgage Supercenter, LLC - For a mortgage broker's license
BAN20031138	First United Mortgage Group, LLC - For a mortgage lender and broker license
BAN20031139	Profolio Home Mortgage Corp. - For a mortgage broker's license
BAN20031140	Challenge Financial Investors Corp. d/b/a Challenge Mortgage - To relocate mortgage lender broker's office from 820 Curry Ford Lane, Gaithersburg, MD to 9525 Georgia Avenue, Suite 208, Silver Spring, MD
BAN20031141	The New York Mortgage Company, LLC - To relocate mortgage lender's office from 304 Park Avenue South, 7th Floor, New York, NY to 1301 Avenue of the Americas, New York, NY
BAN20031142	Realty Mortgage, LLC - To open a mortgage lender and broker's office at 1520 Stone Moss Court, Suite 301-A, Virginia Beach, VA
BAN20031143	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 47683 Whirlpool Square, Sterling, VA
BAN20031144	The Richmond Mortgage Group LLC - To open a mortgage lender and broker's office at 10148 West Broad Street, Suite 200, Glen Allen, VA
BAN20031145	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 317-A Chatham Drive, Newport News, VA
BAN20031146	Mortgage Lenders Network USA, Inc. - To open a mortgage lender's office at 240 Gibraltar Road, Suite 150, Horsham, PA
BAN20031147	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 607 Main Avenue, Norwalk, CT
BAN20031148	Blue Ridge Mortgage, Inc. - To open a mortgage broker's office at 2721 S. Seminole Trail, Madison, VA
BAN20031149	A Money Matter Mortgage Inc - To open a mortgage broker's office at 6036 Clerkenwell Court, Burke, VA
BAN20031150	Pioneer Bank - To relocate office from 120 South Main Street, Harrisonburg, VA to 890 West Market Street, Harrisonburg, VA
BAN20031151	First Capital Bank - To open a branch at 1776 Staples Mill Road, Richmond, VA
BAN20031152	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 11420 North Kendall Drive, Suite 110, Miami, FL
BAN20031153	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 945 S. River Road, Denham Springs, LA
BAN20031154	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 7136 South Yale, Suite 300, Tulsa, OK
BAN20031155	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 600 East North Street, Suite 206, Greenville, SC
BAN20031156	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 2013 Madrillon Springs Court, Vienna, VA
BAN20031157	Primerica Financial Services Home Mortgages, Inc. - To open a mortgage broker's office at HCR 2 Box A-1, McDowell, VA
BAN20031158	Primerica Financial Services Home Mortgages, Inc. - To relocate mortgage broker's office from 7905 Malcolm Road, Suite 304, Clinton, MD to 5616 Saint Barnabas Road, Oxon Hill, MD
BAN20031159	Cash & Go, Inc. of Virginia d/b/a Cash-N-Go - To open a payday lender's office at 1940 Peters Creek Road NW, Roanoke, VA
BAN20031160	Cash & Go, Inc. of Virginia d/b/a Cash-N-Go - To open a payday lender's office at 4116 South Amherst Highway, Madison Heights, VA
BAN20031161	Chelsea Capital LLC - For a mortgage broker's license
BAN20031162	Gateway Mortgage Group, LLC - For a mortgage lender and broker license
BAN20031163	Oswald Redman d/b/a Greater Capital Mortgage - For a mortgage broker's license
BAN20031164	CCO Financial, L.L.C. - For a payday lender license
BAN20031165	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 102 Brand Street, Grant Town, WV
BAN20031166	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 108 Sunset Drive, Franklin, VA
BAN20031167	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 911 Paverstone Drive, Raleigh, NC
BAN20031168	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 3128 Lorraine Avenue, Norfolk, VA
BAN20031169	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 8554 Meadowsweet Drive, Mechanicsville, VA
BAN20031170	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 900 Providence Place, Lexington, VA
BAN20031171	UMS, Inc. d/b/a Urgent Money Service - To open a payday lender's office at 244 Rosser Avenue, Waynesboro, VA
BAN20031172	American Residential Funding, Inc. - To open a mortgage lender and broker's office at 1000 Bearcat Way, Suite 104, Morrisville, NC
BAN20031173	Atlantic Coastal Homes, Inc. - To open a mortgage broker's office at RR 2, Box 22-A, Clarksville, DE
BAN20031174	Lifetime Mortgage, Inc. - To open a mortgage broker's office at 4920 W. Broad Street, Richmond, VA
BAN20031175	Liberty Mortgage Corporation - To open a mortgage lender and broker's office at 6600 West Broad Street, Richmond, VA
BAN20031176	First Financial Services, Inc. - To open a mortgage broker's office at 542 Pell Avenue, Rocky Mount, VA
BAN20031177	First Financial Services, Inc. - To relocate mortgage broker's office from 14662 Moneta Road, Suite 2, Moneta, VA to 130 Scuggs Road, Suite 203, Moneta, VA
BAN20031178	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 6330 E. 75th Street, Suite 120, Indianapolis, IN to 8041 Knue Road, Suite 110, Indianapolis, IN
BAN20031179	Virginia One Mortgage Corporation - To relocate mortgage broker's office from 21479 Trowbridge Square, Ashburn, VA to 43684 Warbler Square, Lansdowne, VA
BAN20031180	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 6106 42nd Place, Hyattsville, MD to 342 W. Bruce Street, Harrisonburg, VA
BAN20031181	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 414 Oakmears Crescent, Suite 101, Virginia Beach, VA to 414 Oakmears Crescent, Suite 103, Virginia Beach, VA
BAN20031182	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 6001 South Anthony Blvd., Suite 103, Ft. Wayne, IN to 5800 Fairfield Avenue, Suite 149, Ft. Wayne, IN

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20031183	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 4109 Leisure Drive, Temple Hills, MD to 12600 Abbotsford Circle, Fort Washington, MD
BAN20031184	Patriot Ntl Mortgage Corporation - To relocate mortgage broker's office from 5602 Daniel Circle, Waldorf, MD to 5455 Huntingtown Road, Huntingtown, MD
BAN20031185	Crusader Cash Advance of Virginia, LLC - To conduct payday lending business where a money transmission business will also be conducted
BAN20031186	Family First Mortgage, Inc. - To relocate mortgage broker's office from 4093 Palace Court, Lilburn, GA to 4610 Bloomsbury Drive, Syracuse, NY
BAN20031187	Chawky Bourtos Jabaly d/b/a Fairfax Mortgage - To relocate mortgage broker's office from 4313 Andes Drive, Fairfax, VA to 3040 Williams Drive, Suite 101, Fairfax, VA
BAN20031188	Merit Mortgage, Inc. d/b/a Central Virginia Mortgage - To open a mortgage broker's office at 9840 Oxbridge Place, Suite 200, Richmond, VA
BAN20031189	Gulfport Financial, L.L.C. d/b/a Virginia Cash Advance - To open a payday lender's office at 3330 South Military Highway, Chesapeake, VA
BAN20031190	American Mortgage Solution, Inc. - For a mortgage broker's license
BAN20031191	Greentree Mortgage Company, L.P. - For a mortgage broker's license
BAN20031192	Gee Mortgage LLC - For a mortgage broker's license
BAN20031193	Rock River Trust Company - To open a new independent trust company branch at 34855 Welbourne Road, Middleburg, VA
BAN20031194	Affordable Mortgage of Virginia, Inc. - To relocate mortgage broker's office from 739 Thimble Shoals Boulevard, Newport News, VA to 739 Thimble Shoals Boulevard, Suite 1004, Newport News, VA
BAN20031195	F & L Marketing Enterprises LLC d/b/a Cash-2-U Payday Loans - To open a payday lender's office at 1749 George Washington Memorial Hwy., Gloucester, VA
BAN20031196	World Lending Group, Inc. - To open a mortgage lender and broker's office at 1715 Peachtree Parkway, Cumming, GA
BAN20031197	First Greensboro Home Equity, Inc. d/b/a Homeland Capital Group - To relocate mortgage lender broker's office from 10800 Midlothian Turnpike, Suite 101, Richmond, VA to 10800 Midlothian Turnpike, Suite 128, Richmond, VA
BAN20031198	Conseco Finance Servicing Corp. - To relocate mortgage lender's office from 332 Minnesota Street, Suite 500-600, Saint Paul, MN to Landmark Towers 345 St. Peters Street, St. Paul, MN
BAN20031199	American Residential Funding, Inc. - To open a mortgage lender and broker's office at 22865 Lake Forest Drive, Lake Forest, CA
BAN20031200	Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 544 East Stuart Drive, Galax, VA
BAN20031201	Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 1128 Lynchburg-Salem Turnpike East, Suite 400, Bedford, VA
BAN20031202	Premier Financial Company - To open a mortgage lender and broker's office at 10999 Red Run Boulevard, Suite 215, Owings Mills, MD
BAN20031203	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 2826 Roesh Way, Vienna, VA to 12830 Hyannis Lane, Woodbridge, VA
BAN20031204	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 21620 Monmouth Terrace, Ashburn, VA
BAN20031205	Atlantic Bay Mortgage Group, L.L.C. - To open a mortgage lender and broker's office at 3909 Midlands Road, Williamsburg, VA
BAN20031206	RMC Vanguard Mortgage Corporation - For a mortgage lender's license
BAN20031207	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 5000 Snapfinger Woods Drive, Suite C-220, Decatur, GA
BAN20031208	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 309 Tramore Court, Sterling, VA
BAN20031209	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 201 St. Johns Street, Suite 1, Havre De Grace, MD
BAN20031210	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 6228 Dimrill Court, Fort Washington, MD
BAN20031211	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 13111 Pennypacker Lane, Fairfax, VA
BAN20031212	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 3515 Meadowside Road, Baltimore, MD to 3511 Greenspring Road, Havre de Grace, MD
BAN20031213	American Residential Funding, Inc. - To open a mortgage lender and broker's office at 1405 N. Dobson Road, Suite 5, Chandler, AZ
BAN20031214	Donald O. King d/b/a Access Mortgage Kod - To relocate mortgage broker's office from 303 34th Street, Virginia Beach, VA to 1023 Laskin Road, Suite 103, Virginia Beach, VA
BAN20031215	Key Financial Corporation - To relocate mortgage broker's office from 6767 Forest Hill Avenue, Suite 305, Richmond, VA to 7400 Beaufont Springs Drive, Suite 400, Richmond, VA
BAN20031216	Coastal Mortgage Services, Inc. d/b/a Coastal Funding Group - To relocate mortgage lender broker's office from 705 Northeast Drive, Suite 17, Davidson, NC to 18809 West Catawba Ave., Suite 101, Cornelius, NC
BAN20031217	Express Mortgage Corp. of Virginia - To open a mortgage lender and broker's office at 13921 Park Center Road, Suite 200, Herndon, VA
BAN20031218	Lincoln Mortgage, LLC - To open a mortgage broker's office at 660 Hunters Place, Charlottesville, VA
BAN20031219	1st Step Financial Services, Inc. - For a mortgage broker's license
BAN20031220	TransLand Financial Services, Inc. - For additional mortgage authority
BAN20031221	Branch Banking and Trust Company of Virginia - To relocate office from 4018 Halifax Road, South Boston, VA to 4028-4030 Halifax Road, South Boston, VA
BAN20031222	American Affordable Homes, Inc. - To relocate mortgage broker's office from 4115 Annandale Road, Suite 102, Annandale, VA to 1650 Tysons Boulevard, Suite 900, McLean, VA
BAN20031223	Virginia Mortgage Processing Incorporated (Used in VA by: Mortgage Processing, Incorporated) - To relocate mortgage broker's office from 6016-7 New Forest Court, Waldorf, MD to 17517A Indian Head Highway, Accokeek, MD
BAN20031224	Pentacle Lending Corporation LLC - For a mortgage broker's license
BAN20031225	Stonehouse Mortgage Group, Inc. - For a mortgage broker's license
BAN20031226	American Discount Mortgage Entity, Inc. (Used in VA by: American Discount Mortgage, Inc.) - For a mortgage broker's license
BAN20031227	SunTrust Bank - To open a branch at 1022 W. Main Street, Charlottesville, VA
BAN20031228	Thornburg Mortgage Home Loans, Inc. - To open a mortgage lender's office at 622 Emerson Road, St. Louis, MO
BAN20031229	Thornburg Mortgage Home Loans, Inc. - To open a mortgage lender's office at 425 Phillips Boulevard, Ewing, NJ

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20031230	Realty Mortgage Corporation d/b/a RealNET Financial - To open a mortgage lender's office at 15451 San Fernando Mission Blvd., Suite 205, Mission Hills, CA
BAN20031231	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1 Richmond Square, Suite 300D, Providence, RI
BAN20031232	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 3110 Lewis Place, Falls Church, VA
BAN20031233	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 4612 Sutton Oaks Drive, Chantilly, VA
BAN20031234	Ralph H. Pecorale d/b/a New Age Capital - To open a mortgage broker's office at 320 Carleton Avenue, Suite 2000, Central Islip, NY
BAN20031235	Edward D. Jones & Co., L.P. d/b/a EdwardJones - To open a mortgage broker's office at 11224 Highway 501S, Clarksville, VA
BAN20031236	Charles C. Frey d/b/a Approved 1st Mortgage - To open a mortgage broker's office at 106 5th Avenue, Franklin, VA
BAN20031237	CBSK Financial Group, Inc. d/b/a American Home Loans - To open a mortgage lender and broker's office at 18141 Beach Boulevard, Suite 350, Huntington Beach, CA
BAN20031238	GMAC Mortgage Corporation d/b/a Ditech.Com - To open a mortgage lender and broker's office at 767 Madison Road, Culpeper, VA
BAN20031239	Diamond Mortgage Exchange, Inc. - For additional mortgage authority
BAN20031240	Dominion Mortgage Corporation - To open a mortgage broker's office at 45 Northgate Court, Lynch Station, VA
BAN20031241	Fairway Mortgage Services, Inc. (Used in VA by:: The Coleman Group, Inc.) - To relocate mortgage broker's office from 1613 Trail Ridge Road, Charlottesville, VA to 4811 Jonestown Road, Suite 229, Harrisburg, PA
BAN20031242	Gregg Lilienfield - To acquire 25 percent or more of Crosstowne Mortgage Corporation
BAN20031243	Dominion Mortgage Group, LLC - To relocate mortgage broker's office from 703 Thimble Shoals Boulevard, Newport News, VA to 240 Nat Turner Boulevard, Suite B, Newport News, VA
BAN20031244	American Residential Funding, Inc. - To relocate mortgage lender broker's office from 2656 Fallow Hill Lane, Jamison, PA to 129 E. Butler Avenue, Ambler, PA
BAN20031245	Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To relocate mortgage broker's office from 6581 Cypress Point Road, Alexandria, VA to 11500 Carboness Lane, Unit 304, Fairfax, VA
BAN20031246	First Mortgage Group, Inc. - To relocate mortgage broker's office from 3937-C University Drive, Fairfax, VA to 10623 Jones Street, Suite 101-A, Fairfax, VA
BAN20031247	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 2030 Tonawanda Road, Grawn, MI to 2502 South M-137, Interlochen, MI
BAN20031248	DEEPAM Inc - To open a check casher at 6245 Little River Turnpike, Alexandria, VA
BAN20031249	American Residential Funding, Inc. - To open a mortgage lender and broker's office at 1206 W. South Jordan Parkway, Suite D, South Jordan, UT
BAN20031250	American Nationwide Mortgage Company, Inc. - To open a mortgage lender and broker's office at 110 Plaza Circle, Waterloo, IA
BAN20031251	Equity Services of Virginia, Inc. d/b/a Affordable Funding - To open a mortgage lender and broker's office at 4900 Waters Edge Drive, Suite 135, Raleigh, NC
BAN20031252	Equity Services of Virginia, Inc. d/b/a Affordable Funding - To open a mortgage lender and broker's office at 5901 Falls of the Neuse, Raleigh, NC
BAN20031253	Equity Services of Virginia, Inc. d/b/a Affordable Funding - To open a mortgage lender and broker's office at 1320 SE Maynard Road, Suite 104, Cary, NC
BAN20031254	Equity Services of Virginia, Inc. d/b/a Affordable Funding - To open a mortgage lender and broker's office at 105 Sedgemoor Drive, Cary, NC
BAN20031255	Equity Services of Virginia, Inc. d/b/a Affordable Funding - To open a mortgage lender and broker's office at 110-C Applecross Road, Pinehurst, NC
BAN20031256	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 2814 Spring Road, Suite 205, Atlanta, GA
BAN20031257	American Home Loan, Inc. d/b/a Allymac Mortgage Services - For a mortgage broker's license
BAN20031258	First Discount Mortgage, LLC - For a mortgage broker's license
BAN20031259	American Affordable Homes, Inc. - For additional mortgage authority
BAN20031260	Greater Washington Mortgage, Inc. - For a mortgage broker's license
BAN20031261	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 5090 N. 40th Street, Suite 180, Phoenix, AZ to 5090 N. 40th Street, Suite 270, Phoenix, AZ
BAN20031262	GN & AN LLC - For a mortgage broker's license
BAN20031263	Evergreen Financial, Inc. - For a mortgage broker's license
BAN20031264	Waterstone Mortgage, Corporation - For a mortgage broker's license
BAN20031265	America's Best Lending Network, Inc. - For a mortgage broker's license
BAN20031266	Remesas Quisqueyana, Inc. - For a money order license
BAN20031267	Mercantile Bankshares Corporation - To acquire F&M Bancorp
BAN20031268	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1701 Palmetto Drive, Mitchellville, MD
BAN20031269	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 3022 Kings Village Road, Alexandria, VA to 6911 Richmond Highway, Suite 324, Alexandria, VA
BAN20031270	Allied Home Mortgage Capital Corporation - To relocate mortgage lender broker's office from 533 Newtowne Road, Suite 113, Virginia Beach, VA to 8422 Tidewater Drive, Suite D, Norfolk, VA
BAN20031271	All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 3707 Virginia Beach Boulevard, Suite 214, Virginia Beach, VA
BAN20031272	American Residential Funding, Inc. - To relocate mortgage lender broker's office from 2131 Park Street, Columbia, SC to 209 Stoneridge Drive, Suite 103, Columbia, SC
BAN20031273	Harvest Mortgage, LLC - To relocate mortgage broker's office from 7700 Leesburg Pike, Suite 426, Falls Church, VA to 44135 Woodridge Parkway, Suite 100, Lansdowne, VA
BAN20031274	Sunset Mortgage Company L.P. - To open a mortgage lender and broker's office at 208 S. Loudoun Street, Winchester, VA
BAN20031275	Express Mortgage Corp. of Virginia - To open a mortgage lender and broker's office at 1760 Old Meadow Road, Suite 200, McLean, VA
BAN20031276	Jams-01, Inc. d/b/a Home Savings & Trust Mortgage - To open a mortgage lender and broker's office at 11417 Sunset Hills Road, Suite 228, Reston, VA
BAN20031277	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 1816 Englishtown Road, Suite 103, Old Bridge, NJ to 109 White Oak Lane, Suite 200-N, Old Bridge, NJ
BAN20031278	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 42 Corporate Park, Suite 100, Irvine, CA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20031279 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 4480 William Penn Highway, Easton, PA
 BAN20031280 Mountain Valley Mortgage Corporation - To open a mortgage broker's office at 311 B N. Madison Road, Orange, VA
 BAN20031281 SouthStar Funding, LLC - To open a mortgage lender's office at 400 Northridge Road, Suite 1000, Atlanta, GA
 BAN20031282 Lincoln Mortgage, LLC - To open a mortgage broker's office at 707 Warren Avenue, Front Royal, VA
 BAN20031283 Diamond Lending Corporation - To relocate mortgage broker's office from 8403 Colesville Road, Suite 705, Silver Spring, MD to 15825 Shady Grove Road, Suite 190, Rockville, MD
 BAN20031284 Bay Capital Corp. - To open a mortgage lender and broker's office at 2030 Liberty Road, Eldersburg, MD
 BAN20031285 Access Capital Mortgage, LLC - For a mortgage broker's license
 BAN20031286 Integral Mortgage Company - For a mortgage broker's license
 BAN20031287 U.S. Lending, LLC - For a mortgage broker's license
 BAN20031288 Primerica Financial Services Home Mortgages, Inc. - To open a mortgage broker's office at 2013 Cunningham Drive, Suite 103, Hampton, VA
 BAN20031289 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 240 South 200, West, Suite 220, Farmington, UT
 BAN20031290 InterActiveCorp - To acquire 25 percent or more of LendingTree, Inc.
 BAN20031291 Premium Capital Funding LLC d/b/a BLS Funding - For a mortgage lender and broker license
 BAN20031292 Allied Cash Advance Virginia LLC d/b/a Allied Cash Advance - To open an payday lender's office at 7788 Sudley Road, Manassas, VA
 BAN20031293 The Mortgage Center, LLC - For a mortgage broker's license
 BAN20031294 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 2905 Franklin's Chance Drive, Fallston, MD to 6801 Eastern Avenue, Suite 200, Baltimore, MD
 BAN20031295 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 71 Grace Street, Cranston, RI
 BAN20031296 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1405 Barrett Road, Baltimore, MD
 BAN20031297 Janis J. Crews d/b/a Gold Star Mortgage Services - To relocate mortgage broker's office from 2321 Riverside Drive, Suite 30, Danville, VA to 415 Piney Forest Road, Danville, VA
 BAN20031298 Madison Mortgage Corporation - To acquire 25 percent or more of Sunshine Mortgage Corporation
 BAN20031299 Global Money Transmission (GMT), LLC - For a money order license
 BAN20031300 Foreign Currency Exchange Corp. - To open a check casher at 2700 Potomac Mills Circle, Suite 430, Prince William, VA
 BAN20031301 The Mortgage Doctor, Inc. - To relocate mortgage broker's office from 105 Jodeco Station Terrace, Stockbridge, GA to 2115 Emerald Drive, Jonesboro, GA
 BAN20031302 American Cash Exchange Enterprise of Virginia, L.L.C. d/b/a 1st Choice Cash Advance - To open a payday lender's office at 2508 South Front Street, Richlands, VA
 BAN20031303 D&Q Enterprises, Inc. d/b/a Paymasters - To open a check casher at 2261 Valley Avenue, Winchester, VA
 BAN20031304 First Bancorp Mortgage Corporation - To open a mortgage lender and broker's office at 302 Main Street, Smithfield, VA
 BAN20031305 Edward D. Jones & Co., L.P. d/b/a EdwardJones - To open a mortgage broker's office at 1110 E. Washington Avenue, Vinton, VA
 BAN20031306 Old Stone Mortgage Corporation - To open a mortgage broker's office at 200 High Street, Portsmouth, VA
 BAN20031307 American Mortgage Network, Inc. - To open a mortgage lender's office at 13777 Ballantyne Corporate Place, Suite 325, Charlotte, NC
 BAN20031308 Allied Home Mortgage Capital Corporation - To open a mortgage lender and broker's office at 5675 Stone Road, Suite 330, Centreville, VA
 BAN20031309 Colonial Atlantic Mortgage, Inc. - To open a mortgage broker's office at 10605 Concord Street, Suite 205, Kensington, MD
 BAN20031310 Saab Financial Corp. d/b/a Saab Mortgage - To open a mortgage broker's office at 4900 Leesburg Pike, Suite 209, Alexandria, VA
 BAN20031311 Coastal Capital Corp. - To open a mortgage lender and broker's office at 2740 North Dallas Parkway, Suite 100, Plano, TX
 BAN20031312 Allied Home Mortgage Capital Corporation - To open a mortgage lender and broker's office at 4500 Plank Road, Suite 2406, Fredericksburg, VA
 BAN20031313 Sunset Mortgage Company L.P. - To open a mortgage lender and broker's office at 5675 Farmhouse Drive, Frederick, MD
 BAN20031314 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 12 Hughes Street, Suite D-106, Irvine, CA
 BAN20031315 Check First, Inc. - To open a payday lender's office at 701 Newtown Road, Norfolk, VA
 BAN20031316 Check First, Inc. - To open a payday lender's office at 5277 Princess Anne Road, Virginia Beach, VA
 BAN20031317 Check First, Inc. - To open a payday lender's office at 1201 London Boulevard, Suite C, Portsmouth, VA
 BAN20031318 Check First, Inc. - To open a payday lender's office at 1291 North King Street, Hampton, VA
 BAN20031319 Check First, Inc. - To open a payday lender's office at 2412 East Little Creek Road, Norfolk, VA
 BAN20031320 Check First, Inc. - To open a payday lender's office at 9963 Warwick Boulevard, Unit A, Newport News, VA
 BAN20031321 Check First, Inc. - To open a payday lender's office at 12838 Jefferson Avenue, Newport News, VA
 BAN20031322 First Coast Capital Mortgage, Inc. d/b/a First Capital Mortgage - To relocate mortgage broker's office from 2021-B Cunningham Drive, Suite 3, Hampton, VA to 2021-A Cunningham Drive, Suite 4, Hampton, VA
 BAN20031323 LowerMyBills, Inc. - For a mortgage broker's license
 BAN20031324 Evergreen Services Inc. - For a payday lender license
 BAN20031325 Panda Mortgage, Inc. - For a mortgage broker's license
 BAN20031326 Loan America, Inc. - For a mortgage lender's license
 BAN20031327 Byron B. Miles - To acquire 25 percent or more of Merit Mortgage, Inc.
 BAN20031328 Provident Funding Group, Inc. - To open a mortgage lender's office at 700 East Main Street, Suite 1600, Richmond, VA
 BAN20031329 CitiFinancial Services, Inc. - To conduct consumer finance business where an automobile club membership business will also be conducted
 BAN20031330 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 4710 Rosedale Avenue, Bethesda, MD
 BAN20031331 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 3300 Virginia Beach Boulevard, Building B, Suite 401 G, Virginia Beach, VA
 BAN20031332 CUNA Mutual Mortgage Corporation - To open a mortgage lender's office at 2909 Route 100, North, Orefield, PA
 BAN20031333 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 4322 Tavern Green Lane, Bowie, MD
 BAN20031334 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 9380 McKnight Road, Pittsburgh, PA
 BAN20031335 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 4306 Poplar Branch Drive, Chantilly, VA
 BAN20031336 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 18313 El Dorado Way, Leesburg, VA
 BAN20031337 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 10 Edgemont Drive, Hampton, VA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20031338 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 13929 Possum Track Road, Raleigh, NC

BAN20031339 TrustMor Mortgage Company d/b/a Doiquality.Com - To open a mortgage lender and broker's office at 4501 Ford Avenue, Suite 300, Alexandria, VA

BAN20031340 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 13800 Rampant Lion Court, Centreville, VA to 5029-B Backlick Road, Annandale, VA

BAN20031341 Streamline Holding, LLC d/b/a Streamline Mortgage & Financial of VA - To relocate mortgage broker's office from 183 Windchime Court, Suite 100, Raleigh, NC to 8390 Six Forks Road, Suite 201, Raleigh, NC

BAN20031342 Gateway Funding Diversified Mortgage Services, L.P. - To relocate mortgage lender's office from 298 P. Canterbury Road, Belair, MD to 260 Gateway Drive, Suite 15 C, Belair, MD

BAN20031343 American General Financial Services (DE), Inc. (Used in VA by: American General Financial Services, Inc.) - To relocate mortgage lender broker's office from 605 Piney Forest Road, Danville, VA to 625 Piney Forest Road, Suite 201, Danville, VA

BAN20031344 American General Financial Services of America, Inc. - To relocate consumer finance office from 605 Piney Forest Road, Danville, VA to 625 Piney Forest Road, Suite 201, Danville, VA

BAN20031345 Mortgage Discounters, Inc. d/b/a Premier Funding Group - To relocate mortgage broker's office from 5103 B Backlick Road, Annandale, VA to 4115 Annandale Road, Suite 102, Annandale, VA

BAN20031346 Equity First Mortgage, Inc. - For a mortgage broker's license

BAN20031347 Green Dot Mortgage, LLC - For a mortgage broker's license

BAN20031348 National Foundation for Debt Management, Inc. d/b/a Alternative Credit Solutions - To open a debt counseling office

BAN20031349 Vision Mortgage, L.L.C. d/b/a Aaacquire Mortgage - For additional mortgage authority

BAN20031350 Provident Bank of Maryland - To open a branch at 1505 Stafford Market Place, Stafford, VA

BAN20031351 Pioneer Home Equity Corporation - For a mortgage broker's license

BAN20031352 RTG Financial Corporation d/b/a Challenge Residential Mortgage - For a mortgage broker's license

BAN20031353 All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 6915 Shawnee Road, Richmond, VA

BAN20031354 All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 727 Honeyspot Road, Suite 200, Stratford, CT

BAN20031355 At-Home Mortgage Associates, Ltd., A Limited Partnership (Used in VA by: At-Home Mortgage Associates, Ltd.) - To open a mortgage lender and broker's office at 2828 N. Harwood, Dallas, TX

BAN20031356 Consumer Mortgage Services Incorporated - To open a mortgage lender and broker's office at 2508 Chamberlayne Avenue, Suite 202, Richmond, VA

BAN20031357 Premier Mortgage Funding, Inc. - For a mortgage broker's license

BAN20031358 Benod Financial Group LLC - For a money order license

BAN20031359 Professional Employment Management, Inc. - For a mortgage broker's license

BAN20031360 Lincoln Mortgage Associates L.L.C. d/b/a Lincoln Financial Mortgage - For a mortgage lender and broker license

BAN20031361 Araminta Financial Group, LLC - For a mortgage broker's license

BAN20031362 Prime Mortgage Financial, Inc. - For a mortgage lender and broker license

BAN20031363 New Millennium Mortgage, Inc. - For a mortgage broker's license

BAN20031364 UMS, Inc. d/b/a Urgent Money Service - To open a payday lender's office at 1834 South Main Street, Harrisonburg, VA

BAN20031365 BLS Funding Corp. - To open a mortgage lender and broker's office at 605 Locust Street, Garden City, NY

BAN20031366 Sampson Mortgage, LLC - To relocate mortgage broker's office from 2154 Kimball Circle, Virginia Beach, VA to 1151 Cavalier Boulevard, Portsmouth, VA

BAN20031367 Lifetime Mortgage, Inc. - To relocate mortgage broker's office from 14101 Harrowgate Road, Chester, VA to 9910 Chester Road, Chester, VA

BAN20031368 Finance America, LLC - To relocate mortgage lender broker's office from 1100 Jorie Boulevard, Suite 240, Oakbrook, IL to 2655 Warrenville Road, 5th Floor, Downers Grove, IL

BAN20031369 Family Mortgage Corp. - To relocate mortgage broker's office from 1412 Battlefield Boulevard, Chesapeake, VA to 1408-1410 Battlefield Boulevard, Chesapeake, VA

BAN20031370 Flexible Mortgage Corp. - To relocate mortgage broker's office from 8212 Old Courthouse Road, Suite 2, Vienna, VA to 6320 Augusta Drive, Suite 1100, Springfield, VA

BAN20031371 NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 908 Niagara Falls Boulevard, Suite 222, North Tonawanda, NY to 908 Niagara Falls Boulevard, Suite 210, North Tonawanda, NY

BAN20031372 Atlantic Bay Mortgage Group, L.L.C. - To relocate mortgage lender broker's office from 130 Franklin Street, Mount Airy, NC to 452 Franklin Street, Mount Airy, NC

BAN20031373 Atlantic Bay Mortgage Group, L.L.C. - To relocate mortgage lender broker's office from 3959 Electric Road, Suite 101, Roanoke, VA to 3959 Electric Road, Suite 203, Roanoke, VA

BAN20031374 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 10047 Dragoonguard Court, Bristow, VA to 4105 Mt. Atlas Lane, Haymarket, VA

BAN20031375 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 408 Terrace Court, Virginia Beach, VA to 529 Croatan Hills Drive, Virginia Beach, VA

BAN20031376 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 1658 Canonade Court, Annapolis, MD to 1517 Ritchie Highway, Suite 1-G, Arnold, MD

BAN20031377 Jerry W. Thornton, Sr. d/b/a Jerry's Payday Loans - To open a check casher at 1336 A Kempsville Road, Virginia Beach, VA

BAN20031378 Carolina State Mortgage Corporation - To open a mortgage broker's office at 727 J. Clyde Morris Boulevard, Newport News, VA

BAN20031379 Capricorn Express Padala, Inc. - For a money order license

BAN20031380 Shirazi Express, Inc. - For a money order license

BAN20031381 Progressive Loan Funding Corporation (Used in VA by: Progressive Loan Funding) - For a mortgage broker's license

BAN20031382 Superior Home Mortgage Corporation (Used in VA by: Superior Mortgage Corporation) - To open a mortgage lender and broker's office at 5024 Campbell Boulevard, Suite J, Baltimore, MD

BAN20031383 Aggressive Mortgage Corp. - To open a mortgage broker's office at 14961 Washington Street, Haymarket, VA

BAN20031384 Bancstar Mortgage LLC - To relocate a mortgage broker's office from 1804 Sherwood Road, Silver Spring, MD to 8120 Woodmont Avenue, Suite 350, Bethesda, MD

BAN20031385 Destiny Mortgage Group, Inc. - To open a mortgage broker's office at 2240 D Gallows Road, Vienna, VA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20031386	Fieldstone Mortgage Company d/b/a Broad Street Mortgage Co. - To open a mortgage lender and broker's office at 138-144 East German Street, Suite 3, Shepherdstown, WV
BAN20031387	Express Mortgage Corp. of Virginia - To open a mortgage lender and broker's office at 1609 Vauxhall Road, Union, NJ
BAN20031388	Express Mortgage Corp. of Virginia - To open a mortgage lender and broker's office at 200 Howard Street, Suite 102D, LaPlata, MD
BAN20031389	Express Mortgage Corp. of Virginia - To open a mortgage lender and broker's office at 8605 Cameron Street, Suite 308, Silver Spring, MD
BAN20031390	Express Mortgage Corp. of Virginia - To open a mortgage lender and broker's office at 5211 Auth Road, Suite 200, Suitland, MD
BAN20031391	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 5167 Clayton Road, Suite C, Concord, CA
BAN20031392	All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 701 St. George Road, Danville, CA
BAN20031393	Corridor Mortgage Group, Inc. - To relocate mortgage broker's office from 10324 B Baltimore National Pike, Ellicott City, MD to 8820 Columbia 100 Parkway, Suite 250, Columbia, MD
BAN20031394	Jeffrey Dale Chandler - To relocate mortgage broker's office from 720 Thimble Shoals Boulevard, Suite 111, Newport News, VA to 11864 Canon Boulevard, Suite 103, Newport News, VA
BAN20031395	Federated Home Mortgage, Inc. - For additional mortgage authority
BAN20031396	Morrison Capital Corporation - For a mortgage broker's license
BAN20031397	Vista Mortgage, Inc. - For a mortgage broker's license
BAN20031398	First Funding, Inc. - For a mortgage broker's license
BAN20031399	Fusion Financial Group Limited Liability Company - For a mortgage broker's license
BAN20031400	Frontier Financial Corporation, Incorporated - For a mortgage broker's license
BAN20031401	American Mortgage Company of Kentucky, LLC - For a mortgage broker's license
BAN20031402	Radian Group Inc. - To acquire 25 percent or more of Nassau Mortgage LLC
BAN20031403	Albemarle First Bank - To open a branch at 2500 Austin Drive, Albemarle County, VA
BAN20031404	Bank of Clarke County - To open a branch at 1879 Berryville Pike, Frederick County, VA
BAN20031405	Premier Financial Company - To open a mortgage lender and broker's office at 320 Main Street, Suite 100, Gaithersburg, MD
BAN20031406	QC Financial Services, Inc. d/b/a Quik Cash - To open a payday lender's office at 463 A Denbigh Boulevard, Newport News, VA
BAN20031407	QC Financial Services, Inc. d/b/a Quik Cash - To open a payday lender's office at 910 Great Bridge Boulevard, Suite 108, Chesapeake, VA
BAN20031408	CMG Mortgage, Inc. d/b/a Pacific Guarantee Mortgage - To open a mortgage lender and broker's office at 1701 Euclid Avenue, Suite 1, Bristol, VA
BAN20031409	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1503 Carolina Court, Upper Marlboro, MD
BAN20031410	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 3015 Hartley Road, Suite 6, Jacksonville, FL
BAN20031411	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1722 Splendor Drive, Woodbine, MD
BAN20031412	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 6495 New Hampshire Avenue, Suite LL-100A, Box 155, Hyattsville, MD
BAN20031413	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 4 Yankee, Irvine, CA
BAN20031414	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 911 Paverstone Drive, Raleigh, NC to 244 W. Millbrook Road, Raleigh, NC
BAN20031415	Sunset Mortgage Company L.P. - To relocate mortgage lender broker's office from 2211 Lake Vista Drive, Christiansburg, VA to 125 Arrowhead Trail, Suite B, Christiansburg, VA
BAN20031416	Challenge Financial Investors Corp. d/b/a Challenge Mortgage - To relocate mortgage lender broker's office from 530 E. Main Street, Richmond, VA to 6001 Lakeside Avenue, Suite 7, Richmond, VA
BAN20031417	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 511 East Bexley Lane, Highlands Ranch, CO to 801 W. Mineral Avenue, Suite 101, Highlands Ranch, CO
BAN20031418	Edward D. Jones & Co., L.P. d/b/a EdwardJones - To relocate mortgage broker's office from 11224 Highway 501S, Clarksville, VA to 11224 Highway 15, Clarksville, VA
BAN20031419	Arisen Mortgage Corporation - To relocate mortgage lender broker's office from 11835 Rock Landing Drive, Newport News, VA to The Arisen Financial Center, 3526 George Washington Memorial Hwy., Yorktown, VA
BAN20031420	Redwood Capital, Inc. d/b/a Redwood Mortgage Services - To relocate mortgage broker's office from 8840 Stanford Boulevard, Suite 1300, Columbia, MD to 180 Admiral Cochrane Drive, Suite 350, Annapolis, MD
BAN20031421	F & S Supermarkets, Inc. d/b/a F & S Supermarket - To open a check casher at 2615 Marshall Avenue, Newport News, VA
BAN20031422	Chesapeake Residential Finance, Corp. - For a mortgage broker's license
BAN20031423	Consolidated Lenders Corporation d/b/a Greenpockets - For a mortgage lender and broker license
BAN20031424	C & G Financial Services, Inc. - For a mortgage lender and broker license
BAN20031425	Richard Tocado Companies, Inc. - For a mortgage broker's license
BAN20031426	Sunset Mortgage Company L.P. - To open a mortgage lender and broker's office at 4715 Cordell Avenue, 2nd Floor, Bethesda, MD
BAN20031427	Instafi.com (Inc) (Used in VA by: Instafi.com) - To open a mortgage lender and broker's office at 10650 West Charleston, Summerlin, NV
BAN20031428	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 6120 Old Frederick Road, Catonsville, MD
BAN20031429	All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 4351-A East Indian River Road, Chesapeake, VA
BAN20031430	Check into Cash of Virginia, LLC d/b/a Check into Cash - To open a payday lender's office at 12779 Jefferson Avenue, Newport News, VA
BAN20031431	Integrity Mortgage Funding, L.L.C. - To relocate mortgage broker's office from 4 Professional Drive, Suite 126, Gaithersburg, MD to 101 Chestnut Street, Suite 100, Gaithersburg, MD
BAN20031432	Coastal Mortgage Services, Inc. d/b/a Coastal Funding Group - To relocate mortgage lender broker's office from 3300 Battleground Avenue, Suite 305, Greensboro, NC to 3300 Battleground Avenue, Suite 401, Greensboro, NC
BAN20031433	Northern Star Credit Union, Incorporated - To merge into it The Portsmouth Post Office Credit Union, Incorporated Portsmouth, VA
BAN20031434	Hogarty Funding Group, Inc. - To relocate mortgage broker's office from 6693 Owens Drive, Pleasanton, CA to 7139 Koll Center Parkway, Suite 100, Pleasanton, CA
BAN20031435	Taylor, Bean & Whitaker Mortgage Corp. - To open a mortgage lender's office at 3950 Premier North Drive, Tampa, FL
BAN20031436	Ivan D. Jones, Jr. - For a mortgage broker's license

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20031437 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 39576 Dellamanna Lane, Lovettsville, VA

BAN20031438 Cristina V. G. Kramer d/b/a Anchor Tidewater Mortgage Company - For a mortgage broker's license

BAN20031439 W.R. Starkey Mortgage, LLP - For a mortgage lender and broker license

BAN20031440 Community Lending Associates, Inc. - For a mortgage broker's license

BAN20031441 Fidelity First Mortgage, Inc. - For additional mortgage authority

BAN20031442 Atlantic Bay Mortgage Group, L.L.C. - To open a mortgage lender and broker's office at 1427 North Great Neck Road, Virginia Beach, VA

BAN20031443 Primerica Financial Services Home Mortgages, Inc. - To open a mortgage broker's office at 606 Thimble Shoals Boulevard, Building C-2, Suite 4, Newport News, VA

BAN20031444 Monday Mortgage Corporation - To open a mortgage broker's office at 7531 Leesburg Pike, Suite 401, Falls Church, VA

BAN20031445 First Savings Mortgage Corporation d/b/a Portfolio Funding Group - To open a mortgage lender and broker's office at 5501 Backlick Road, Suite 200, Springfield, VA

BAN20031446 East West Mortgage Company, Inc. - To relocate mortgage lender broker's office from 3408 Oregon Oak Drive, Richmond, VA to 7639 Hull Street Road, Suite 202, Richmond, VA

BAN20031447 SunTrust Bank - To open a branch at 80 Westlake Road, Hardy, VA

BAN20031448 Eagle Funding Group, Ltd. - To relocate mortgage broker's office from 3863-A Plaza Drive, Fairfax, VA to 14100 Sullyfield Circle, Suite 500, Chantilly, VA

BAN20031449 Olympia Mortgage Group, Inc. - For a mortgage broker's license

BAN20031450 Davis & Gordon, LLC - For a mortgage broker's license

BAN20031451 America's Choice Mortgage, Inc. - For a mortgage broker's license

BAN20031452 Homeland Mortgage, LLC - For a mortgage broker's license

BAN20031453 Affiliated Financial Corporation - To open a consumer finance office

BAN20031454 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 135 Rosedale Court, Danville, VA

BAN20031455 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 3808 Parkmont Avenue, Baltimore, MD

BAN20031456 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 201 Shannon Oaks Circle, Suite 200, Cary, NC

BAN20031457 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 2602 South Kent Street, Arlington, VA

BAN20031458 Superior Home Mortgage Corporation (Used in VA by: Superior Mortgage Corporation) - To open a mortgage lender and broker's office at 251 Bellevue Avenue, Suite 202, Hammonton, NJ

BAN20031459 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 20 Sorbonne, Laguna Niguel, CA

BAN20031460 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To relocate mortgage broker's office from 8104 Valley Lane, Ellicott City, MD to 10440 Shaker Drive, Suite 109, Columbia, MD

BAN20031461 Secured Funding Corporation - To relocate mortgage lender broker's office from 18012 Cowan, Suite 100, Irvine, CA to 2955 Redhill Avenue, Costa Mesa, CA

BAN20031462 HomeAmerican Credit, Inc. d/b/a Upland Mortgage - To relocate mortgage lender's office from 111 Presidential Boulevard, Suite 114, Bala Cynwyd, PA to The Wanamaker Building, 100 Penn Square, East, 8th Floor, Philadelphia, PA

BAN20031463 Home Loan Corporation - To relocate mortgage lender broker's office from 7810 Ballantyne Commons Parkway, Charlotte, NC to 11510 North Community House Road, Suite 200, Charlotte, NC

BAN20031464 American Business Mortgage Services, Inc. - To relocate mortgage lender's office from 5 Becker Farm Road, Roseland, NJ to 105 Eisenhower Parkway, Fourth Floor, Roseland, NJ

BAN20031465 Challenge Financial Investors Corp. d/b/a Challenge Mortgage - To open a mortgage lender and broker's office at 1101 West Hibiscus Boulevard, Suite 211, Melbourne, FL

BAN20031466 First Fidelity Mortgage, Inc. - To open a mortgage lender and broker's office at 5040 Corporate Woods Drive Suite 135, Virginia Beach, VA

BAN20031467 Premium Mortgage Corporation - For a mortgage broker's license

BAN20031468 Absolute Mortgage Company, Inc. - For a mortgage broker's license

BAN20031469 Mortgage Select Services Inc. - For a mortgage broker's license

BAN20031470 Mariners Capital Inc (Used in VA by: Mariners Capital) - For a mortgage broker's license

BAN20031471 Southern Trust Mortgage, LLC d/b/a Middleburg Mortgage (2 Norfolk Offices) - To open a mortgage lender and broker's office at 13800 Coppermine Road, Suite 357, Herndon, VA

BAN20031472 SLM Mortgage Corporation-VA - To open a mortgage lender and broker's office at 593 Washington Street, Weymouth, MA

BAN20031473 Countryside Mortgage Services, Inc. - To open a mortgage broker's office at 1655 N. Fort Myer Drive, Suite 700, Arlington, VA

BAN20031474 T. Byrd, Inc. d/b/a Instant Money Service - To relocate payday lender's office from 12779 Jefferson Avenue, Newport News, VA to 13678-D Warwick Boulevard, Newport News, VA

BAN20031475 GMAC Mortgage Corporation d/b/a Ditech.Com - To relocate mortgage lender broker's office from 3451 Hammond Avenue, Waterloo, IA to 235 Fisher Drive, Waterloo, IA

BAN20031476 First Midland Mortgage Company, L.L.C. - To relocate mortgage lender broker's office from 4101 Chain Bridge Road, Suite 208, Fairfax, VA to 3915 Old Lee Highway, Suite 23 D, Fairfax, VA

BAN20031477 Systech Solutions Inc. d/b/a 29 Food Mart - To open a check casher at 10062 James Madison Highway, Warrenton, VA

BAN20031478 Foundation Enterprises, LLC - For a mortgage broker's license

BAN20031479 Loudoun Lenders LLC - For a mortgage broker's license

BAN20031480 Columbia National, Incorporated - To open a mortgage lender and broker's office at 520 Broadhollow Road, Melville, NY

BAN20031481 Columbia National, Incorporated - To open a mortgage lender and broker's office at 305 Harrison Street, Suite 200, Leesburg, VA

BAN20031482 All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 14333 Laurel Bowie Road, Suite 106, Laurel, MD

BAN20031483 Edward D. Jones & Co., L.P. d/b/a EdwardJones - To open a mortgage broker's office at 1076 Thomas Jefferson Road, Suite C, Forest, VA

BAN20031484 GMAC Mortgage Corporation d/b/a Ditech.Com - To open a mortgage lender and broker's office at 8044 Montgomery Road, Cincinnati, OH

BAN20031485 Darrell L. Payne d/b/a Payne's Check Cashing - To open a payday lender's office at 8881 Seminole Trail, Ruckersville, VA

BAN20031486 DL King, LLC d/b/a King\$ Ca\$h Advance\$ - To open a payday lender's office at 1155 Piney Forest Road, Suite C, Danville, VA

BAN20031487 T. I., Inc. - To open a check casher at 2802 Graham Road, Falls Church, VA

BAN20031488 Southern Financial Bank - To open a branch at 1001 East Main Street, Richmond, VA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20031489	Home Consultants, Inc. d/b/a HCI Mortgage - For additional mortgage authority
BAN20031490	Accountable mortgage L.L.C. - For a mortgage broker's license
BAN20031491	Household Financial Services, Inc. - For a mortgage lender's license
BAN20031492	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 2417 W. Main, Suite 1A, Bozeman, MT
BAN20031493	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 7340 Executive Way, Suite M, Frederick, MD
BAN20031494	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 800 North Mangum Street, Durham, NC
BAN20031495	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 1281 Terminal Way, Suite 201, Reno, NV
BAN20031496	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 9774 Lakepoint Drive, Burke, VA
BAN20031497	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 945 S. River Road, Denham Springs, LA to 5647 Galeria, Suite A, Baton Rouge, LA
BAN20031498	Sunset Mortgage Company L.P. - To open a mortgage lender and broker's office at 12110 Sunset Hills Road, Suite 450, Reston, VA
BAN20031499	All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 3311 Toledo Terrace, Suite 203B, Hyattsville, MD
BAN20031500	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 137 West Quail Lane, LaPlata, MD
BAN20031501	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 18313 El Dorado Way, Leesburg, VA
BAN20031502	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 2555 Crooks Road, Suite 100, Troy, MI
BAN20031503	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at Rt. 2, Box 353, Bluefield, VA
BAN20031504	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 6802 Hartwood Lane, Centreville, VA
BAN20031505	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 2038 Watermark Place, Columbia, SC
BAN20031506	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 627 B Sandfiddler Circle, Corolla, NC
BAN20031507	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 3348 Garrison Circle, Abingdon, MD to 7902 Belair Road, Baltimore, MD
BAN20031508	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 12115 Greenway Court, Suite 102, Fairfax, VA to 3271 SW 4th Street, Deerfield Beach, FL
BAN20031509	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 605-9th Street, Suite 705, Huntington, WV to 1219 Washington Boulevard, Huntington, WV
BAN20031510	InterBay Funding, LLC - To relocate mortgage lender's office from 5740 Hollywood Boulevard, Suite 600, Hollywood, FL to 4601 Sheridan Street, Suite 400, Hollywood, FL
BAN20031511	Beneficial Discount Co. of Virginia - To relocate mortgage lender's office from 232 E. Main Street, Ahoskie, NC to 124 East Main Street, Ahoskie, NC
BAN20031512	Beneficial Mortgage Co. of Virginia - To relocate mortgage lender broker's office from 232 E. Main Street, Ahoskie, NC to 124 East Main Street, Ahoskie, NC
BAN20031513	Virginia Community Bank - To open a branch at NE corner of U.S. Routes 15 and 250, Zion Crossroads, Louisa County, VA
BAN20031514	The Lending Connection, Inc. - To relocate mortgage lender's office from 950 South Coast Drive, Suite 155, Costa Mesa, CA to 949 South Coast Drive, Suite 200, Costa Mesa, CA
BAN20031515	Franklin Mortgage Corporation - To open a mortgage broker's office at 328 Walnut Avenue, Waynesboro, VA
BAN20031516	Metropolitan Mortgage Services L.L.C. - For a mortgage broker's license
BAN20031517	MortgageMecca Inc. - For a mortgage broker's license
BAN20031518	Evergreen Mortgage & Financial, Inc. - For a mortgage broker's license
BAN20031519	AmPro Mortgage Corporation d/b/a WestWorks Mortgage - For a mortgage lender and broker license
BAN20031520	Challenge Financial Investors Corp. d/b/a Challenge Mortgage - To open a mortgage lender and broker's office at 100 N. Washington Street, Falls Church, VA
BAN20031521	Fieldstone Mortgage Company d/b/a Broad Street Mortgage Co. - To open a mortgage lender and broker's office at 19321 U.S. Highway 19 N., Suite 415, Clearwater, FL
BAN20031522	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 10219 Waterford Drive, Manassas, VA
BAN20031523	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 481 17th. Avenue, Hickory, NC
BAN20031524	GMAC Mortgage Corporation d/b/a Ditech.Com - To open a mortgage lender and broker's office at 5 Greentree Centre, Marlton, NJ
BAN20031525	Paradigm Mortgage Services, Inc. - To relocate mortgage broker's office from 4720 Montgomery Avenue, Suite 420, Bethesda, MD to 4720 Montgomery Lane, Suite 1010, Bethesda, MD
BAN20031526	Everyday Lending Mortgage Corporation, Inc. - To relocate mortgage broker's office from 5602B Virginia Beach Boulevard, Virginia Beach, VA to 5604 A Virginia Beach Boulevard, Suite 201, Virginia Beach, VA
BAN20031527	Bodega Latina, LLC - To open a check casher at 9046 W. Broad Street, Richmond, VA
BAN20031528	First Citizens Mortgage Corp. - To open a mortgage broker's office at 6564 Loisdale Court, Suite 100, Springfield, VA
BAN20031529	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 1049 Liberty Road, Eldersburg, MD
BAN20031530	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 908 South Main Street, Bel Air, MD to 2211 Commerce Road, Forest Hill, MD
BAN20031531	John R. Humphries d/b/a Johns Service Station - To open a check casher at 12 Edmunds Street, South Boston, VA
BAN20031532	Metropoint Financial Corp. - For a mortgage broker's license
BAN20031533	NFM, Inc. d/b/a Fidelity Mortgage Corporation - For additional mortgage authority
BAN20031534	Apex Financial Group, Inc. d/b/a AApeX Mortgage - For additional mortgage authority
BAN20031535	Branch Banking and Trust Company of Virginia - To open a branch at Short Pump Towne Center, West Broad Street, Glen Allen, VA
BAN20031536	SunTrust Bank - To open a branch at 150 West Main Street, Norfolk, VA
BAN20031537	USA Home Loans, Inc. - To open a mortgage broker's office at 8725 Loch Raven Blvd, Suite 205, Towson, MD
BAN20031538	First Superior Mortgage Corp. - To relocate mortgage broker's office from 8034 Mechanicsville Turnpike, Mechanicsville, VA to 7309 Hanover Green Drive, Suite 202, Mechanicsville, VA
BAN20031539	Independent Mortgage LLC - For a mortgage broker's license
BAN20031540	Triangle Lending Services, LLC - For a mortgage broker's license
BAN20031541	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 6540 Holabird Avenue, Baltimore, MD
BAN20031542	CH Mortgage Company I, Ltd., L.P. (Used in VA by: CH Mortgage Company I, Ltd.) - To relocate mortgage lender broker's office from 11710 Plaza America Drive, Reston, VA to 11216 Waples Mill Road, Suite 105, Fairfax, VA
BAN20031543	Alpine Internet, LLC - For a mortgage broker's license

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20031544 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 4704 Carlisle Pike, Mechanicsburg, PA
 BAN20031545 Alta Financial Corporation - To relocate mortgage lender broker's office from 531 Roselane Street, Suite 600, Marietta, GA to 2727 Paces Ferry Road, One Paces West, Suite 1800, Atlanta, GA

BAN20031546 All Virginia Mortgage Company, Inc. - For a mortgage broker's license
 BAN20031547 Planters Bank & Trust Company of Virginia - To open a branch at 110 Mall Road, Alleghany County, VA
 BAN20031548 Second Bank & Trust - To open a branch at 300 West Reservoir Road, Woodstock, VA
 BAN20031549 Planters Bank & Trust Company of Virginia - To open a branch at 1508 South Main Street, Farmville, VA
 BAN20031550 Planters Bank & Trust Company of Virginia - To open a branch at 450 West Main Street, Covington, VA
 BAN20031551 Planters Bank & Trust Company of Virginia - To open a branch at 201 West Main Street, Tazewell, VA
 BAN20031552 Planters Bank & Trust Company of Virginia - To open a branch at 369 Franklin Street, Rocky Mount, VA
 BAN20031553 Planters Bank & Trust Company of Virginia - To open a branch at 20 Jubal Early Highway, Wirtz, VA
 BAN20031554 Planters Bank & Trust Company of Virginia - To open a branch at 1155 Claypool Hill Mall Road, Cedar Bluff, VA
 BAN20031555 Bristol's E-Z Cash Advance, LLC - To conduct payday lending business where a retail sales business will also be conducted
 BAN20031556 Regional Mortgage Financial Service, Inc. - For a mortgage broker's license
 BAN20031557 1st Priority Mortgage Corp. d/b/a Affordable Mortgage Solutions - To relocate mortgage broker's office from 1001 Navaho Drive, Suite 100, Raleigh, NC to 2320 Turtle Point Drive, Raleigh, NC

BAN20031558 1st Priority Mortgage Corp. d/b/a Affordable Mortgage Solutions - To open a mortgage broker's office at 7121 Broomfield Way, Raleigh, NC

BAN20031559 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 17 Asbury Way, Sterling, VA to 46598 Kingschase Court, Sterling, VA

BAN20031560 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 16 Bally Hean Court, Timonium, MD to 222 Gateswood Road, Timonium, MD

BAN20031561 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from Route 2, Box 355, Washington, WV to 16187 W. Watson Lane, Surprise, AZ

BAN20031562 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 854 Macalister Drive, Leesburg, VA to 6043 Polomaglade Drive, Lithia, FL

BAN20031563 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 10878 Cabbage Pond Court, Jacksonville, FL to 3015 Hartley Road, Jacksonville, FL

BAN20031564 H&R Block Mortgage Corporation - To relocate mortgage lender broker's office from 3976 Powell Road, Powell, OH to 3978 Powell Road, Powell, OH

BAN20031565 Ameritrust Mortgage Company, LLC - To open a mortgage lender's office at 839 Exchange Street, Charlotte, NC
 BAN20031566 Global Mortgage, Inc. - To relocate mortgage broker's office from 4912 Creekside Drive, Clearwater, FL to 14440 Myer Lake Circle, Clearwater, FL

BAN20031567 Independent Realty Capital Corporation - To open a mortgage lender and broker's office at 310 S. Williams Boulevard, Tucson, AZ
 BAN20031568 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 17452 Irvine Boulevard, Suite 207, Tustin, CA
 BAN20031569 Primerica Financial Services Home Mortgages, Inc. - To open a mortgage broker's office at 219 W. Beverley Street, Suite 204, Staunton, VA

BAN20031570 Primerica Financial Services Home Mortgages, Inc. - To relocate mortgage broker's office from 541 S. Washington Highway, Ashland, VA to 10451 Dow - Gil Road, Ashland, VA

BAN20031571 PDQ Cash Advance, Inc. - To relocate payday lender's office from 170 U.S. Highway 23, North, Gate City, VA to 105 Reading Road, Weber City, VA

BAN20031572 DL King, LLC d/b/a King's Ca\$h Advance\$ - To open a payday lender's office at 651 Boulevard, Space 1, Colonial Heights, VA
 BAN20031573 DL King, LLC d/b/a King's Ca\$h Advance\$ - To open a payday lender's office at 5480 Oaklawn Boulevard, Suite B, Prince George, VA

BAN20031574 Apple Valley Mortgage, LLC - For a mortgage broker's license
 BAN20031575 Olympia Funding, Inc. - To open a mortgage broker's office at 10300 Eaton Place, Suite 120, Fairfax, VA
 BAN20031576 Olympia Funding, Inc. - To open a mortgage broker's office at 2944 Hunter Mill Road, Suite 104, Oakton, VA
 BAN20031577 United Bank - To merge into it SequoiaBank
 BAN20031578 Branch Banking and Trust Company of Virginia - To merge into it First Virginia Bank-Blue Ridge
 BAN20031579 Branch Banking and Trust Company of Virginia - To merge into it First Virginia Bank-Hampton Roads
 BAN20031580 Branch Banking and Trust Company of Virginia - To merge into it First Vantage Bank/Tri-Cities
 BAN20031581 Branch Banking and Trust Company of Virginia - To merge into it First Virginia Bank-Colonial
 BAN20031582 Branch Banking and Trust Company of Virginia - To merge into it First Virginia Bank
 BAN20031583 Branch Banking and Trust Company of Virginia - To merge into it First Virginia Bank - Southwest
 BAN20031584 Pamela H. Sisk d/b/a Sisk Mortgage Group - For a mortgage broker's license
 BAN20031585 American Payment Solutions, Inc. - For a money order license
 BAN20031586 Union Bank and Trust Company - To open a branch at 1773 Parham Road, Henrico County, VA
 BAN20031587 All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 718 Milford Road, East Stroudsburg, PA
 BAN20031588 Check into Cash of Virginia, LLC d/b/a Check into Cash - To open a payday lender's office at 1181 North Main Street, Marion, VA
 BAN20031589 Fairfax Mortgage Investments Inc. - To relocate mortgage lender broker's office from 813 Diligence Drive, Suite 121C, Newport News, VA to 708 Thimble Shoals Blvd., Suite A, Newport News, VA

BAN20031590 Salama Money Express Corporation - For a money order license
 BAN20031591 Lender's Investment Corp. - For a mortgage lender and broker license
 BAN20031592 Financial Mortgage, Inc. - To relocate mortgage lender broker's office from 404 Oakmeads Crescent, Suite 204, Virginia Beach, VA to 814 15th Street, Virginia Beach, VA

BAN20031593 All Fund, Inc. d/b/a All Fund Mortgage - To relocate mortgage lender broker's office from 27205 148th Avenue, SE, Suite 107, Kent, WA to 1439 Rogers Street, Richmond, VA

BAN20031594 Lawyers Financial Corporation - To relocate mortgage broker's office from 905 Richmond Road, Williamsburg, VA to 1001 Richmond Road, Williamsburg, VA

BAN20031595 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 207 N. Gilbert Street, Suite 02, Gilbert, AZ
 BAN20031596 Union Liberty Mortgage, Inc. (Used in VA by: National Liberty Mortgage, Inc.) - For a mortgage broker's license
 BAN20031597 LoanApp, Inc. - For a mortgage broker's license

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20031598	ComUnity Lending, Incorporated d/b/a Virginia Community Lending (McLean) - To open a mortgage lender and broker's office at 1571 West Shaw Avenue, Fresno, CA
BAN20031599	ComUnity Lending, Incorporated d/b/a Virginia Community Lending (McLean) - To open a mortgage lender and broker's office at 231 East Main Street, Suite 221, Round Rock, TX
BAN20031600	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 11823 Lancashire Drive, Tampa, FL to 12524 Leatherleaf Drive, Tampa, FL
BAN20031601	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 7320 Peppers Ferry Boulevard, Radford, VA
BAN20031602	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 1341 West Main Street, Salem, VA
BAN20031603	Weststar Mortgage, Inc. - To open a mortgage lender and broker's office at 202 East Davis Street, Culpeper, VA
BAN20031604	Weststar Mortgage, Inc. - To open a mortgage lender and broker's office at 1775 Wiehle Avenue, Reston, VA
BAN20031605	B & B Enterprises d/b/a 1st American Mortgage - To open a mortgage broker's office at 114 Hovatter Drive, Inwood, WV
BAN20031606	1st Nations Mortgage Corporation - To open a mortgage broker's office at 14 Centre Court, Lake Monticello, VA
BAN20031607	1st Nations Mortgage Corporation - To open a mortgage broker's office at 10993 Milestone Drive, Mechanicsville, VA
BAN20031608	1st Nations Mortgage Corporation - To open a mortgage broker's office at 2601 Duxbury Court, Woodbridge, VA
BAN20031609	AEGIS Funding Corporation d/b/a AEGIS Home Equity - To open a mortgage lender's office at 220 Continental Drive, Suite 109, Newark, DE
BAN20031610	Primerica Financial Services Home Mortgages, Inc. - To relocate mortgage broker's office from 3102 Golansky Boulevard, Suite 202, Woodbridge, VA to 13628 Jefferson Davis Highway, Woodbridge, VA
BAN20031611	American Residential Funding, Inc. - To relocate mortgage lender broker's office from 1000 Bearcat Way, Suite 104, Morrisville, NC to 1000 Bearcat Way, Suite 100, Morrisville, NC
BAN20031612	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 6 Hutton Center Drive, Suite 830, Santa Ana, CA
BAN20031613	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 5361 Harpers Farm Road, Suite 2, Columbia, MD
BAN20031614	Regency Mortgage, Inc. - To relocate mortgage broker's office from 10660 Cherokee Road, Richmond, VA to 10401 Apache Road, Richmond, VA
BAN20031615	First Equity Mortgage of Ohio, Incorporated (Used in VA by: First Equity Mortgage Incorporated) - For a mortgage lender and broker license
BAN20031616	United Bankshares, Inc. - To acquire Sequoia Bancshares, Inc. Bethesda, MD
BAN20031617	Continental First Mortgage Corporation - For a mortgage broker's license
BAN20031618	Mortgage Source, Inc. - To relocate mortgage lender broker's office from 702 Middleground Boulevard, Suite D, Newport News, VA to 749-A J. Clyde Morris Boulevard, Newport News, VA
BAN20031619	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 2217 Princess Anne St., Suite 213-1, Fredericksburg, VA
BAN20031620	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 2501 Porter Street, NW, Suite 728, Washington, DC
BAN20031621	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 2038 Watermark Place, Columbia, SC
BAN20031622	Castle Point Mortgage, Inc. - For a mortgage lender and broker license
BAN20031623	Wilmington Finance, Inc. - For additional mortgage authority
BAN20031624	Pinnacle Direct Funding Corporation - To open a mortgage lender's office at 1500 Tradeport Drive, Orlando, FL
BAN20031625	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 40347 U.S. Highway 19, N., Tarpon Springs, FL
BAN20031626	Vertical Lend, Inc. d/b/a Mortgage Warehouse - To open a mortgage broker's office at 329 Southgate Shopping Center, Culpeper, VA
BAN20031627	Cambridge Financial Services, L.C. - For a mortgage lender's license
BAN20031628	Passport Mortgage, Inc. - For a mortgage broker's license
BAN20031629	Lakeside Mortgage, L.L.C. - For a mortgage broker's license
BAN20031630	Fortune Mortgage Company d/b/a BORROW123.COM - For additional mortgage authority
BAN20031631	Challenge Financial Investors Corp. d/b/a Challenge Mortgage - To open a mortgage lender and broker's office at 12559 Carrington Hill Drive, Gaithersburg, MD
BAN20031632	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at Highway 460, West, Unit #5, Appomattox, VA
BAN20031633	Capital Mortgage Group, Inc. - To relocate mortgage broker's office from 4326 Sutler Hill Square, Fairfax, VA to 12916 Swedes Street, Fairfax, VA
BAN20031634	E Source Mortgage, Inc. - To open a mortgage lender and broker's office at 1524 West 14th Street, Suite 120, Tempe, AZ
BAN20031635	Allied Home Mortgage Capital Corporation - To relocate mortgage lender broker's office from 6767 Forest Hill Avenue, Suite 305, Richmond, VA to 6767 Forest Hill Avenue, Suite 105, Richmond, VA
BAN20031636	World Lending Group, Inc. - To open a mortgage lender and broker's office at 515 Rivergate Parkway, Suite 100, Goodlettsville, TN
BAN20031637	Absolute Mortgage Solutions, LLC - For a mortgage broker's license
BAN20031638	Challenge Financial Investors Corp. d/b/a Challenge Mortgage - To open a mortgage lender and broker's office at 8494 Charnwood Court, Manassas, VA
BAN20031639	Approved Mortgage Capital, L.L.C. - To open a mortgage broker's office at 428 Snow Hill Road, Salisbury, MD
BAN20031640	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 2800 Middle Country Road, Lake Grove, NY
BAN20031641	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 9111 Cross Park Drive, Suite D-211, Knoxville, TN
BAN20031642	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 4700 Falls of Neuse Road, Suite 340S, Tower, Raleigh, NC
BAN20031643	Primerica Financial Services Home Mortgages, Inc. - To open a mortgage broker's office at 962 Norfolk Square, Norfolk, VA
BAN20031644	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 360 Peakwood Drive, Boones Mill, VA
BAN20031645	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 1235 Diamond Avenue, Rocky Mount, VA
BAN20031646	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 1607 Stanley Avenue, Landisville, PA to 428 Nevin Street, Lancaster, PA
BAN20031647	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 19 Wood Cove Drive, The Woodlands, TX
BAN20031648	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 3209 Gresham Lake Road, Suite 115, Raleigh, NC

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20031649 Allied Home Mortgage Capital Corporation - To relocate mortgage lender broker's office from 41 Simmons Lane, Severna Park, MD to 600 Baltimore Annapolis Boulevard, Suite 206, Severna Park, MD

BAN20031650 Resicom Funding, Inc. - For a mortgage broker's license

BAN20031651 Norfolk Southern Employees' Credit Union, Incorporated - To relocate credit union office from 1324 N Battlefield Boulevard, Suite 3-F, Chesapeake, VA to 1417 North Battlefield Boulevard, Suite 290, Chesapeake, VA

BAN20031652 Semidey & Semidey Mortgage Group, LLC - To relocate mortgage broker's office from 7361 McWhorter Place, Suite 321, Annandale, VA to 1154 Markell Court, Reston, VA

BAN20031653 First Magnus Financial Corporation d/b/a Charter Funding - To open a mortgage lender and broker's office at 5255 East Williams Circle, Suite 2020, Tucson, AZ

BAN20031654 First Magnus Financial Corporation d/b/a Charter Funding - To open a mortgage lender and broker's office at 5255 East Williams Circle, Suite 1025, Tucson, AZ

BAN20031655 Golden Rule Mortgages, Inc. - For a mortgage broker's license

BAN20031656 Lighthouse Credit Foundation, Inc. - To open a debt counseling office

BAN20031657 21st Mortgage Corporation - To open a mortgage lender and broker's office at 620 Market Street, Knoxville, TN

BAN20031658 American Residential Funding, Inc. - To relocate mortgage lender broker's office from 2152 Dupont Drive, Suite 101, Irvine, CA to 2152 Dupont Drive, Suite 110, Irvine, CA

BAN20031659 America's Mortgage Broker, L.L.C. d/b/a Affordable Home Funding - To relocate mortgage lender broker's office from 1750 Jefferson Highway, Fishersville, VA to 2716 Enterprise Parkway, Suite C, Richmond, VA

BAN20031660 America's Mortgage Broker, L.L.C. d/b/a Affordable Home Funding - To relocate mortgage lender broker's office from 265 E. Market Street, Harrisonburg, VA to 7718 Rockledge Court, Springfield, VA

BAN20031661 MortgageSouth Financial Services, Inc. - For a mortgage lender and broker license

BAN20031662 First American Mortgage Services, Inc. - To relocate mortgage broker's office from 601 Caroline Street, Suite 201, Fredericksburg, VA to 302 East Davis Street, Culpeper, VA

BAN20031663 Prime Mortgage Company - To open a mortgage broker's office at 9408 Congress Street, New Market, VA

BAN20031664 CashNet, Inc. d/b/a Cash Advance Centers - To relocate payday lender's office from 1301 Main Street, Altavista, VA to 1301-O Main Street, Altavista, VA

BAN20031665 First Mortgage Masters, Inc. - To open a mortgage broker's office at 7 Old Solomons Island Rd, Suite 200, Annapolis, MD

BAN20031666 Quality Mortgage and Financial Services Corporation - To open a mortgage broker's office at 5822 Hubbard Drive, Rockville, MD

BAN20031667 Edward D. Jones & Co., L.P. d/b/a EdwardJones - To open a mortgage broker's office at 6845 Elm Street, Suite 613, McLean, VA

BAN20031668 BMG, LLC d/b/a Best Mortgage Group LLC - To relocate mortgage broker's office from 1950 Old Gallows Road, Suite 210, Vienna, VA to 1950 Old Gallows Road, Suite 200, Vienna, VA

BAN20031669 The Lending Group of Virginia, Inc. (Used in VA by: The Lending Group, Inc.) - To relocate mortgage lender's office from 2300 N. Barrington Road, Hoffman Estates, IL to 13901 Sutton Park Drive, Suite 150, Jacksonville, FL

BAN20031670 Atlas Mortgage Inc. - For a mortgage broker's license

BAN20031671 Charles D. Williams - For a mortgage broker's license

BAN20031672 AmStar Mortgage Corporation - For a mortgage broker's license

BAN20031673 Cal Capital Credit, Inc. - For a mortgage broker's license

BAN20031674 Southside Bank - To open a branch at 209 West Main Street, Waverly, VA

BAN20031675 Southside Bank - To open a branch at 233 South County Drive, Waverly, VA

BAN20031676 Southside Bank - To open a branch at 22241 Main Street, Courtland, VA

BAN20031677 Southside Bank - To open a branch at 22510 Linden Street, Courtland, VA

BAN20031678 Southside Bank - To open a branch at 176 Colonial Trail East, Surry, VA

BAN20031679 Homeview Financial, LLC - For a mortgage broker's license

BAN20031680 Citizens Accounting and Tax Services, Inc. d/b/a Citizens Mortgage Broker - For a mortgage broker's license

BAN20031681 Catocin Mortgage, L.L.C. - For a mortgage broker's license

BAN20031682 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 420 Kirkwood Drive, Fairborn, OH

BAN20031683 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 473 East Rich Street, Columbus, OH

BAN20031684 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 780 Pilot House Drive, Suite 200-D, Hampton, VA

BAN20031685 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 631 Bellerive Court, Arnold, MD

BAN20031686 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 8206 Leesburg Pike, Suite #305, Vienna, VA

BAN20031687 Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 3258A Titanic Drive, Stafford, VA to 3282 Titanic Drive, Stafford, VA

BAN20031688 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 6625 S 190th Street, Suite F100, Kent, WA

BAN20031689 Independent Realty Capital Corporation - To open a mortgage lender and broker's office at 365-B Roundbunch, Bridge City, TX

BAN20031690 Olde South Mortgage Corporation - To relocate mortgage broker's office from 606 Virginia Avenue, Clarksville, VA to 762 Parkridge Drive, Clayton, NC

BAN20031691 Encore Credit Corp. - To open a mortgage lender and broker's office at 1800 Sutter Street, Suite 650, Concord, CA

BAN20031692 Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 726 Berryville Avenue, Winchester, VA

BAN20031693 Allied Home Mortgage Capital Corporation - To relocate mortgage lender broker's office from 1702 Taylor Ave., Suite A-207, Baltimore, MD to 1700 Reisterstown Road, Suite 125 and 126 A and B, Baltimore, MD

BAN20031694 Burke & Herbert Bank & Trust Company - To open a branch at 14008 Smoketown Road, Woodbridge, VA

BAN20031695 The Community Bank of Virginia - To open a branch at 10014 Robious Road, Chesterfield County, VA

BAN20031696 First Vantage Bank/Tri-Cities - To relocate main office from 2973 Lee Highway, Bristol, VA to 3000 Lee Highway, Bristol, VA

BAN20031697 1st Choice Mortgage/Equity Corporation of Lexington - To open a mortgage lender's office at 809 William Street, Suite C, Fredericksburg, VA

BAN20031698 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 9265 Corporate Circle, Manassas, VA

BAN20031699 Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 11908 McGee Court, Spotsylvania, VA

BAN20031700 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 2845 Mesa Verde Drive, Suite 2A, Costa Mesa, CA

BAN20031701 American Residential Funding, Inc. - To relocate mortgage lender broker's office from 22865 Lake Forest Drive, Lake Forest, CA to 20532 El Toro Road, Suite 112, Mission Viejo, CA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20031702	Weststar Mortgage, Inc. - To relocate mortgage lender broker's office from 408 Oakmears Crescent, Suite 202, Virginia Beach, VA to 760 Lynnhaven Parkway, Virginia Beach, VA
BAN20031703	Capetown Mortgage Corp. - To relocate mortgage broker's office from 10415 Stallworth Court, Fairfax, VA to 4115 Annandale Road, Annandale, VA
BAN20031704	American Cash Exchange Enterprise of Virginia, L.L.C. d/b/a 1 st Choice Cash Advance - To conduct payday lending business where a communications business will also be conducted
BAN20031705	Check First, Inc. - To open a payday lender's office at 1020 N. Battlefield Boulevard, Unit E, Chesapeake, VA
BAN20031706	Check First, Inc. - To open a payday lender's office at 3361 Western Branch Blvd., Unit 4A-1, Chesapeake, VA
BAN20031707	USMoney Source, Inc. - For additional mortgage authority
BAN20031708	Magellan Capital Mortgage, LLC - For a mortgage broker's license
BAN20031709	Alliance Bank Corporation - To open a branch at 8221 Old Courthouse Road, Vienna, VA
BAN20031710	First Mortgage Group, Inc. - For additional mortgage authority
BAN20031711	Service 1 Mortgage Corporation - To open a mortgage lender and broker's office at 5701 Thurston Avenue, Suite 10, Virginia Beach, VA
BAN20031712	D and D Home Loans Inc - To open a mortgage broker's office at 1110 Atlantic Avenue, Suite 212, Virginia Beach, VA
BAN20031713	East West Mortgage Company, Inc. - To open a mortgage lender and broker's office at 4629 Star Flower Drive, Chantilly, VA
BAN20031714	East West Mortgage Company, Inc. - To open a mortgage lender and broker's office at 7202 Arlington Boulevard, Suite 201, Falls Church, VA
BAN20031715	Bridge Capital Corporation - To open a mortgage lender and broker's office at 3801 Union Drive, Suite 100, Lincoln, NE
BAN20031716	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 39 E. Hanover Avenue, Morris Plains, NJ
BAN20031717	Madison Investment Advisors, LLC d/b/a Madison Mortgages - To open a mortgage broker's office at 1791 Cambridge Drive, Suite 203, Richmond, VA
BAN20031718	Madison Investment Advisors, LLC d/b/a Madison Mortgages - To open a mortgage broker's office at 2276 Franklin Turnpike, Suite 107, Danville, VA
BAN20031719	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 6150 Oak Tree Boulevard, 3rd Floor, Independence, OH to 6200 Oak Tree Boulevard, 3rd Floor, Independence, OH
BAN20031720	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 2555 Crooks Road, #100, Troy, MI
BAN20031721	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 19355 Elderberry Terrace, Germantown, MD
BAN20031722	Atlantic Financial of Virginia, Inc. (Used in VA by: Atlantic Financial, Inc.) - To relocate mortgage lender broker's office from 4511 Knox Road, Suite 303, College Park, MD to 11720 Beltsville Drive, Suite 160, Beltsville, MD
BAN20031723	Mortgage1040.Com, Inc. - For a mortgage broker's license
BAN20031724	Raymond L. Blagmon - For a mortgage broker's license
BAN20031725	Pay First, LLC - For a payday lender license
BAN20031726	Evergreen Financial Services Inc. d/b/a Evergreen Mortgage Company - For a mortgage broker's license
BAN20031727	Harris Funding, Corp. - For a mortgage broker's license
BAN20031728	Brooke Point Mortgage, Inc. - For a mortgage broker's license
BAN20031729	Mid-Atlantic Mortgage Group, Inc. - For a mortgage broker's license
BAN20031730	Norwestern Mortgage Group, L.L.C. - For a mortgage broker's license
BAN20031731	First Bancorp Mortgage Corporation - To open a mortgage lender and broker's office at 3972 Holland Road, Suite 116, Virginia Beach, VA
BAN20031732	Aggressive Mortgage Corp. - To relocate mortgage broker's office from 522 S. Independence Blvd., Suite 101, Virginia Beach, VA to 575 Lynnhaven Parkway, Suite 260, Virginia Beach, VA
BAN20031733	Express Capital Lending, Inc. (Used in VA by: Express Capital Lending) - To open a mortgage lender's office at 15540 Del Amo Avenue, Tustin, CA
BAN20031734	Southern Trust Mortgage, LLC d/b/a Middleburg Mortgage (2 Norfolk Offices) - To relocate mortgage lender broker's office from 13800 Coppermine Road, Suite 357, Herndon, VA to 13800 Coppermine Road, Suite 340, Herndon, VA
BAN20031735	Crescent Bank & Trust - To open a branch at 700 Independence Parkway Suite 200, Chesapeake, VA
BAN20031736	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 9351 Common Brook Road, Suites 203 and 205, Owings Mills, MD
BAN20031737	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 32863 Hayes Road, Warren, MI
BAN20031738	Primary Residential Mortgage, Inc. - To relocate mortgage lender broker's office from 5229 Wipledale Avenue, Roanoke, VA to 5440 Peters Creek Road, Suite 206, Roanoke, VA
BAN20031739	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 6158 Hoot Owl Trail, Yucca Valley, CA
BAN20031740	Superior Mortgage Corporation - To open a mortgage lender and broker's office at 122 Fourth Street, Farmville, VA
BAN20031741	National Mortgage Network, Inc. - For a mortgage lender and broker license
BAN20031742	Mortgage Investors Group - For a mortgage lender's license
BAN20031743	Chawky Boutros Jabaly d/b/a Fairfax Mortgage - To open a mortgage broker's office at 2320 S. Eads Street, Arlington, VA
BAN20031744	Sunset Mortgage Company L.P. - To relocate mortgage lender broker's office from 1064 Commodore Drive, Virginia Beach, VA to 5347 Lila Lane, Suite 106, Virginia Beach, VA
BAN20031745	Allied Home Mortgage Capital Corporation - To relocate mortgage lender broker's office from 300 Arboretum Place, Suite 140, Richmond, VA to 9019 Forest Hill Avenue, Suite 2C, Richmond, VA
BAN20031746	Allied Cash Advance Virginia LLC d/b/a Allied Cash Advance - To open a payday lender's office at 1136-A Emmet Street, Charlottesville, VA
BAN20031747	Allied Cash Advance Virginia LLC d/b/a Allied Cash Advance - To open a payday lender's office at 838 Greenville Avenue, Staunton, VA
BAN20031748	Ruby Cash, Corp. - For a payday lender license
BAN20031749	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 2618 Virginia Avenue, Collinsville, VA
BAN20031750	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 1605 Williamson Road, Roanoke, VA
BAN20031751	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 2504 Memorial Avenue, Lynchburg, VA

BAN20031752	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 2943 Riverside Drive, Danville, VA
BAN20031753	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 3322 Halifax Road, South Boston, VA
BAN20031754	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 20600-A Timberlake Road, Lynchburg, VA
BAN20031755	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 2605 Virginia Beach Blvd., Unit 105, Virginia Beach, VA
BAN20031756	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 2328 Orange Avenue NE, Roanoke, VA
BAN20031757	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 1077 Virginia Beach Blvd., Suite 108, Virginia Beach, VA
BAN20031758	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 717 North Independence Blvd., Suite 211, Virginia Beach, VA
BAN20031759	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 665 Newtown Road, Suite 112, Virginia Beach, VA
BAN20031760	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 237 South Battlefield Boulevard, Space 18A, Chesapeake, VA
BAN20031761	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 5300 Kempsriver Drive, Unit 108, Virginia Beach, VA
BAN20031762	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 2048 S Sycamore Street, Petersburg, VA
BAN20031763	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 5203 S Laburnum Avenue, Richmond, VA
BAN20031764	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 2102 Boulevard, Colonial Heights, VA
BAN20031765	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 1069-D N. George Washington Highway, Chesapeake, VA
BAN20031766	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 1413 Tappahannock Boulevard, Tappahannock, VA
BAN20031767	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 10679 Courthouse Road, Fredericksburg, VA
BAN20031768	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 801 Volvo Parkway, Suite 106, Chesapeake, VA
BAN20031769	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 963 1/2 East Stuart Drive, Galax, VA
BAN20031770	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 7395 Peppers Ferry Boulevard, Fairlawn, VA
BAN20031771	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 100 W Mercury Boulevard, Hampton, VA
BAN20031772	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 3120 Cedar Valley Drive, Richlands, VA
BAN20031773	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 10842 Warwick Boulevard, Unit 12, Newport News, VA
BAN20031774	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 736 Warrenton Road, Unit 107, Fredericksburg, VA
BAN20031775	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 998 J Clyde Morris Boulevard, Newport News, VA
BAN20031776	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 1225 Roanoke Street, Christiansburg, VA
BAN20031777	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 10153 Jefferson Avenue, Newport News, VA
BAN20031778	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 1506 Euclid Avenue, Bristol, VA
BAN20031779	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 912 S. Lynnhaven Road, Virginia Beach, VA
BAN20031780	Ruby Cash, Corp. - To conduct payday lending business where a money transmission business will also be conducted
BAN20031781	Virginia Commerce Bank - To open a branch at 1960 Gallows Road, Vienna, VA
BAN20031782	First Direct Mortgage, Inc. - For a mortgage broker's license
BAN20031783	American Eagle Financial Inc. - For a mortgage broker's license
BAN20031784	First National Mortgage & Investment, Inc. - For a mortgage broker's license
BAN20031785	Nations Home Funding, Inc. - For additional mortgage authority
BAN20031786	American Home Mortgage Investment Corp. - To acquire 25 percent or more of Columbia National, Incorporated
BAN20031787	American Home Mortgage Investment Corp. - To acquire 25 percent or more of American Home Mortgage Corp.
BAN20031788	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 5526 Winford Court, Fairfax, VA
BAN20031789	Carteret Mortgage Corporation - To open a mortgage lender and broker's office at 8000 Pohick Road, Springfield, VA
BAN20031790	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 6310 Montgomery Road, Elkridge, MD to 6741 Runkles Road, Mount Airy, MD
BAN20031791	Carteret Mortgage Corporation - To relocate mortgage lender broker's office from 21797 Baldwin Square, Sterling, VA to 20028 Valhalla Square, Ashburn, VA
BAN20031792	Vertical Lend, Inc. d/b/a Mortgage Warehouse - To open a mortgage broker's office at 6108 Jahnke Road, Richmond, VA
BAN20031793	Nationwide Financial Corp. - To open a mortgage lender and broker's office at 6000 Stevenson Avenue, Suite 302, Alexandria, VA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20031794 Reliance Mortgage Group, Inc. - To open a mortgage broker's office at 14518 Lee Road, Unit B446, Chantilly, VA
 BAN20031795 Natael Mortgage Consultants Incorporated - For a mortgage broker's license
 BAN20031796 Alta Financial Mortgage Company (Used in VA by: Alta Financial, Inc. d/b/a Alta Financial M) - For a mortgage lender's license
 BAN20031797 Residential Property Mortgage Services (RPMS), Inc. (Used in VA by: RPMS, Inc. d/b/a Loansquicker.com) - For a mortgage broker's license
 BAN20031798 United Mortgage Solutions, Inc. - For a mortgage broker's license
 BAN20031799 Jabez Mortgage Group LLC - For a mortgage lender and broker license
 BAN20031800 NovaStar Home Mortgage, Inc - To open a mortgage lender and broker's office at 425 Creekstone Ridge, Woodstock, GA
 BAN20031801 1st Choice Mortgage/Equity Corporation of Lexington - To relocate mortgage lender's office from 6160 St. Andrews Road, Suite 1, Columbia, SC to 1021 Briargate Circle, Columbia, SC
 BAN20031802 The Carolina Mortgage Group LLC - To open a mortgage broker's office at 3621 NW 63rd Place, Gainesville, FL
 BAN20031803 Afro International Limited, Inc. - For a money order license
 BAN20031804 American Equity Mortgage, Inc. - For a mortgage lender and broker license
 BAN20031805 1st Nations Mortgage Corporation - To open a mortgage broker's office at 302 B Georgetown Lane, Charlottesville, VA
 BAN20031806 Southern Trust Mortgage, LLC d/b/a Middleburg Mortgage (2 Norfolk Offices) - To open a mortgage lender and broker's office at AAAA Self Storage, Space 410, 110 East 22nd Street, Norfolk, VA
 BAN20031807 Universal American Mortgage Company, LLC - To open a mortgage lender and broker's office at 6895 Richmond Road, Williamsburg, VA
 BAN20031808 CashNet, Inc. d/b/a Cash Advance Centers - To open a payday lender's office at 119 Hill Carter Parkway, Ashland, VA
 BAN20031809 CashNet, Inc. d/b/a Cash Advance Centers - To open a payday lender's office at 923-B Village Highway, Rustburg, VA
 BAN20031810 CashNet, Inc. d/b/a Cash Advance Centers - To open a payday lender's office at 2300-E Wards Road, Lynchburg, VA
 BAN20031811 Bankers Fidelity Mortgage Corporation - To relocate mortgage broker's office from 10805 Main Street, Suite 100, Fairfax, VA to 12359 Sunrise Valley Drive, Unit 340, Reston, VA
 BAN20031812 Columbia National, Incorporated - To relocate mortgage lender broker's office from 6387 Center Drive, Suite 101, Norfolk, VA to 6353 Center Drive, Building 8, Suite 201, Norfolk, VA
 BAN20031813 Cardinal Financial Company, Limited Partnership - To relocate mortgage lender's office from 355 E. Street Road, Treose, PA to 444 Jacksonville Road, Warminster, PA
 BAN20031814 Mortgage America Bankers, LLC - To relocate mortgage broker's office from 2110 Darcy Green Place, Silver Spring, MD to 3930 Knowles Avenue, Suite 305, Kensington, MD
 BAN20031815 Hassle Free Mortgage Brokers, Inc. - For a mortgage broker's license
 BAN20031816 Birdneck Pawn Shop, Inc. d/b/a Birdneck Pawn, Jewelry, and Check Cashing - To open a check casher at 1077 Virginia Beach Blvd., Suite 115, Virginia Beach, VA
 BAN20031817 Safeway Inc. d/b/a Safeway - To open a check casher at 11120 S. Lake Drive, Reston, VA
 BAN20031818 Cash Unlimited, LLC d/b/a Check Plus Cash N Go - To open a check casher at 909 West Broad Street, Falls Church, VA
 BAN20031819 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To relocate mortgage broker's office from 6120 Old Frederick Road, Catonsville, MD to 1208 Rolling Road, Catonsville, MD
 BAN20031820 Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 998 J. Clyde Morris Boulevard, Newport News, VA
 BAN20031821 Home Loan Corporation - To open a mortgage lender and broker's office at 1534 Jefferson Highway, Suites A and B, Fishersville, VA
 BAN20031822 Allied Cash Advance Virginia LLC d/b/a Allied Cash Advance - To open a payday lender's office at 2312-13 Hungary Road, Richmond, VA
 BAN20031823 Advantage Investors Mortgage Corporation - To relocate mortgage lender broker's office from 1703 E. Joppa Road, Suite 205, Baltimore, MD to 810 Glen Eagles Court, Suite 207, Towson, MD
 BAN20031824 Specialty Mortgage Corporation - For a mortgage lender's license
 BAN20031825 Million Financial Group, Inc. - For a mortgage broker's license
 BAN20031826 Joe Liberto - To acquire 25 percent or more of R. K. Financial Services, Inc.
 BAN20031827 Superior Home Mortgage Corporation (Used in VA by: Superior Mortgage Corporation) - To relocate mortgage lender broker's office from 1228 Progressive Drive, Suite 104, Chesapeake, VA to 1228 Progressive Drive, Suite 201, Chesapeake, VA
 BAN20031828 Primary Residential Mortgage, Inc. - To open a mortgage lender and broker's office at 6803 York Road, Suite 200, Baltimore, MD
 BAN20031829 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 104 Robin Road, Lexington, SC
 BAN20031830 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 5001 West 80th. Street, Suite 110, Bloomington, MN
 BAN20031831 NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 6034 Chester Avenue, Suite 109, Jacksonville, FL to 7300 W. Camino Real, Suite 231, Boca Raton, FL
 BAN20031832 Barrons Mortgage Group, Ltd. d/b/a goodmortgage.com - To relocate mortgage broker's office from 314 Rensselaer Avenue, Suite 300, Charlotte, NC to 2000 South Boulevard, Suite 540, Charlotte, NC
 BAN20031833 Patriot Mortgage Corporation - For a mortgage broker's license
 BAN20031834 SunTrust Bank - To open a branch at Riverside Parkway and Lansdowne Boulevard, Leesburg, VA
 BAN20031835 SunTrust Bank - To open a branch at 43150 Broadlands Center Safeway, Ashburn, VA
 BAN20031836 BMIC Mortgage, Inc. - To open a mortgage lender and broker's office at 20270 Goldenrod Lane, Germantown, MD
 BAN20031837 Challenge Financial Investors Corp. d/b/a Challenge Mortgage - To open a mortgage lender and broker's office at 5627 Allentown Road, Camp Springs, MD
 BAN20031838 Home Loan Corporation - To open a mortgage lender and broker's office at 320C Charles H. Dimmock Parkway, Rooms 126 and 129, Colonial Heights, VA
 BAN20031839 American Home Mortgage Corp. d/b/a MortgageSelect - To open a mortgage lender and broker's office at 21400 Ridgetop Circle, Suite 170, Sterling, VA
 BAN20031840 Chesapeake Mortgage Consultants, Inc. - To open a mortgage lender and broker's office at 1812 Baltimore Boulevard, Suite C, Westminster, MD
 BAN20031841 Mortgage Lenders Network USA, Inc. - To relocate mortgage lender's office from 1750 East Gulf Road, Suite 350, Schaumburg, IL to 10 North Martingale, Suite 600, Schaumburg, IL
 BAN20031842 Arlington Capital Mortgage Corporation - To relocate mortgage lender's office from 771 E. Lancaster Avenue, Villanova, PA to Millenium Corporate Center 3, Suite 240227 Washington Street, Conshohocken, PA
 BAN20031843 Home Acceptance Corporation - To relocate mortgage broker's office from 4271 Monroe Street, Toledo, OH to 1620 Kieswetter, Holland, OH

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20031844 HomeSouth Mortgage Services, Inc. - For a mortgage lender and broker license
 BAN20031845 Piedmont Mortgage, LLC - For a mortgage broker's license
 BAN20031846 PAULcashinc d/b/a Dumfries Checks Cashed - To open a check casher at 18103 Triangle Shopping Plaza, Dumfries, VA
 BAN20031847 Diversity Mortgage, Corp. - For a mortgage broker's license
 BAN20031848 Americor Lending Group, Inc. - For additional mortgage authority
 BAN20031849 Abacus Discount Mortgage, Inc. - For a mortgage broker's license
 BAN20031850 One Source Mortgage, L L C - To open a mortgage lender's office at 1301 Hightower Trail, Suite 120, Atlanta, GA
 BAN20031851 Liberty Mortgage Corporation - To open a mortgage lender and broker's office at 7642 Boxwood Circle, S.W., Roanoke, VA
 BAN20031852 1st American Mortgage, Inc. d/b/a CU Mortgage Group - To open a mortgage lender and broker's office at 12500 Fair Lakes Circle, Suites 130 and 145, Fairfax, VA
 BAN20031853 World Lending Group, Inc. - To open a mortgage lender and broker's office at 10900 E. 183rd Street, Suite 300, Cerritos, CA
 BAN20031854 Urgent Money Service, Inc. d/b/a Urgent Money Service - To open a payday lender's office at 109 Greenville Road, Suite 113-A, Stuarts Draft, VA
 BAN20031855 Universal American Mortgage Company, LLC - To relocate mortgage lender broker's office from 8640 Guilford Road, Suite 252, Columbia, MD to 10211 Wincopin Circle, Suite 310, Columbia, MD
 BAN20031856 Alan A. Yurkshat - For a mortgage broker's license
 BAN20031857 Sterling Coast to Coast Financial Group, Inc. - For additional mortgage authority
 BAN20031858 United Financial Systems, Inc. - To open a debt counseling office
 BAN20031859 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 6475 New Hampshire Avenue, Suite 705, Hyattsville, MD
 BAN20031860 Independent Realty Capital Corporation - To open a mortgage lender and broker's office at 365 Roundbunch, Bridge City, TX
 BAN20031861 Bridge Capital Corporation - To open a mortgage lender and broker's office at 1791 Cambridge Drive, Suite 203, Richmond, VA
 BAN20031862 Calvert Mortgage Company, L.L.C. - To open a mortgage broker's office at 130 Park Street, Suite 301, Vienna, VA
 BAN20031863 Residential Home Funding Corporation - To relocate mortgage lender broker's office from 6 Montgomery Village Avenue, Suite 325, Gaithersburg, MD to 704 Quince Orchard Road, Suite 350, Gaithersburg, MD
 BAN20031864 Pinnacle Financial Corporation d/b/a Tristar Lending Group (In Certain Offices) - To relocate mortgage lender broker's office from 500 Lee Road, Suite 200, Orlando, FL to 2611 Technology Drive, Orlando, FL
 BAN20031865 Paragon Mortgage, Inc. - To relocate mortgage broker's office from 249 Williamson Road, Suite 100, Mooresville, NC to 548 Williamson Road, Suite 3, Mooresville, NC
 BAN20031866 David J. Oliverio - To acquire 25 percent or more of 1st American Mortgage, Inc.
 BAN20031867 Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To open a mortgage broker's office at 6609 East Wakefield Drive, Alexandria, VA
 BAN20031868 Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To open a mortgage broker's office at 5 Victoria Falls Drive, Rancho Mirage, CA
 BAN20031869 Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To open a mortgage broker's office at 9862 Solitary Place, Bristow, VA
 BAN20031870 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 19 Park Street, Suite 101, Attleboro, MA
 BAN20031871 Summit Mortgage Corporation d/b/a Summit Home Mortgage Inc. - To open a mortgage lender and broker's office at 201 Concourse Boulevard, Suite 210, Glen Allen, VA
 BAN20031872 Summit Mortgage Corporation d/b/a Summit Home Mortgage Inc. - To open a mortgage lender and broker's office at 4860 Cox Road, Suite 200, Glen Allen, VA
 BAN20031873 Franklin Mortgage Corporation - To open a mortgage broker's office at 246 Whitehorse Court, Ruckersville, VA
 BAN20031874 Blue Ridge Mortgage, Inc. - To relocate mortgage broker's office from 2721 S. Seminole Trail, Madison, VA to 1200 Sunset Lane, Suite 2132, Culpeper, VA
 BAN20031875 Fidelity & Trust Mortgage, Inc. - To relocate mortgage lender broker's office from 3251 Old Lee Highway, Suite 500, Fairfax, VA to 13198 Centerpointe Way, Woodbridge, VA
 BAN20031876 Sunset Mortgage Company L.P. - To relocate mortgage lender broker's office from 5675 Farmhouse Drive, Frederick, MD to 174 Thomas Johnson Drive, Suite 201, Frederick, MD
 BAN20031877 Atlantic Bay Mortgage Group, L.L.C. - To relocate mortgage lender broker's office from 7 Corporate Center Court, Suite B, Greensboro, NC to 3824 North Elm Street, Suite L, Building Two, Greensboro, NC
 BAN20031878 American Residential Funding, Inc. - To relocate mortgage lender broker's office from 3200 Bristol Avenue, 8th Floor, Costa Mesa, CA to 3200 Bristol Street, 7th Floor, Costa Mesa, CA
 BAN20031879 MegaStar Financial Corp. - For a mortgage lender's license
 BAN20031880 Dunn Mortgage Capital, Inc. - For a mortgage broker's license
 BAN20031881 M & M Mortgage Inc. - For a mortgage broker's license
 BAN20031882 Resource One Mortgage Corp. (Used in VA by: Resource One, Inc.) - For a mortgage lender and broker license
 BAN20031883 The New York Mortgage Company, LLC - For additional mortgage authority
 BAN20031884 Roger Alston - To open a check casher at 9301 B. Meadowfield Court, Glen Allen, VA
 BAN20031885 New Logic Mortgage, LLC - For a mortgage broker's license
 BAN20031886 ESI Mortgage, LP - For a mortgage lender's license
 BAN20031887 Persepolis, Inc. d/b/a Cash in a Flash - For a payday lender license
 BAN20031888 Entrust Mortgage, Inc. - For a mortgage lender's license
 BAN20031889 Linda L. Alexander - To acquire 25 percent or more of Roy D. Hansen Mortgage Company, Inc.
 BAN20031890 Allied Home Mortgage Capital Corporation - To open a mortgage lender and broker's office at 8913 Clement Avenue, Baltimore, MD
 BAN20031891 Bankers Funding Corporation - To open a mortgage broker's office at 3448 Ellicott Center Drive, Suite 103, Ellicott City, MD
 BAN20031892 Primary Residential Mortgage, Inc. - To open a mortgage lender and broker's office at 238 N. Lowry, Smyrna, TN
 BAN20031893 Residential Lending Corporation - To open a mortgage lender and broker's office at 4041 Powder Mill Road, 6th Floor, Calverton, MD
 BAN20031894 Madison First Financial, Inc. - To relocate mortgage lender broker's office from 989 Old Eagle School Road, Suite 801, Wayne, PA to 801 Springdale Drive, Exton, PA
 BAN20031895 Jerry W. Thornton, Sr. d/b/a Jerry's Payday Loans - To open a payday lender's office at 1501 Lynnhaven Parkway, Unit 113, Virginia Beach, VA
 BAN20031896 Washington Nationwide Mortgages Corporation - To relocate mortgage broker's office from 1300 Mercantile Lane, Suite 100-N, Largo, MD to 1300 Mercantile Lane, Suite 100-B, Largo, MD
 BAN20031897 Brar, Inc. - To open a check casher at 3335 Fall Hill Avenue, Fredericksburg, VA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20031898	Evergreen Services Inc. - To conduct payday lending business where a money transmission business will also be conducted
BAN20031899	Evergreen Services Inc - To conduct payday lending business where a convenience store business will also be conducted
BAN20031900	Evergreen Services Inc - To conduct payday lending business where a retail sales business will also be conducted
BAN20031901	Evergreen Services Inc - To conduct payday lending business where a phone card sales business will also be conducted
BAN20031902	Evergreen Services Inc - To conduct payday lending business where a cell phone sales business will also be conducted
BAN20031903	American Investment Group, Inc. d/b/a Military Mortgage - For a mortgage broker's license
BAN20031904	North Nations Mortgage Corp. - For a mortgage broker's license
BAN20031905	MortgageTree Lending Corporation (Used in VA by: MortgageTree Lending) - For a mortgage lender's license
BAN20031906	1st Atlas Mortgage Corporation - To open a mortgage broker's office at 927 N. Battlefield Boulevard, Suite 100, Chesapeake, VA
BAN20031907	Encore Credit Corp. - To open a mortgage lender and broker's office at 1833 Alton Parkway, Irvine, CA
BAN20031908	FRMC Financial, Inc. d/b/a First Republic Mortgage Corporation - To relocate mortgage broker's office from 179 Admiral Cochrane Drive, Suite 110, Annapolis, MD to 2661 Riva Road, Bldg. 1000, Suite 1020, Annapolis, MD
BAN20031909	Greenway Lending Group, LLC - To open a mortgage lender and broker's office at 4434 Connecticut Avenue, NW, Washington, DC
BAN20031910	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 1615 General Booth Boulevard, Virginia Beach, VA
BAN20031911	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 2320 Hungary Road, Richmond, VA
BAN20031912	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To relocate payday lender's office from 5652 Brook Road, Richmond, VA to 5642 Brook Road, Richmond, VA
BAN20031913	ComUnity Lending, Incorporated d/b/a Virginia Community Lending (McLean) - To relocate mortgage lender broker's office from 8105 Calmosa Avenue, Whittier, CA to 12145 Mora Drive, Unit 12, Santa Fe Springs, CA
BAN20031914	DAVLAW Enterprises, Inc. d/b/a Union First Mortgage - To relocate mortgage broker's office from 2401 Bermondsey Drive, Mitchellville, MD to 4536 Owensville Sudley Road, Harwood, MD
BAN20031915	M-Point Mortgage Services, LLC - For additional mortgage authority
BAN20031916	United American Mortgage Corporation - To open a mortgage broker's office at 1915 South Grand Avenue, Santa Ana, CA
BAN20031917	Arlington Capital Mortgage Corporation - To open a mortgage lender's office at 200 Lake Drive East, Suite 205, Woodland Falls Corporate Park, Cherry Hill, NJ
BAN20031918	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To relocate mortgage broker's office from 6625 S. 190th Street, Suite F100, Kent, WA to 6627 S 191 Place, Suite F100, Kent, WA
BAN20031919	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 301 Southlake Boulevard, Suite 100, Richmond, VA to 301 Southlake Boulevard, Suite 101, Richmond, VA
BAN20031920	Global Home Loans & Finance, Inc. - For a mortgage lender and broker license
BAN20031921	Provident Bank of Maryland - To open a branch at 7471 Summerset Drive, Gainesville, VA
BAN20031922	ABC Home Mortgage, Inc. - To open a mortgage broker's office at 1769-207 Jamestown Road, Williamsburg, VA
BAN20031923	First Mount Vernon Mortgage, L.L.C. - For a mortgage broker's license
BAN20031924	CitiOne Financial Group, L.L.C. - For a mortgage broker's license
BAN20031925	Aadvantage Mortgage, L.L.C. - For a mortgage broker's license
BAN20031926	Harry H. Horning d/b/a Harry H. Horning Financial Services - For a mortgage broker's license
BAN20031927	Bariek Money Transfer, LLC - For a money order license
BAN20031928	MortgageIT, Inc. - To open a mortgage lender and broker's office at 120 Office Parkway, Pittsford, NY
BAN20031929	MortgageIT, Inc. - To open a mortgage lender and broker's office at 2777 Summer Street, Stamford, CT
BAN20031930	CBSK Financial Group, Inc. d/b/a American Home Loans - To open a mortgage lender and broker's office at 8260 Greensboro Drive, Suite 500, McLean, VA
BAN20031931	Check 'n Go of Virginia, Inc. d/b/a Check 'n Go - To open a payday lender's office at 865 Great Bridge Boulevard, Chesapeake, VA
BAN20031932	Capital Financial Home Equity, LLC - To relocate mortgage broker's office from 1320 Central Park Blvd., Suite 208, Fredericksburg, VA to 535 Barberton Drive, Virginia Beach, VA
BAN20031933	Citizens and Farmers Bank - To open a branch at 698 Town Center Drive, Newport News, VA
BAN20031934	Gordon Henry Miller d/b/a DNJ Mortgage - For a mortgage broker's license
BAN20031935	USA Check Cashers, Inc. - For a payday lender license
BAN20031936	Metro Mortgage Corporation - For a mortgage broker's license
BAN20031937	Loan Tech, Inc. - For a mortgage broker's license
BAN20031938	1st Nations Mortgage Corporation - For additional mortgage authority
BAN20031939	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To relocate mortgage broker's office from 2214 Route 37 East, Toms River, NJ to 150 Oberlin Avenue North, Lakewood, NJ
BAN20031940	PayRite Mortgage, LLC - To relocate mortgage broker's office from 100 W. Okaloosa Way, Simpsonville, SC to 124 Edinburgh Court, Suite 205, Greenville, SC
BAN20031941	GMAC Mortgage Corporation d/b/a Ditech.Com - To relocate mortgage lender broker's office from 15200 Shady Grove Road, Rockville, MD to 20300 Seneca Meadows Parkway, Germantown, MD
BAN20031942	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To relocate mortgage broker's office from 5821 Fairview Road, Charlotte, NC to 5821 Fairview Road, Suite 200, Charlotte, NC
BAN20031943	Howard Voight d/b/a Courthouse Cheque Exchange - For a payday lender license
BAN20031944	CH Mortgage Services, LLC - For a mortgage lender and broker license
BAN20031945	AMG Guaranty Trust, NA - To open a new independent trust company branch at 100 East Main Street, Suite 200, Norfolk, VA
BAN20031946	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 32875 Rivergate Circle, Suite 27, Springfield, LA
BAN20031947	USLoans.net, Inc. - To open a mortgage broker's office at 4020 Jefferson Woods Drive, Powhatan, VA
BAN20031948	Bank of Clarke County - To relocate office from 40 West Piccadilly Street, Winchester, VA to 202 North Loudoun Street, Winchester, VA
BAN20031949	Crusader Cash Advance of Virginia, LLC - To relocate payday lender's office from 9622 Warwick Boulevard, Newport News, VA to 10842 Warwick Boulevard, Unit 12, Newport News, VA
BAN20031950	Frank J. Damiano d/b/a A Discount Mortgage Lending Company - To relocate mortgage broker's office from 1340 Covey Court, Venice, FL to 186 Inlets Boulevard, Nokomis, FL
BAN20031951	Southern Community Bank & Trust - To open a branch at 1231 Alverser Drive, Midlothian, VA

BAN20031952 United Freedom Funding Corp. - For a mortgage broker's license
 BAN20031953 Consumer Credit Counseling Service of Greater Atlanta, Inc. - To open a debt counseling office
 BAN20031954 Integrated Mortgage Strategies Ltd. - To open a mortgage broker's office at 205 W. Main Street, Suite 206, Carrboro, NC
 BAN20031955 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 1840 Forrest Hill Boulevard, Suite 203, West Palm Beach, FL
 BAN20031956 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 3309 Brook Street, Suite C, Missoula, MT
 BAN20031957 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 1051 County Line Road, Suite 102A, Huntingdon Valley, PA
 BAN20031958 Capital Financial Associates, Inc. - To open a mortgage broker's office at 4711 A/B Eisenhower Avenue, Alexandria, VA
 BAN20031959 Community Home Mortgage, LLC d/b/a Community Mortgage Group, LLC - To relocate mortgage broker's office from 380 Maple Avenue, West, Suite 201, Vienna, VA to 10610-A Crestwood Drive, Manassas, VA
 BAN20031960 eFinancial Mortgage Corporation - For a mortgage broker's license
 BAN20031961 123Loan, LLC - For a mortgage lender and broker license
 BAN20031962 The Mortgage Gallery, Inc. - For a mortgage broker's license
 BAN20031963 Carolina State Mortgage Corporation - For additional mortgage authority
 BAN20031964 Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To open a payday lender's office at 825 West Danville Street, South Hill, VA
 BAN20031965 1st Choice Mortgage/Equity Corporation of Lexington - To relocate mortgage lender's office from 1621 N. Main Street, Suite 106, Fuquay-Varina, NC to 1000 N. Main Street, Suite 201, Fuquay-Varina, NC
 BAN20031966 Fast Payday Loans, Inc. - For a payday lender license
 BAN20031967 Fast Payday Loans, Inc. - To conduct payday lending business where an open end credit business will also be conducted
 BAN20031968 Homes For You, LLC - For a mortgage broker's license
 BAN20031969 Branch Banking and Trust Company of Virginia - To open a branch at Intersection of Highway 40 (Old Franklin Turnpike) and Route 649, Rocky Mount, VA
 BAN20031970 First Guaranty Mortgage Corporation - To open a mortgage lender and broker's office at 41 Moores Road, Malvern, PA
 BAN20031971 TM Mortgage Corporation - To open a mortgage broker's office at 825 Diligence Drive, Suite 104, Two Oyster Point Building, Newport News, VA
 BAN20031972 American Cash Center, Inc. (Used in VA by: B & L Management, Inc.) - To open a payday lender's office at 4573 South Amherst Highway, Madison Heights, VA
 BAN20031973 American Cash Center, Inc. (Used in VA by: B & L Management, Inc.) - To open a payday lender's office at 441 South Main Street, Emporia, VA
 BAN20031974 AEGIS Wholesale Corporation - To relocate mortgage lender's office from 3131 Turtle Creek Boulevard, Dallas, TX to 3333 Welborn Street, Suite 400, Dallas, TX
 BAN20031975 First Greensboro Home Equity, Inc. d/b/a Homeland Capital Group - To relocate mortgage lender broker's office from 106 Rowe Road, Suite 108, Staunton, VA to 4090 Evelyn Byrd Avenue, Harrisonburg, VA
 BAN20031976 Huntlyer Enterprises, Inc. d/b/a Ross Mortgage Corporation - To relocate mortgage broker's office from 2700 Glades Circle, Suite C-128, Weston, FL to 2700 Glades Circle, Suite C-123, Weston, FL
 BAN20031977 Prime Mortgage Company - To relocate mortgage broker's office from 95 Chetola Trail, Fort Defiance, VA to 2269 Lee Highway, Mt. Sidney, VA
 BAN20031978 The Cash Store, Inc. - To open a check casher at 9766 Lee Highway, Fairfax, VA
 BAN20031979 Market Mortgage Inc. (Used in VA by: Superior Mortgage Inc.) - To open a mortgage broker's office at 7100 Northland Circle, Suite 301, Brooklyn Park, MN
 BAN20031980 DL King, LLC d/b/a King's Ca\$h Advance\$ - To open a payday lender's office at Yorkshire Downs Shopping Center, 3301 Hampton Highway, Suite 1, York, VA
 BAN20031981 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 8606 Allisonville Road, Suite 138C, Indianapolis, IN
 BAN20031982 American Home Mortgage Corp. - d/b/a MortgageSelect - To open a mortgage lender and broker's office at 17W662 Butterfield Road, Suite 306, Oakbrook Terrace, IL
 BAN20031983 Cornerstone Mortgage, Inc. - To open a mortgage broker's office at 4015 Old Calverton Road, Catlett, VA
 BAN20031984 American Home Mortgage Corp. d/b/a MortgageSelect - To open a mortgage lender and broker's office at 1221 Lakeview Court, Romeoville, IL
 BAN20031985 Olympia Funding, Inc. - To open a mortgage broker's office at 133 Defense Highway, Suite 108, Annapolis, MD
 BAN20031986 Olympia Mortgage Group, Inc. - For additional mortgage authority
 BAN20031987 Thomas A. Yost, Sr. - To acquire 25 percent or more of Calvert Mortgage Company, L.L.C.
 BAN20031988 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 3009 Wildflower Drive, La Plata, MD
 BAN20031989 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 500 Newbern Road, Dublin, VA
 BAN20031990 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 743 Park Road, NW, Washington, DC
 BAN20031991 Fast Cash of Virginia Inc. - To open a payday lender's office at 36282 Colonial Square Office Park, Suite 13C, Belle Haven, VA
 BAN20031992 Mortgage Shares, Inc. - For a mortgage broker's license
 BAN20031993 Reliance Lending Inc. - For a mortgage lender and broker license
 BAN20031994 United Capital, Inc. d/b/a United Capital Mortgage - For additional mortgage authority
 BAN20031995 Lincoln Mortgage, LLC - To open a mortgage broker's office at 8647 Mathis Avenue, Suite 201/202, Manassas, VA
 BAN20031996 Michael L. Vaughan d/b/a VIP Lending Services - To open a payday lender's office at 206 37th Street, Newport News, VA
 BAN20031997 American Residential Funding, Inc. - To relocate mortgage lender broker's office from 2845 Mesa Verde Drive, Suite 2A, Costa Mesa, CA to 20422 Beach Boulevard, Suite 335, Huntington Beach, CA
 BAN20031998 CTX Mortgage Company, LLC - To relocate mortgage lender broker's office from 3951 Westerre Parkway, Suite 160, Richmond, VA to 3951 Westerre Parkway, Suite 300, Richmond, VA
 BAN20031999 Beach Robo Inc. - To open a check casher at 2456 Virginia Beach Boulevard, Virginia Beach, VA
 BAN20032000 New Peoples Bank, Inc. - To open a branch at 2975 Lee Highway, Bristol, VA
 BAN20032001 Nassau Mortgage LLC - For a mortgage broker's license
 BAN20032002 William Ray Williams d/b/a 1st Choice Mortgage - For a mortgage broker's license
 BAN20032003 Panam Mortgage & Financial Services, Inc. - For a mortgage broker's license
 BAN20032004 American Freedom Mortgage, Inc. d/b/a AFMI Funding - For a mortgage lender and broker license

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20032005	Global Mortgage, Inc. - To open a mortgage broker's office at 1616 Anderson Road, McLean, VA
BAN20032006	American Home Mortgage Corp. d/b/a MortgageSelect - To open a mortgage lender and broker's office at 2 West Lafayette Street, Suite 325, Norristown, PA
BAN20032007	Bankers Funding Corporation - To open a mortgage broker's office at 11821 Parklawn Drive, Suite 210, Rockville, MD
BAN20032008	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 572 Volunteer Parkway, Bristol, TN
BAN20032009	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 6913 Wynmeadow Drive, Stone Mountain, GA
BAN20032010	Wyndham Capital Mortgage, Inc. - To open a mortgage broker's office at 2709 Water Ridge Parkway, Suite 150, Charlotte, NC
BAN20032011	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To relocate mortgage broker's office from 923 Del Prado Boulevard, Cape Coral, FL to 1314 Cape Coral Parkway, Suite 102, Cape Coral, FL
BAN20032012	Challenge Financial Investors Corp. d/b/a Challenge Mortgage - To relocate mortgage lender broker's office from 1631 Forest Glen Road, Richmond, VA to 2558 Three Willows Court, Richmond, VA
BAN20032013	Independent Realty Capital Corporation - To relocate mortgage lender broker's office from 8072 West Sahara Avenue, Suite D, Las Vegas, NV to 10650 W. Charleston, Suite 180, Las Vegas, NV
BAN20032014	PHM Financial Incorporated d/b/a Professional Home Mortgage - To relocate mortgage lender broker's office from 425 South Cherry Street, Suite 300, Denver, CO to 7241 South Fulton Street, Centennial, CO
BAN20032015	AmTrust Funding Services, Inc. - For a mortgage broker's license
BAN20032016	Coastal Community Mortgage, LLC - For a mortgage lender and broker license
BAN20032017	Independent Mortgage Corp. - For a mortgage broker's license
BAN20032018	American Cash Exchange Enterprise of Virginia, L.L.C. d/b/a 1st Choice Cash Advance - To open a payday lender's office at 1505 Williamson Road, Roanoke, VA
BAN20032019	Lifetime Financial Services, LLC - To open a mortgage broker's office at 1110 Elden Street, Bldg. D, Suite 208, Herndon, VA
BAN20032020	SAI Mortgage, Inc. - To open a mortgage broker's office at 7360 McWhorter Place, Suite 200, Annandale, VA
BAN20032021	SAI Mortgage, Inc. - To open a mortgage broker's office at 6609 Warrens Way, Elkridge, MD
BAN20032022	Aames Funding Corporation d/b/a Aames Home Loan - To relocate mortgage lender broker's office from 8160 Baymeadows Way, West, Suite 320, Jacksonville, FL to 8160 Baymeadows Way, West, Suite 230, Jacksonville, FL
BAN20032023	Reliable Mortgage, Inc. - To relocate mortgage broker's office from 212 Grafton Way, NE, Leesburg, VA to 18545 Sierra Springs Square, Leesburg, VA
BAN20032024	Homeloan USA Corporation - For a mortgage lender and broker license
BAN20032025	Alliance Credit Counseling, Inc. - To open a debt counseling office
BAN20032026	Challenge Financial Investors Corp. d/b/a Challenge Mortgage - To open a mortgage lender and broker's office at 7260 Beverly Manor Drive, Annandale, VA
BAN20032027	Premier Mortgage Funding, Inc. - To open a mortgage broker's office at 7203 Hanover Parkway, Suite B, Greenbelt, MD
BAN20032028	Premier Mortgage Funding, Inc. - To open a mortgage broker's office at 201 Old Padonia Road, Cockeysville, MD
BAN20032029	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 1326 Hempstead Turnpike, Elmont, NY
BAN20032030	Apex Home Loans, Inc. - To relocate mortgage broker's office from 9111 Edmonston Road, Suite 304, Greenbelt, MD to 10411 Motor City Drive, Suite 350, Bethesda, MD
BAN20032031	Jams-01, Inc. d/b/a Home Savings & Trust Mortgage - To open a mortgage lender and broker's office at 12500 Fair Lakes Circle, Suite 200, Fairfax, VA
BAN20032032	Accredited Home Lenders, Inc. - To relocate mortgage lender's office from 15030 Avenue of Science, Suite 100, San Diego, CA to 15090 Avenue of Science, San Diego, CA
BAN20032033	Acoustic Home Loans, LLC - For a mortgage lender's license
BAN20032034	Michigan Fidelity Acceptance Corporation d/b/a Franklin Mortgage Funding - For a mortgage lender and broker license
BAN20032035	Alcova Mortgage LLC - For a mortgage broker's license
BAN20032036	AEGIS Funding Corporation d/b/a AEGIS Home Equity - To open a mortgage lender's office at 7751 Belfort Parkway, Suite 210, Jacksonville, FL
BAN20032037	Global Remittance Limited - For a money order license
BAN20032038	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 1515 Mockingbird Lane, Suite 712, Charlotte, NC
BAN20032039	Americorp Credit Corporation - To open a mortgage lender and broker's office at 2018 Parkview Boulevard, Hermitage, PA
BAN20032040	ComUnity Lending, Incorporated d/b/a Virginia Community Lending (McLean) - To open a mortgage lender and broker's office at 2010 Ridge Corporate, Suite 715, McLean, VA
BAN20032041	Vertical Lend, Inc. d/b/a Mortgage Warehouse - To open a mortgage broker's office at 907 McDowell Road, Richmond, VA
BAN20032042	American Residential Funding, Inc. - To open a mortgage lender and broker's office at 1078 Town and Country, Orange, CA
BAN20032043	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 54 Sunny Side Boulevard, Suites D and E, Plainview, NY
BAN20032044	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 1060 Powers Place, Alpharetta, GA
BAN20032045	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 9111 Jollyville Road, Austin, TX
BAN20032046	Check into Cash of Virginia, LLC d/b/a Check into Cash - To open a payday lender's office at 12434 Warwick Boulevard, Newport News, VA
BAN20032047	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 736 Warrenton Road, Suite 107, Fredericksburg, VA
BAN20032048	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 407B England Street, Ashland, VA
BAN20032049	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 476-E Wythe Creek Road, Poquoson, VA
BAN20032050	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 1069 George Washington Highway, Chesapeake, VA
BAN20032051	Superior Home Mortgage Corporation (Used in VA by: Superior Mortgage Corporation) - To relocate mortgage lender broker's office from 13190 Centerpointe Way, Suite 102, Woodbridge, VA to 4330 Ridgewood Center Drive, Woodbridge, VA
BAN20032052	Prosperity Mortgage Company - To relocate mortgage lender broker's office from 412 Libbie Avenue, Suite 2A, Richmond, VA to 5014 Monument Avenue, Richmond, VA
BAN20032053	Baldwin Financial, LLC - For a mortgage broker's license

BAN20032054 NexTag, Inc. - For a mortgage broker's license
 BAN20032055 Quotemearate.com, Inc. - For a mortgage broker's license
 BAN20032056 Maggie & Lee, Inc. - To open a check casher at 6506 Virginia Beach Boulevard, Norfolk, VA
 BAN20032057 NovaStar Home Mortgage, Inc - To open a mortgage lender and broker's office at 1200 Clinton Avenue, Suite 200, Irvington, NJ
 BAN20032058 Premium Financial Services, Inc. - To open a mortgage lender and broker's office at 6559 Edsall Road, Springfield, VA
 BAN20032059 Platinum Capital Group, Inc. (Used in VA by Platinum Capital Group) - To open a mortgage lender and broker's office at 2800 Corporate Exchange Drive, Suite 110, Columbus, OH
 BAN20032060 Blue Chip Mortgage, LLC - To open a mortgage broker's office at 12450 Fair Lakes Circle, Fairfax, VA
 BAN20032061 Appomattox Mortgage, LLC - To open a mortgage broker's office at 300 W. Randolph Road, Hopewell, VA
 BAN20032062 Nationwide Financial Corp. - To open a mortgage lender and broker's office at 5252 Cherokee Avenue, Alexandria, VA
 BAN20032063 Virginia One Mortgage Corporation - To open a mortgage broker's office at 2 Pidgeon Hill Drive, Suite 340, Sterling, VA
 BAN20032064 Chrysler Home Mortgage Corporation - To open a mortgage broker's office at 1421 Kempsville Road, Chesapeake, VA
 BAN20032065 ComUnity Lending, Incorporated d/b/a Virginia Community Lending (McLean) - To open a mortgage lender and broker's office at 2041 Business Center Drive, Suite 108, Irvine, CA
 BAN20032066 Century Home Mortgage, LLC - To open a mortgage broker's office at Pembroke Two, Suite 130, Virginia Beach, VA
 BAN20032067 Dominion Mortgage Corporation - To relocate mortgage broker's office from 2807 N. Parham Road, Suite 125, Richmond, VA to 2810 N. Parham Road, Suite 245, Richmond, VA
 BAN20032068 Home Consultants, Inc. d/b/a HCI Mortgage - To relocate mortgage lender broker's office from 281 Independence Blvd., Suite 430, Virginia Beach, VA to 287 Independence Blvd., Suite 135, Virginia Beach, VA
 BAN20032069 Southern Trust Mortgage, LLC d/b/a Middleburg Mortgage (2 Norfolk Offices) - To relocate mortgage lender broker's office from Colonnade Corporate Center, 2840, Roanoke, VA to 2820 Keagy Road, Salem, VA
 BAN20032070 Blue Chip Mortgage, LLC - To relocate mortgage broker's office from 20897 Fowlers Mill Circle, Ashburn, VA to 20904 Fowlers Mill Circle, Ashburn, VA
 BAN20032071 Mortgage and Equity Funding Corporation - To relocate mortgage lender broker's office from 7202 Glen Forest Drive, Suite 207, Richmond, VA to 7200 Glen Forest Drive, Suite 300, Richmond, VA
 BAN20032072 DuPont Community Credit Union - To open a credit union service office at 601 Shenandoah Village Drive, Building 9G, Waynesboro, VA
 BAN20032073 Chesapeake Lending Corporation - For a mortgage broker's license
 BAN20032074 Allied Mortgage, L.L.C. - For a mortgage broker's license
 BAN20032075 Washington Metro Mortgage, Inc. - For a mortgage broker's license
 BAN20032076 Amerifund Financial, Inc. d/b/a All Fund Mortgage - For a mortgage lender and broker license
 BAN20032077 Gary McInturff - To acquire 25 percent or more of Jams-01, Inc.
 BAN20032078 MLI Capital Group, Inc. - To open a mortgage lender and broker's office at 7830 Backlick Road, Suite 302, Springfield, VA
 BAN20032079 Town and Country Financial Services, Inc., Town and Country Mortgage and Financial Services, Inc. - To open a mortgage broker's office at 101 S. Whiting Street, Suite 318, Alexandria, VA
 BAN20032080 All Fund, Inc. d/b/a All Fund Mortgage - To relocate mortgage lender broker's office from 6915 Shawnee Road, Richmond, VA to 593 Southlake Boulevard, Suite E, Richmond, VA
 BAN20032081 Shenandoah Valley Mortgage Corporation - To relocate mortgage broker's office from 31 S. Braddock Street, Winchester, VA to 31 S. Braddock Street, Suite 6, 2nd Floor, Winchester, VA
 BAN20032082 Veekay Video Club, Inc. - To open a check casher at 7320-B Richmond Highway, Alexandria, VA
 BAN20032083 Equity United Mortgage Corporation - For a mortgage broker's license
 BAN20032084 Northstar Mortgage, LLC - To relocate mortgage broker's office from 10440 Shaker Drive, Suite 109, Columbia, MD to 2850 North Ridge Road, Suite 207, Ellicott City, MD
 BAN20032085 Green Tree Servicing LLC - To relocate mortgage lender's office from 2501 Blue Ridge Road, Suite 200, Raleigh, NC to 2501 Blue Ridge Road, Suite 260, Raleigh, NC
 BAN20032086 Central Virginia Bank - To open a branch at 2500 Promenade Parkway, Midlothian, VA
 BAN20032087 XyberFinance, Inc. - For a mortgage broker's license
 BAN20032088 Debt Counseling Corp. - To open a debt counseling office
 BAN20032089 Paragon Financial Corporation - To acquire 25 percent or more of B.E.M.C. Mortgage, Inc.
 BAN20032090 ComUnity Lending, Incorporated d/b/a Virginia Community Lending (McLean) - To open a mortgage lender and broker's office at 601 S. Main Street, Suite 200, Grapevine, TX
 BAN20032091 EZ Loans of Virginia, Inc. - To open a payday lender's office at 25064 Lankford Highway, Onley, VA
 BAN20032092 First Southern Mortgage Corporation - To relocate mortgage broker's office from 17 West Jefferson St., Suite 001, Rockville, MD to 12230 Rockville Pike, Suite 200, Rockville, MD
 BAN20032093 Affinity Mortgage Company, Inc. - To relocate mortgage broker's office from 1466 Cloyo Shawnee Road, Cloyo, GA to 1575 Highway 21 South, Bldg. 100, Suite 102, Springfield, GA
 BAN20032094 First Residential Mortgage Corporation - To open a mortgage broker's office at 1480 East Main Street, Suite 402, Wytheville, VA
 BAN20032095 Summit Mortgage Corporation d/b/a Summit Home Mortgage Inc. - To relocate mortgage lender broker's office from 10201 Wayzata Boulevard, Suite 350, Minnetonka, MN to 605 N. Highway 169, Suite 700, Plymouth, MN
 BAN20032096 Towne Bank - To open a branch at 200 High Street, Portsmouth, VA
 BAN20032097 Integrated Mortgage Strategies Ltd. - For additional mortgage authority
 BAN20032098 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 9375 Chesapeake Street, Suite 223, La Plata, MD
 BAN20032099 Universal American Mortgage Company, LLC - To open a mortgage lender and broker's office at 37942 Wright Farm Drive, Purcellville, VA
 BAN20032100 Universal American Mortgage Company, LLC - To open a mortgage lender and broker's office at 12883 Rannoch Forest Circle, Bristow, VA
 BAN20032101 Weststar Mortgage, Inc. - To open a mortgage lender and broker's office at 720 Moorefield Park Drive, Suite 200, Moorefield V, Richmond, VA
 BAN20032102 Greater Chesapeake Mortgage Company, LLC - For a mortgage broker's license
 BAN20032103 AmTrust Mortgage Corporation - To relocate mortgage lender's office from 3867 Roswell Road, Suite 300, Atlanta, GA to 100 Glenridge Point Parkway, Suite 400, Atlanta, GA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20032104	Challenge Financial Investors Corp. d/b/a Challenge Mortgage - To open a mortgage lender and broker's office at 7771 Roseberry Farm Drive, Manassas, VA
BAN20032105	Bay Mortgage, Inc. - For a mortgage broker's license
BAN20032106	MortgageIT, Inc. - To open a mortgage lender and broker's office at 6 Venture, Irvine, CA
BAN20032107	Briner, Incorporated - To relocate mortgage lender broker's office from Westwood Office Park, Suite 503, Fredericksburg, VA to 606 608 Westwood Office Park, Fredericksburg, VA
BAN20032108	Virginia Mortgage Group, Inc. - For a mortgage broker's license
BAN20032109	Bank of the James - To open a branch at intersection of Route 221 and Cloverhill Boulevard, Forest, VA
BAN20032110	Blackstone Mortgage Group, Inc. - For a mortgage broker's license
BAN20032111	Marion Mortgage, LLC - For a mortgage broker's license
BAN20032112	NVR Mortgage Finance, Inc. - To relocate mortgage lender broker's office from 100 Ryan Court, Pittsburgh, PA to 121 Hillpointe Drive, Suite 100, Canonsburg, PA
BAN20032113	NovaStar Home Mortgage, Inc - To relocate mortgage lender broker's office from 9774 Lakepoint Drive, Burke, VA to 450 West Broad Street, Suite 301, Falls Church, VA
BAN20032114	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 5918 Sharon Wood Boulevard, Suite 240, Columbus, OH
BAN20032115	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 160 Commercial Drive, Suite 201, Columbia, SC
BAN20032116	All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 3416 Cheverly Avenue, Cheverly, MD
BAN20032117	Mortgage Master, Inc. - For a mortgage lender's license
BAN20032118	HomePlace Financial, LLC - For a mortgage broker's license
BAN20032119	First Security Mortgage Corp. - For a mortgage broker's license
BAN20032120	Optimum Mortgage Group, LLC - For a mortgage lender and broker license
BAN20032121	SuffolkFirst Bank - To open a branch at 1000 N. Main Street, Suffolk, VA
BAN20032122	1st Nations Mortgage Corporation - To open a mortgage broker's office at 3004 Berkmar Drive, Charlottesville, VA
BAN20032123	MortgageIT, Inc. - To open a mortgage lender and broker's office at 4898 South Old Peachtree Road, Norcross, GA
BAN20032124	CTX Mortgage Company, LLC - To open a mortgage lender and broker's office at 50 Catoctin Circle, N.E., Suite 302, Leesburg, VA
BAN20032125	H&R Block Mortgage Corporation - To open a mortgage lender and broker's office at 1915 South Grand Avenue, Santa Ana, CA
BAN20032126	H&R Block Mortgage Corporation - To open a mortgage lender and broker's office at 25671 Commercentre, Lake Forest, CA
BAN20032127	Anykind Check Cashing, LC d/b/a Check City - To relocate payday lender's office from 910 North Boulevard, Richmond, VA to 2729 West Broad Street, Richmond, VA
BAN20032128	Superior Home Mortgage Corporation (Used in VA by: Superior Mortgage Corporation) - To relocate mortgage lender broker's office from 1 Leifried Lane, Tuckerton, NJ to 1064 S. Main St., Unit D, Bldg. 2, West Creek, NJ
BAN20032129	Tico Credit Company, Inc. - To relocate consumer finance office from 1441 W. Main Street, Salem, VA to 1334 W. Main Street, Salem, VA
BAN20032130	Burehut, Inc. d/b/a Speedy Cash - To conduct payday lending business where a retail tobacco sales business will also be conducted
BAN20032131	Option One Mortgage Corporation - To open a mortgage lender and broker's office at 25671 Commercentre, Lake Forest, CA
BAN20032132	Optimum Mortgage Services, Inc. - For a mortgage broker's license
BAN20032133	FFSI, Inc. (Used in VA by: First Financial Services, Inc.) - For additional mortgage authority
BAN20032134	Potomac Valley Bank - To open a branch at 14231 Willard Road, Suite 100, Chantilly, VA
BAN20032135	Potomac Valley Bank - To open a branch at 45975 Nokes Boulevard, Sterling, VA
BAN20032136	First Tennessee Bank National Association - To open a branch at 1960 Gallows Road, Vienna, VA
BAN20032137	First Tennessee Bank National Association - To open a branch at 133 S. Washington Street, Falls Church, VA
BAN20032138	First Tennessee Bank National Association - To open a branch at 11180 Lee Highway, Fairfax, VA
BAN20032139	First Tennessee Bank National Association - To open a branch at 14260-J Centreville Square, Centreville, VA
BAN20032140	Franklin Mortgage Corporation - To relocate mortgage broker's office from 1928 Arlington Boulevard, Suite 206, Charlottesville, VA to 1928 Arlington Boulevard, Suite 300, Charlottesville, VA
BAN20032141	Dell Franklin Financial, LLC - For a mortgage lender and broker license
BAN20032142	Millennium Mortgage Acceptance Corporation (Used in VA by: Millennium Mortgage Services Corporation) - For a mortgage broker's license
BAN20032143	Najarian Loans, Inc. - For a mortgage lender's license
BAN20032144	City Mortgage Group, Inc. - For a mortgage broker's license
BAN20032145	All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 519 Aspen Drive, Herndon, VA
BAN20032146	American Home Mortgage Corp. d/b/a MortgageSelect - To open a mortgage lender and broker's office at 1245 E. Diehl Road, Suite 305, Naperville, IL
BAN20032147	Edward D. Jones & Co., L.P. d/b/a EdwardJones - To open a mortgage broker's office at 256 E. Ellerslie Avenue, Colonial Heights, VA
BAN20032148	Tower Mortgage and Financial Services Corporation - For additional mortgage authority
BAN20032149	Mila, Inc. - For a mortgage lender's license
BAN20032150	Trinity Financial Group Inc. - For a mortgage broker's license
BAN20032151	American Debt Solutions, Inc. - To open a debt counseling office
BAN20032152	Fieldstone Investment Corporation - To acquire 25 percent or more of Fieldstone Mortgage Company
BAN20032153	ValleyWide Mortgage Corporation - To open a mortgage broker's office at 5621 Green Meadow Road, Roanoke, VA
BAN20032154	Allied Cash Advance Virginia LLC d/b/a Allied Cash Advance - To open a payday lender's office at 9902-B Warwick Boulevard, Newport News, VA
BAN20032155	American Residential Funding, Inc. - To relocate mortgage lender broker's office from 3995 Cottage Hill Road, #A, Mobile, AL to 5260 Highway 90, West, Mobile, AL
BAN20032156	AEGIS Lending Corporation - To open a mortgage lender and broker's office at Two Greentree Centre, Suite 122, Marlton, NJ
BAN20032157	AEGIS Lending Corporation - To open a mortgage lender and broker's office at 61 South Paramus Road, 2nd Floor, Paramus, NJ
BAN20032158	AEGIS Lending Corporation - To open a mortgage lender and broker's office at 200 Valley Road, Suite 301, Mount Arlington, NJ
BAN20032159	AEGIS Lending Corporation - To open a mortgage lender and broker's office at 14 Commerce Drive, 3rd Floor, Cranford, NJ
BAN20032160	AEGIS Lending Corporation - To open a mortgage lender and broker's office at 66 York Street, Suite 502, Jersey City, NJ
BAN20032161	AEGIS Lending Corporation - To open a mortgage lender and broker's office at 2271 State Highway 33, Suite 105, Hamilton Square, NJ
BAN20032162	Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To open a mortgage broker's office at 5423 Point Longstreet Way, Burke, VA

BAN20032163 Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To open a mortgage broker's office at 12138 Open Meadow Lane, Bristow, VA
 BAN20032164 Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To open a mortgage broker's office at 103 Pinewood Place, Emerald Isle, NC
 BAN20032165 Unison Financial Services, Inc. - For a mortgage broker's license
 BAN20032166 Wall Street Mortgage Bankers, Ltd. - For a mortgage lender's license
 BAN20032167 Superior Home Mortgage Corporation (Used in VA by: Superior Mortgage Corporation) - To open a mortgage lender and broker's office at 4101 Cox Road, Suite 320, Glen Allen, VA
 BAN20032168 GMAC Mortgage Corporation d/b/a Ditech.Com - To open a mortgage lender and broker's office at 1770 Kirby Parkway, Memphis, TN
 BAN20032169 Edward D. Jones & Co., L.P. d/b/a EdwardJones - To open a mortgage broker's office at Rosewood Office Park, 4905 Brambleton Avenue, Roanoke, VA
 BAN20032170 GMAC Mortgage Corporation d/b/a Ditech.Com - To open a mortgage lender and broker's office at 6 Cadillac Drive, Brentwood, TN
 BAN20032171 Southern Trust Mortgage, LLC d/b/a Middleburg Mortgage (2 Norfolk Offices) - To open a mortgage lender and broker's office at 544 Newtown Road, Virginia Beach, VA
 BAN20032172 Southern Trust Mortgage, LLC d/b/a Middleburg Mortgage (2 Norfolk Offices) - To relocate mortgage lender broker's office from 41838 Highway 12, Suite 205, Avon, NC to 1245 Duck Road, Unit 8A, Duck, NC
 BAN20032173 Jefferson Mortgage Group, Ltd. - To relocate mortgage lender's office from 10461 White Granite Drive, Suite 225, Oakton, VA to 1801 Alexander Bell Drive, Suite 600, Reston, VA
 BAN20032174 FlatFee Home Loans, Inc. - For a mortgage broker's license
 BAN20032175 Your Mortgage Company, LLC - For a mortgage broker's license
 BAN20032176 Union Bank and Trust Company - To open a branch at 4690 Pouncey Tract Road, Glen Allen, VA
 BAN20032177 Metropolitan Mortgage Bankers, Inc. - To open a mortgage lender and broker's office at 10571B Ambassador Drive, Suite 201, Manassas, VA
 BAN20032178 Metrociti Mortgage LLC - To open a mortgage lender and broker's office at 1090 Powers Place, Alpharetta, GA
 BAN20032179 CoreStar Financial Group, LLC - To open a mortgage lender and broker's office at The Office Suites of Centerpark Inc., 4061 Powder Mill Road, Suite 700, Calverton, MD
 BAN20032180 CoreStar Financial Group, LLC - To open a mortgage lender and broker's office at 1920 Victory Hills Way, Marriottsville, MD
 BAN20032181 William J. Ridge d/b/a Ridge Mortgage Services Co. - To relocate mortgage broker's office from 9221 SW Barbur Boulevard, Suite 101, Portland, OR to 10230 SW Hall Boulevard, Tigard, OR
 BAN20032182 Cristina V. G. Kramer d/b/a Anchor Tidewater Mortgage Company - To relocate mortgage broker's office from 1804 Laurel Oak Lane, Virginia Beach, VA to 505 S Independence Boulevard, Suite 107, Virginia Beach, VA
 BAN20032183 Green Tree Consumer Discount Company - To open a consumer finance office
 BAN20032184 Green Tree Consumer Discount Company - To conduct consumer finance business where mortgage lending will also be conducted
 BAN20032185 Challenge Financial Investors Corp. d/b/a Challenge Mortgage - To open a mortgage lender and broker's office at 8428 Page Boulevard, St. Louis, MO
 BAN20032186 American Cash Center, Inc. (Used in VA by: B & L Management, Inc.) - To open a payday lender's office at Cloverleaf Shopping Center, 2440-B Greensboro Road, Martinsville, VA
 BAN20032187 The Mortgage Link, Inc. - To open a mortgage broker's office at 2575 Chainbridge Road, Vienna, VA
 BAN20032188 America's Mortgage Broker, L.L.C. d/b/a Affordable Home Funding - To open a mortgage lender and broker's office at 10037 East Adamo Drive, Tampa, FL
 BAN20032189 Option One Mortgage Corporation - To relocate mortgage lender broker's office from 13454 Sunrise Valley Drive, Suite 110, Herndon, VA to 13650 Dulles Technology Drive, Suite 175, Herndon, VA
 BAN20032190 ComUnity Lending, Incorporated d/b/a Virginia Community Lending (McLean) - To relocate mortgage lender broker's office from 14300 Northsight Road, Scottsdale, AZ to 14300 Northsight Road, Suite 126, Scottsdale, AZ
 BAN20032191 Miracle Mortgage, Inc. - To relocate mortgage broker's office from 508 N. Birdneck Road, Suite F, Virginia Beach, VA to 1300 Diamond Springs Road, Suite 501, Virginia Beach, VA
 BAN20032192 Blue Nile Financial Services, Inc. - For a money order license
 BAN20032193 Residential Broker Group, Inc. - For a mortgage broker's license
 BAN20032194 Wired Money, Inc. - For a money order license
 BAN20032195 A-1 Mortgage Corporation - For a mortgage broker's license
 BAN20032196 The Money Tree Financial Corp. - For a mortgage broker's license
 BAN20032197 American Home Mortgage Corp. - For a mortgage lender and broker license
 BAN20032198 Omni Home Financing, Inc. - For a mortgage broker's license
 BAN20032199 Premier Mortgage Funding, Inc. - To open a mortgage broker's office at 1700 Rockville Pike, Suite 400, Rockville, MD
 BAN20032200 Premier Mortgage Funding, Inc. - To open a mortgage broker's office at 5850 Waterloo Road, Suite 140, Columbia, MD
 BAN20032201 Premier Mortgage Funding, Inc. - To open a mortgage broker's office at 905 West 7th Street, Suite 307, Frederick, MD
 BAN20032202 Arlington Capital Mortgage Corporation - To open a mortgage lender's office at 750 Broad Street, Shrewsbury, NJ
 BAN20032203 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 500 West Bonita Avenue, Suite 24, San Dimas, CA
 BAN20032204 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 601 E Yorba Linda Boulevard, Suite 8, Placentia, CA
 BAN20032205 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 26-20 212th Street, Bayside, NY
 BAN20032206 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 221 Point West Boulevard, St. Charles, MO
 BAN20032207 Cash Express of Virginia, Inc. - To open a payday lender's office at 1576 Holland Road, Suffolk, VA
 BAN20032208 Congressional Funding, Inc. - To relocate mortgage broker's office from 15746A Crabbs Branch Way, Rockville, MD to 15245 Shady Grove Road, Suite 145, Rockville, MD
 BAN20032209 Congressional Funding USA, LLC - To relocate mortgage broker's office from 15746A Crabbs Branch Way, Rockville, MD to 15245 Shady Grove Road, Suite 145, Rockville, MD
 BAN20032210 Cash Express of Virginia, Inc. - To relocate payday lender's office from 3525 E. Virginia Beach Boulevard, Norfolk, VA to 1517 Azalea Garden Road, Norfolk, VA
 BAN20032211 Principal Residential Mortgage, Inc. - To relocate mortgage lender broker's office from 11363 San Jose Boulevard, Jacksonville, FL to Gran Park at the Avenues, 10199 Southside Boulevard, Suite 104, Jacksonville, FL
 BAN20032212 Fidelity & Trust Mortgage, Inc. - To open a mortgage lender and broker's office at 2557 John Milton Drive, Oak Hill, VA
 BAN20032213 Cash Express of Virginia, Inc. - To conduct payday lending business where a money transmission business will also be conducted
 BAN20032214 Harbert PE Holdings, LLC - To acquire 25 percent or more of Express Check Advance of Virginia, LLC

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20032215 Dexter Stencil d/b/a Destiny Financial Services - For a mortgage broker's license

BAN20032216 Old Dominion Home Loans, LLC - For a mortgage broker's license

BAN20032217 American Mortgage Express Corp. - To open a mortgage lender and broker's office at 7100 Rockledge Drive, Charlotte, NC

BAN20032218 American Mortgage Express Corp. - To open a mortgage lender and broker's office at 1804 Laurel Oak Lane, Virginia Beach, VA

BAN20032219 American Mortgage Express Corp. - To open a mortgage lender and broker's office at 15245 Shady Grove Road, Rockville, MD

BAN20032220 American Mortgage Express Corp. - To open a mortgage lender and broker's office at 210 Pier One Road, Suite 100, Stevensville, MD

BAN20032221 American Mortgage Express Corp. - To open a mortgage lender and broker's office at 4853 Slatestone Court, Fairfax, VA

BAN20032222 American Mortgage Express Corp. - To open a mortgage lender and broker's office at 1930 E. Marlton Pike, Suite A-7, Cherry Hill, NJ

BAN20032223 American Mortgage Express Corp. - To open a mortgage lender and broker's office at 7000 Atrium Way, Mt. Laurel, NJ

BAN20032224 SAI Mortgage, Inc. - To open a mortgage broker's office at 6404-R Seven Corners Place, Falls Church, VA

BAN20032225 Premier Mortgage Group, Inc. - To relocate mortgage broker's office from 5905 W. Broad Street, Suite 303, Richmond, VA to 1900 Byrd Avenue, Suite 100, Richmond, VA

BAN20032226 John H. Lecky t/a H & W Mortgage - To relocate mortgage broker's office from 306 Adams Avenue, Suite 103, Alexandria, VA to 7911 Oak Street, Dunn Loring, VA

BAN20032227 1st Priority Mortgage Corp. d/b/a Affordable Mortgage Solutions - To relocate mortgage broker's office from 106 Top Tobacco Road, Lake Waccamaw, NC to 5044 Carolina Beach Road, Suite B-176, Wilmington, NC

BAN20032228 Heritage Mortgage Brokers, L.L.C. - To open a mortgage broker's office at 9479 Cloverdale Court, Burke, VA

BAN20032229 Heritage Mortgage Brokers, L.L.C. - To relocate mortgage broker's office from 11268 Shady Lane, King George, VA to 7613 River Road, Fredericksburg, VA

BAN20032230 Heritage Mortgage Brokers, L.L.C. - To relocate mortgage broker's office from 13674 Orchard Drive, Clifton, VA to 14301 Grape Holly Grove, Unit 15, Centreville, VA

BAN20032231 Washington Capitol Financial Corp. - To relocate mortgage broker's office from 8150 Leesburg Pike, Suite 710, Vienna, VA to 8150 Leesburg Pike, Suite 1040, Vienna, VA

BAN20032232 Golden Rule Mortgages, Inc. - To relocate mortgage broker's office from 792 W. Lumsden Road, Brandon, FL to 138 East Bloomingdale Ave., Brandon, FL

BAN20032233 Innovative Mortgage Corporation - To relocate mortgage broker's office from 6916 Surrey Road, Fayetteville, NC to 6729A Irongate Drive, Fayetteville, NC

BAN20032234 1st Choice Mortgage/Equity Corporation of Lexington - For additional mortgage authority

BAN20032235 Complete Mortgage Solutions, Inc. - For a mortgage broker's license

BAN20032236 Allied Home Mortgage Capital Corporation - To relocate mortgage lender broker's office from 4201 Northview Drive, Suite 103, Bowie, MD to 7568 Main Street, Suite C, Sykesville, MD

BAN20032237 Allied Home Mortgage Capital Corporation - To relocate mortgage lender broker's office from 5823 Allentown Way, Camp Springs, MD to 5833 Allentown Way, Camp Springs, MD

BAN20032238 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 175 West Wieuca Road, Suite 124, Atlanta, GA

BAN20032239 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 8545 Patterson Avenue, Suite 202-204, Richmond, VA

BAN20032240 1st Choice Mortgage/Equity Corporation of Lexington - To relocate mortgage lender's office from 3740 South Evans Street, Suite A, Greenville, NC to 3740 South Evans Street, Suite E, Greenville, NC

BAN20032241 Premier Mortgage Funding, Inc. - To open a mortgage broker's office at 15200 Shady Grove Road, Suite 350, Rockville, MD

BAN20032242 Primerica Financial Services Home Mortgages, Inc. - To relocate mortgage broker's office from 4710 Auth Place, Suite 101, Camp Springs, MD to 5889 Allentown Road, Camp Springs, MD

BAN20032243 United Mortgage Corporation - For additional mortgage authority

BAN20032244 Capital Mortgage Finance Corp. - For additional mortgage authority

BAN20032245 Premier Mortgage Funding, Inc. - To open a mortgage broker's office at 8000 Towers Crescent Drive, Vienna, VA

BAN20032246 1st Nations Mortgage Corporation - To open a mortgage broker's office at 1670 Mill Quarter Road, Powhatan, VA

BAN20032247 American Cash Center, Inc. (Used in VA by: B & L Management, Inc.) - To open a payday lender's office at 101 North Brunswick Avenue, South Hill, VA

BAN20032248 Newport Shores Mortgage, Inc. - To relocate mortgage broker's office from 8508 Loch Raven Boulevard, Suite B, Baltimore, MD to 1526 York Road, Lutherville, MD

BAN20032249 Capital Mortgage Finance Corp. - To relocate mortgage broker's office from 9881 Broken Land Parkway, Suite 210, Columbia, MD to 6310 Stevens Forest Road, Columbia, MD

BAN20032250 Greene County Bank - To open a branch at 901 State Street, Bristol, VA

BAN20032251 Nationwide Processing, Inc. - For a mortgage broker's license

BAN20032252 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 4451 Brookfield Corporate Drive, Suite 112, Chantilly, VA

BAN20032253 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 3406 Bella Vista Way, Bella Vista, AR

BAN20032254 Mortgage Access Corp. d/b/a Weichert Financial Services - To open a mortgage lender's office at 120 Longwater Drive, Norwell, MA

BAN20032255 First Guaranty Mortgage Corporation - To open a mortgage lender and broker's office at 725 Skippack Pike, Suite 250, Blue Bell, PA

BAN20032256 Allied Home Mortgage Capital Corporation - To open a mortgage lender and broker's office at 5833 Richmond Tappahannock Highway, Suite 204A, Aylett, VA

BAN20032257 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 12529 Baliey Drive, N.E., Lowell, MI

BAN20032258 Integrated Mortgage Strategies Ltd. - To relocate mortgage broker's office from 3200 Croasdaile Drive, Suite 703, Durham, NC to 4705 University Drive, Suite 200, Durham, NC

BAN20032259 NovaStar Mortgage, Inc. - To relocate mortgage lender's office from 9115 Guilford Road, Suite 400, Columbia, MD to Crestpointe Corporate Center 7070 Samuel Morse Dr., Columbia Gateway, Columbia, MD

BAN20032260 Silver Mortgage Company, L.L.C. - To relocate mortgage lender broker's office from 1235 Central Park Boulevard, Fredericksburg, VA to 1211 Central Park Boulevard, Fredericksburg, VA

BAN20032261 Riley Home Mortgage Corporation - To relocate mortgage broker's office from 10711 Spotsylvania Avenue, 2nd Floor, Fredericksburg, VA to 5608 SouthPoint Centre Blvd., Suite 101, Fredericksburg, VA

BAN20032262 Primerica Financial Services Home Mortgages, Inc. - To relocate mortgage broker's office from 701 Elm Avenue, Suite A, Grottoes, VA to 125 West Bruce Street, Suite A, Harrisonburg, VA

BAN20032263 Britannia Mortgage Ltd. - For a mortgage broker's license

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20032264 Madison Mortgage Company, LLC - For a mortgage lender and broker license
 BAN20032265 Check into Cash of Virginia, LLC d/b/a Check into Cash - To relocate payday lender's office from 210-B Marshall Drive, Christiansburg, VA to 202-B Marshall Drive, Christiansburg, VA
 BAN20032266 B & B Enterprises d/b/a 1st American Mortgage - To relocate mortgage broker's office from 14 West Market Street, Leesburg, VA to 114 Edwards Ferry Road, Suite C, Leesburg, VA
 BAN20032267 Sable Enterprises, Corp. d/b/a City Finance Corp.Com - To relocate mortgage broker's office from 4203 Kimbree Court, Alexandria, VA to 4010 Maury Place, Suite 7B, Alexandria, VA
 BAN20032268 The Mortgage Link, Inc. - To open a mortgage broker's office at 3607 Crest Drive, Annandale, VA
 BAN20032269 Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 922 West Main Street, Radford, VA
 BAN20032270 Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 250 N. Poplar Avenue, Suite A-1, Waynesboro, VA
 BAN20032271 American Mortgage Company of Kentucky, LLC - To open a mortgage broker's office at 245 E. New Street, Suite 212, Kingsport, TN
 BAN20032272 Pinnacle Financial Corporation d/b/a Tristar Lending Group (In Certain Offices) - To open a mortgage lender and broker's office at 10376 Festival Lane, Manassas, VA
 BAN20032273 Pinnacle Financial Corporation d/b/a Tristar Lending Group (In Certain Offices) - To open a mortgage lender and broker's office at 4900 Leesburg Pike, Suite 209, Alexandria, VA
 BAN20032274 Pinnacle Financial Corporation d/b/a Tristar Lending Group (In Certain Offices) - To open a mortgage lender and broker's office at 11141 Georgia Avenue, Suite 328, Wheaton, MD
 BAN20032275 Pinnacle Financial Corporation d/b/a Tristar Lending Group (In Certain Offices) - To relocate mortgage lender broker's office from 11350 Random Hills Road, Suite 800, Fairfax, VA to 3613 D Chain Bridge Road, Fairfax, VA
 BAN20032276 Premier Mortgage Funding, Inc. - To open a mortgage broker's office at 12007 Sunrise Valley Drive, Suite 400, Reston, VA
 BAN20032277 Premier Mortgage Funding, Inc. - To open a mortgage broker's office at 4911 Brambleton Avenue, Roanoke, VA
 BAN20032278 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 528 Edgefield Road, North Augusta, SC
 BAN20032279 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 430 West Mohammad Ali Blvd., Suite 1901, Louisville, KY
 BAN20032280 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 590 Oak Bay Drive, Osprey, FL
 BAN20032281 All Fund, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 4641 Montgomery Avenue, Suite 515, Bethesda, MD
 BAN20032282 Citizens Bancorp of Virginia, Inc. - To acquire Citizens Bank and Trust Company, Blackstone, VA
 BAN20032283 Ivanhoe Financial, Inc. - For additional mortgage authority
 BAN20032284 WMC Mortgage Corp. d/b/a American Loan Centers - To open a mortgage lender and broker's office at 15305 Dallas Parkway, Suite 500, Dallas, TX
 BAN20032285 American Residential Funding, Inc. - To open a mortgage lender and broker's office at 1206 West South Jordan Pkwy., Suite D, South Jordan, UT
 BAN20032286 CTX Mortgage Company, LLC - To relocate mortgage lender broker's office from 385 Douglas Avenue, Suite 3000, Altamonte Spring, FL to 435 Douglas Avenue, Suite 2505, Altamonte Springs, FL
 BAN20032287 Branch Banking and Trust Company of Virginia - To relocate office from 251 West Lee Highway, Suite 730, Warrenton, VA to intersection of Winchester Street and West Lee Highway, Warrenton, VA
 BAN20032288 Beacon Home Mortgage, LLC - To relocate mortgage broker's office from 3040 Mitchellville Road, Bowie, MD to 5600 General Washington Dr., Suite B200, Alexandria, VA
 BAN20032289 Savings Mortgage Inc. - For additional mortgage authority
 BAN20032290 NorthStar Mortgage Corp. - To relocate mortgage broker's office from 4411 Peachtree Avenue, Wilmington, NC to 2520 Independence Boulevard, Suite 201, Wilmington, NC
 BAN20032291 BVIG Financial, LLC - To open a check casher at 4907 F Nine Mile Road, Richmond, VA
 BAN20032292 A One Cash Inc. - To open a check casher at 4707 N. Chambliss Street, Alexandria, VA
 BAN20032293 Q. C. & G. Financial, Inc. d/b/a Ace America's Cash Express - To conduct payday lending business where a money transmission business will also be conducted
 BAN20032294 Lenders Direct Capital Corporation - For a mortgage lender's license
 BAN20032295 P.V. Home Lending LLC - For a mortgage broker's license
 BAN20032296 Kishmen Mortgage Corporation - For a mortgage broker's license
 BAN20032297 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 4351 Portsmouth Boulevard, Portsmouth, VA
 BAN20032298 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 5200 DTC Parkway, Suite 240, Greenwood Village, CO
 BAN20032299 Centex Home Equity Company, LLC - To open a mortgage lender and broker's office at 6225 Brandon Avenue, Suite 120, Springfield, VA
 BAN20032300 QC Financial Services, Inc. d/b/a Quik Cash - To open a payday lender's office at 100 West Mercury Boulevard, Hampton, VA
 BAN20032301 The Credit People Company - To open a mortgage broker's office at 2300 M Street, N.W., Suite 825, Washington, DC
 BAN20032302 Advocate Mortgage Group, Inc. - For additional mortgage authority
 BAN20032303 Lovell, Hubbard and Associates, Inc. - For a mortgage broker's license
 BAN20032304 Century Financial Group, Inc. - For a mortgage broker's license
 BAN20032305 Approved Acquisition Corp. - To acquire Approved Financial Corp., Virginia Beach, VA
 BAN20032306 Chancellor Mortgage and Funding Company, LC d/b/a Chancellor Mortgage Company - To open a mortgage lender and broker's office at 4471 James Madison Parkway, King George, VA
 BAN20032307 CoreStar Financial Group, LLC - To open a mortgage lender and broker's office at 9309 Belair Road, 2nd Floor, Perry Hall, MD
 BAN20032308 Primerica Financial Services Home Mortgages, Inc. - To open a mortgage broker's office at 6495 New Hampshire Avenue, Suite 250, Hyattsville, MD
 BAN20032309 Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 2605 Virginia Beach Blvd., Suite 105, Virginia Beach, VA
 BAN20032310 Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 681 Battlefield Boulevard, Unit 6, Chesapeake, VA
 BAN20032311 Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 6550 Town Point Road, Suite 103A, Suffolk, VA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20032312	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 2855 Gallows Road, Falls Church, VA
BAN20032313	Primary Residential Mortgage, Inc. - To relocate mortgage lender broker's office from 6803 York Road, Suite 200, Baltimore, MD to 9431 Belair Road, 2nd Floor, Baltimore, MD
BAN20032314	Americorp Credit Corporation - To relocate mortgage lender broker's office from 2018 Parkview Boulevard, Hermitage, PA to 1628 East State Street, Hermitage, PA
BAN20032315	Challenge Financial Investors Corp. d/b/a Challenge Mortgage - To relocate mortgage lender broker's office from 1301 Seminole Boulevard, Suite 140, Largo, FL
BAN20032316	Chrysler Home Mortgage Corporation - To relocate mortgage broker's office from 1324 N. Battlefield Boulevard, Chesapeake, VA to 1524 Volvo Parkway, Chesapeake, VA
BAN20032317	Quik Fund, Inc. - For a mortgage lender and broker license
BAN20032318	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 640 Rodi Road, Pittsburgh, PA
BAN20032319	Premier Mortgage Funding, Inc. - To open a mortgage broker's office at 875 Walnut Street, Suite 310, Cary, NC
BAN20032320	Challenge Financial Investors Corp. d/b/a Challenge Mortgage - To open a mortgage lender and broker's office at 200 High Street, Suite 402, Portsmouth, VA
BAN20032321	Allied Home Mortgage Capital Corporation - To open a mortgage lender and broker's office at 7029 Pearl Road, Suite 300, Middleburg Heights, OH
BAN20032322	New Freedom Mortgage Corporation - To relocate mortgage lender broker's office from 684 East Vine Street, Suite 3, Murray, UT to 5248 Pinemont Drive, Suite C-190, Murray, UT
BAN20032323	Loan America, Inc. - To open a mortgage lender's office at 3500 Parkway Lane, Suite 520, Norcross, GA
BAN20032324	ComUnity Lending, Incorporated d/b/a Virginia Community Lending (McLean) - To relocate mortgage lender broker's office from 601 S. Main Street, Suite 200, Grapevine, TX to 622 West Main Street, Suite 108, Arlington, TX
BAN20032325	American Residential Funding, Inc. - To relocate mortgage lender broker's office from 9200 Basil Court, Suite 307, Upper Marlboro, MD to 9200 Basil Court, Suite 100, Upper Marlboro, MD
BAN20032326	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To relocate payday lender's office from 736 Warrenton Road, Suite 107, Fredericksburg, VA to 8752 Richmond Highway, Alexandria, VA
BAN20032327	Sun C. Ouzts d/b/a Global Check Cashing - To open a check casher at 13813 Foulger Square, Woodbridge, VA
BAN20032328	Valleyway Mortgage, Inc. - For a mortgage broker's license
BAN20032329	JNB Mortgage Corporation - For a mortgage broker's license
BAN20032330	WCS Lending, LLC - For a mortgage lender and broker license
BAN20032331	Check into Cash of Virginia, LLC d/b/a Check into Cash - To open a payday lender's office at 3601 Old Halifax Road, Suite 402, South Boston, VA
BAN20032332	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 332 St. Tropez, Laguna Beach, CA
BAN20032333	Premier Mortgage Funding, Inc. - To open a mortgage broker's office at 7700 Little River Turnpike, Suite 604, Annandale, VA
BAN20032334	World Lending Group, Inc. - To open a mortgage lender and broker's office at 15 Abelia Lane, Chattanooga, TN
BAN20032335	Edward D. Jones & Co., L.P. d/b/a EdwardJones - To open a mortgage broker's office at 913 First Colonial Road, Suite 104, Virginia Beach, VA
BAN20032336	PayDay Advance, L.L.C. - To open a payday lender's office at 3130 Halifax Road, Suite T, South Boston, VA
BAN20032337	Cornerstone First Financial, LLC - To relocate mortgage broker's office from 6409 Middleburg Lane, Bethesda, MD to 2233 Wisconsin Ave., N.W. Suite 412, Washington, DC
BAN20032338	Liberty American Mortgage Co. - To open a mortgage lender and broker's office at 1311 Jamestown Road, Suite 203, Williamsburg, VA
BAN20032339	Virginia State Mortgage, Inc. - To relocate mortgage broker's office from 3130 Chaparral Drive, Suite 106, Roanoke, VA to 5175 Peters Creek Road, Roanoke, VA
BAN20032340	Beneficial Virginia Inc. - To relocate consumer finance office from 722-4 Rio Road West, Charlottesville, VA to Shoppers World, 460 Shoppers World Court, Albemarle County, VA
BAN20032341	Beneficial Mortgage Co. of Virginia - To relocate mortgage lender broker's office from 722 Rio Road West, Suite 4, Charlottesville, VA to Shoppers World, 460 Shoppers World Court, Charlottesville, VA
BAN20032342	Beneficial Discount Co. of Virginia - To relocate mortgage lender's office from 722 Rio Road, West, Suite 4, Charlottesville, VA to Shoppers World, 460 Shoppers World Court, Charlottesville, VA
BAN20032343	Beneficial Virginia Inc. - To relocate consumer finance office from 470-C S. Commerce Avenue, Front Royal, VA to 310 Commerce Avenue, Front Royal, VA
BAN20032344	Beneficial Discount Co. of Virginia - To relocate mortgage lender's office from Front Royal Business Park, 470-C, Front Royal, VA to 310 Commerce Avenue, Front Royal, VA
BAN20032345	Beneficial Mortgage Co. of Virginia - To relocate mortgage lender broker's office from Front Royal Business Park, Front Royal, VA to 310 Commerce Avenue, Front Royal, VA
BAN20032346	Metrociti Mortgage LLC - To open a mortgage lender and broker's office at 3300 Flintwood Court, Herndon, VA
BAN20032347	Pinnacle Financial Corporation d/b/a Tristar Lending Group (In Certain Offices) - To open a mortgage lender and broker's office at 411 Harbour Point, Suite 101, Virginia Beach, VA
BAN20032348	Universal Express NY, Inc. - For a money order license
BAN20032349	Mortgage Lending Associates, Inc. - For a mortgage broker's license
BAN20032350	Equihome Mortgage, Corp. - For a mortgage lender and broker license
BAN20032351	General Funding Solutions, Inc. - For a mortgage broker's license
BAN20032352	Finance America, LLC - To open a mortgage lender and broker's office at 1551 Sawgrass Corporate Parkway, Suite 400, Sunrise, FL
BAN20032353	AMG Guaranty Corp. - To acquire Old Dominion Trust Company
BAN20032354	Sun Mortgage Funding, LLC - For a mortgage broker's license
BAN20032355	Dar Al Tawakul General Trading, LLC - For a money order license
BAN20032356	R. A. M. Financial Services, Inc. - To open a check casher at 22330 Sterling Boulevard, Suite 128A, Sterling, VA
BAN20032357	Origen Financial L.L.C. - To open a mortgage lender's office at 27777 Franklin Road, Suite 1700, Southfield, MI
BAN20032358	Summit Mortgage Corporation d/b/a Summit Home Mortgage Inc. - To open a mortgage lender and broker's office at 7475 East Peakview Avenue, Bldg. 10, Centennial, CO
BAN20032359	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 3822 Campus Drive, Suite 215, Newport Beach, CA

BAN20032360 Platinum Capital Group, Inc. (Used in VA by: Platinum Capital Group) - To open a mortgage lender and broker's office at 1320 Fenwick Lane, Suite 602, Silver Spring, MD

BAN20032361 Premier Mortgage Funding, Inc. - To open a mortgage broker's office at 708 Thimble Shoals Boulevard, Suite A, Newport News, VA

BAN20032362 Premier Mortgage Funding, Inc. - To open a mortgage broker's office at 9950 Southern Maryland Boulevard, Dunkirk, MD

BAN20032363 Virginia Mortgage Services, Inc. - To open a mortgage broker's office at 2353 Jefferson Highway, Waynesboro, VA

BAN20032364 Accredited Home Lenders, Inc. - To relocate mortgage lender's office from 111 Tri-County Parkway, Suite C, Cincinnati, OH to 9075 Centre Point Drive, Suite 300, West Chester, OH

BAN20032365 Chelsea Capital LLC - To relocate mortgage broker's office from 2013 Madrillon Springs Court, Vienna, VA to 7736 Lewinsville Road, McLean, VA

BAN20032366 Coulbourn Mortgage Inc. - To relocate mortgage broker's office from 205 E Joppa Road, Unit 2706, Towson, MD to 320 E. Towsontowne Blvd., Suite 210, Towson, MD

BAN20032367 L.A.P. Holdings LLC - To open a mortgage broker's office at 1550 Wall Street, Suite 31, St. Charles, MO

BAN20032368 F & L Marketing Enterprises LLC d/b/a Cash-2-U Payday Loans - To open a payday lender's office at 6109 Virginia Beach Boulevard, Unit B, Norfolk, VA

BAN20032369 Park West Mortgage, Inc. - For a mortgage broker's license

BAN20032370 1st 2nd Mortgage Company of N.J., Inc. - For a mortgage lender and broker license

BAN20032371 Southside Mortgage Corporation - To open a mortgage broker's office at 307 Commerce Street, Clarksville, VA

BAN20032372 Edward D. Jones & Co., L.P. d/b/a EdwardJones - To open a mortgage broker's office at 1238 Holland Road, Suite 102, Suffolk, VA

BAN20032373 D and D Home Loans Inc - To open a mortgage broker's office at 6147 Jefferson Avenue, Suite D, Newport News, VA

BAN20032374 North American Home Loans, Inc. - To relocate mortgage broker's office from 5655 Lindero Canyon Road, Suite 406, Westlake Village, CA to 31255 Cedar Valley Drive, 201, Westlake Village, CA

BAN20032375 ComUnity Lending, Incorporated d/b/a Virginia Community Lending (McLean) - To relocate mortgage lender broker's office from 1640 S. Stapley Drive, Suite 245, Mesa, AZ to 1640 S. Stapley Drive, Suite 130, Mesa, AZ

BAN20032376 Swift 1 Mortgage LLC - To relocate mortgage broker's office from 10698 Winfield Loop, Manassas, VA to 12552 Le Vau Court, Suite 202, Fairfax, VA

BAN20032377 John Andrew Osipchak, Jr. - To acquire 25 percent or more of Bull Run Mortgage, Inc.

BAN20032378 Superior Home Mortgage Corporation (Used in VA by: Superior Mortgage Corporation) - To open a mortgage lender and broker's office at 11848 Rock Landing Dr., Suite 202-A, Newport News, VA

BAN20032379 Superior Home Mortgage Corporation (Used in VA by: Superior Mortgage Corporation) - To open a mortgage lender and broker's office at 750 Route 539, Little Egg Harbor, NJ

BAN20032380 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 5898 Cleveland Avenue, Suite 200, Columbus, OH

BAN20032381 Allied Home Mortgage Capital Corporation - To open a mortgage lender and broker's office at 339 Busch's Frontage Road, Suite 206, Annapolis, MD

BAN20032382 A. Anderson Scott Mortgage Group, Incorporated - To open a mortgage lender and broker's office at 180 Admiral Cochrane Drive, Suite 220, Annapolis, MD

BAN20032383 H&R Block Mortgage Corporation - To relocate mortgage lender broker's office from 13990 Baltimore Avenue, Laurel, MD to 8865 Stanford Boulevard, Suite 114, Columbia, MD

BAN20032384 Fast Payday Loans, Inc. - To open a payday lender's office at 6150 Midlothian Turnpike, Richmond, VA

BAN20032385 Fast Payday Loans, Inc. - To open a payday lender's office at 3165 Lee Highway, Bristol, VA

BAN20032386 Fast Payday Loans, Inc. - To open a payday lender's office at 3154 Halifax Road, South Boston, VA

BAN20032387 Fast Payday Loans, Inc. - To open a payday lender's office at 20600-A Timberlake Road, Lynchburg, VA

BAN20032388 Fast Payday Loans, Inc. - To open a payday lender's office at 3030 South Crater Road, Petersburg, VA

BAN20032389 Fast Payday Loans, Inc. - To open a payday lender's office at 4815 Williamson Road, Roanoke, VA

BAN20032390 Fast Payday Loans, Inc. - To open a payday lender's office at 2501 Memorial Drive, Lynchburg, VA

BAN20032391 Fast Payday Loans, Inc. - To open a payday lender's office at 605-A Piney Forest Road, Danville, VA

BAN20032392 Fast Payday Loans, Inc. - To open a payday lender's office at 2101 Wards Road, Lynchburg, VA

BAN20032394 East Coast Capital Corp. - For a mortgage broker's license

BAN20032395 Capital Financial Home Equity, LLC - For additional mortgage authority

BAN20032396 Allied Home Mortgage Capital Corporation - To relocate mortgage lender broker's office from 1760 Reston Parkway, Suite 507, Reston, VA to 11260 Rodger Bacon Drive, Suite 404, Reston, VA

BAN20032397 Kellner Mortgage Investments I, Ltd., L.P. (Used in VA by: Kellner Mortgage Investments I, Ltd.) - To relocate mortgage lender's office from 2828 Trinity Mills, Suite 340, Carrollton, TX to 5055 Park Boulevard, Suite 600, Plano, TX

BAN20032398 United Capital, Inc. - To open a mortgage broker's office at 4355 Highway 58, South, Suite 107A, Chattanooga, TN

BAN20032399 United Capital, Inc. - To relocate mortgage broker's office from 710 West Brookhaven Circle, Memphis, TN to 6685 Poplar Avenue, Suite 202, Germantown, TN

BAN20032400 United Capital, Inc. - To relocate mortgage broker's office from 3151 Custer Drive, Suite A, Lexington, KY to 3166 Custer Drive, Suite 100, Lexington, KY

BAN20032401 New Century Mortgage Corporation - To open a mortgage lender and broker's office at 330 South Service Road, Suite 216A, Melville, NY

BAN20032402 AEGIS Lending Corporation - To open a mortgage lender and broker's office at 525 Plymouth Road, Suite 301, Plymouth Meeting, PA

BAN20032403 AEGIS Lending Corporation - To open a mortgage lender and broker's office at 6901 Rockledge Drive, 7th Floor, Bethesda, MD

BAN20032404 SIRVA Mortgage, Inc. - To open a mortgage lender's office at 15483 Whispering Willow Drive, Wellington, FL

BAN20032405 Alta Financial Mortgage Company (Used in VA by: Alta Financial, Inc. d/b/a Alta Financial M) - To open a mortgage lender's office at 3647 Lake Monticello Road, Palmyra, VA

BAN20032406 Virginia Mortgage Services, Inc. - To open a mortgage broker's office at 3634 S. Plaza Trail, Suite 201, Virginia Beach, VA

BAN20032407 Financial Payments LP - To open a check casher at 4572 Virginia Beach Boulevard, #4A, Virginia Beach, VA

BAN20032408 A Better Way Inc. - For a mortgage broker's license

BAN20032409 Just Mortgage, Inc. - For a mortgage lender's license

BAN20032410 Karim Enterprises, Inc. - For a mortgage broker's license

BAN20032411 Geraldine Watkins - For a mortgage broker's license

BAN20032412 Mortgage Strategies Group, LLC - For a mortgage broker's license

BAN20032413 American Lending Network, Inc. - For a mortgage lender and broker license

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20032414 Mortgage One USA, Inc. - For a mortgage broker's license
 BAN20032415 Family Home Lending Corporation - For a mortgage lender and broker license
 BAN20032416 Absolute Mortgage Company, Inc. - For additional mortgage authority
 BAN20032417 David Etute d/b/a America Continental Home Loan & Investment - To open a mortgage broker's office at 10045 Midlothian Turnpike, Suite 200A, Richmond, VA
 BAN20032418 Primary Residential Mortgage, Inc. - To open a mortgage lender and broker's office at 7459 Westcreek Court, Springfield, VA
 BAN20032419 Norwestern Mortgage Group, L.L.C. - To open a mortgage broker's office at 4601 Presidents Drive, Suite 220, Lanham, MD
 BAN20032420 Shaffer Enterprises, LLC - For a mortgage broker's license
 BAN20032421 Everest Financial, LLC - For a mortgage broker's license
 BAN20032422 JGT Group, Inc. - For a mortgage broker's license
 BAN20032423 Thomas J. Hahn - For a mortgage broker's license
 BAN20032424 First Discount Mortgage, LLC - For additional mortgage authority
 BAN20032425 William E. Wallace - To be an exclusive agent for Primerica Financial Services Home Mortgages, Inc.
 BAN20032426 Fortune Mortgage Company d/b/a BORROW123.COM - To open a mortgage lender and broker's office at 8150 Leesburg Pike, Suite 820, Vienna, VA
 BAN20032427 Capital Access, Ltd. - To open a mortgage broker's office at 6715 Little River Turnpike, Suite 304, Annandale, VA
 BAN20032428 Capital Access, Ltd. - To open a mortgage broker's office at 500 Philadelphia Pike, Wilmington, DE
 BAN20032429 ComUnity Lending, Incorporated d/b/a Virginia Community Lending (McLean) - To open a mortgage lender and broker's office at 25 South Grove Street, Suite 305, Elgin, IL
 BAN20032430 ComUnity Lending, Incorporated d/b/a Virginia Community Lending (McLean) - To open a mortgage lender and broker's office at 2903 Aspen Drive, Suite A, Loveland, CO
 BAN20032431 Service First Mortgage, L.C. - To open a mortgage lender and broker's office at 1 W. Pennsylvania Avenue, Suite 95, Towson, MD
 BAN20032432 Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 6090-B Rose Hill Drive, Alexandria, VA
 BAN20032433 Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 6030 G. Burke Centre Parkway, Burke, VA
 BAN20032434 Avid Mortgage Corporation - To relocate mortgage broker's office from 6121 Kendra Way, Centreville, VA to 7 Loudoun Street, S.E., Suite 3, Leesburg, VA
 BAN20032435 Providence Home Mortgage, LLC - To relocate mortgage broker's office from 21089 Mossy Glen Terrace, Ashburn, VA to 21145 Whitfield Place, Suite 105, Sterling, VA
 BAN20032436 Chesapeake Investment & Mortgage Corporation - To relocate mortgage lender broker's office from 4E Industrial Park Drive, Waldorf, MD to 103 Paul Mellon Court, Suite A, Waldorf, MD
 BAN20032437 First M & S Mortgage Group, L.L.C. - To relocate mortgage broker's office from 3110 Mt. Vernon Avenue, Suite 101, Alexandria, VA to 7062 Leebrad Street, Springfield, VA
 BAN20032438 Wells Fargo Financial Asseptance Virginia, Inc. - To conduct consumer finance business where an automobile club membership business will also be conducted
 BAN20032439 First Southern Financial, Corp. - For a mortgage broker's license
 BAN20032440 First Great Lakes Trust, Inc. - For a mortgage broker's license
 BAN20032441 Blue Ridge Mortgage, L.L.C. - To open a mortgage lender and broker's office at 3715 Old Forest Road, Lynchburg, VA
 BAN20032442 Blue Ridge Mortgage, L.L.C. - To open a mortgage lender and broker's office at 4018 A Wards Road, Lynchburg, VA
 BAN20032443 Multi-Fund of Columbus, Inc. - To open a mortgage broker's office at 1486 Route 119, North, Indiana, PA
 BAN20032444 Aurora Loan Services Inc. - To open a mortgage lender's office at 10350 Park Meadows Drive, Littleton, CO
 BAN20032445 World Lending Group, Inc. - To relocate mortgage lender broker's office from 1715 Peachtree Parkway, Cummings, GA to 775 Branch Drive, Alpharetta, GA
 BAN20032446 Merit Financial, Inc. - To relocate mortgage lender broker's office from 12034 134th Court, NE, Suite 201, Redmond, WA to 13905 N.E. 128th Street, Kirkland, WA
 BAN20032447 Commonwealth Funding Corporation - To relocate mortgage broker's office from 10301 Memory Lane, Suite 202, Chesterfield, VA to 8730 Stony Point Parkway, Suite 170, Richmond, VA
 BAN20032448 Nationwide Home Mortgage, Inc. d/b/a Allstate Mortgage Lending, Inc. - To relocate mortgage broker's office from 7652 Standish Place, Rockville, MD to 1803 Research Boulevard, Suite 101, Rockville, MD
 BAN20032449 USA Check Cashers, Inc. - To conduct payday lending business where a money transmission business will also be conducted
 BAN20032450 North American Mortgage Company, L.L.C. - For a mortgage broker's license
 BAN20032451 Premier Mortgage Funding, Inc. - To open a mortgage broker's office at 11350 Random Hills Road, Suite 800, Fairfax, VA
 BAN20032452 Premier Mortgage Funding, Inc. - To open a mortgage broker's office at 10560 Main Street, Fairfax, VA
 BAN20032453 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 672C Alpha Drive, Highland Heights, OH
 BAN20032454 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 5109 Pleasant Avenue, Suite C2, Fairfield, OH
 BAN20032455 Capital Mortgage Finance Corp. - To open a mortgage lender and broker's office at 11510 Georgia Avenue, Suite 225, Wheaton, MD
 BAN20032456 Mason Dixon Funding, Inc. - To relocate mortgage lender broker's office from 700 King Farm Boulevard, Suite 150, Rockville, MD to 800 King Farm Boulevard, Suite 210, Rockville, MD
 BAN20032457 Innovative Funding Group, Inc. - To relocate mortgage broker's office from 8713 Greenbelt Road, Suite 201, Greenbelt, MD to 7327 Hanover Parkway, Suite C, Greenbelt, MD
 BAN20032458 Alliance Commercial Group LLC - For a mortgage broker's license
 BAN20032459 Emerald Valley Financial Services, L.L.C. - For a mortgage broker's license
 BAN20032460 Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To open a mortgage broker's office at 10407 Breckinridge Lane, Fairfax, VA
 BAN20032461 Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To open a mortgage broker's office at 9384 Indianfield Drive, Mechanicsville, VA
 BAN20032462 Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To open a mortgage broker's office at 215 Celebration Place, Suite 500, PMB 192, Celebration, FL
 BAN20032463 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 1777 S. Harrison Street, Suite GL50, Denver, CO
 BAN20032464 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 775 Brooklyn Avenue, Suite 117, Baldwin, NY
 BAN20032465 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 701 Middle Country Road, Suite B, Selden, NY
 BAN20032466 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 13575 58th Street, N, Suite 120, Clearwater, FL

BAN20032467 AmStar Mortgage Corporation - To open a mortgage broker's office at 105 Paul Mellon Court, Suite 18, Waldorf, MD
 BAN20032468 AmStar Mortgage Corporation - To open a mortgage broker's office at 6826 Riggs Road, Hyattsville, MD
 BAN20032469 AmStar Mortgage Corporation - To open a mortgage broker's office at 308 N. Lindsay Street, High Point, NC
 BAN20032470 Weststar Mortgage, Inc. - To open a mortgage lender and broker's office at 1365 Old Bridge Road, Suite 30, Woodbridge, VA
 BAN20032471 Weststar Mortgage, Inc. - To relocate mortgage lender broker's office from 720 Moorefield Park Drive, Suite 200., Richmond, VA to 1600 Huguenot Road, Richmond, VA
 BAN20032472 Hometown Mortgage Corp. - To relocate mortgage broker's office from 522 South Independence Blvd., Suite 100, Virginia Beach, VA to 1013 Eden Way, North, Suites D and E, Chesapeake, VA
 BAN20032473 Century Mortgage Corporation of Georgia (Used in VA by: Century Mortgage Corporation) - To relocate mortgage lender's office from 730 Mount Vernon Road, Dunwoody, GA to 5655 Peachtree Parkway, Norcross, GA
 BAN20032474 Home Star Mortgage Services, LLC - To relocate mortgage lender's office from 2055 Sugarloaf Circle, Suite 200, Duluth, GA to 6151 Lake Osprey, 3rd Floor, Sarasota, FL
 BAN20032475 Ameritrust Mortgage Company, LLC - To open a mortgage lender's office at 19410 Jetton Road, Suite 130, Cornelius, NC
 BAN20032476 Ameritrust Mortgage Company, LLC - To open a mortgage lender's office at 8400 Six Forks Road, Suite 101, Raleigh, NC
 BAN20032477 Ameritrust Mortgage Company, LLC - For additional mortgage authority
 BAN20032478 S. D. & J. Associates, Inc. - To open a check casher at 6566 Little River Turnpike, Alexandria, VA
 BAN20032479 SIRI, Inc. d/b/a Dale's Grocery - To open a check casher at 702 N. Cameron Street, Winchester, VA
 BAN20032480 Superior Home Mortgage Corporation (Used in VA by: Superior Mortgage Corporation) - To open a mortgage lender and broker's office at 15310 Amberly Drive, Suite 318, Tampa, FL
 BAN20032481 K. Hovnanian American Mortgage, L.L.C. d/b/a Homebuyer's Mortgage (VA office only) - To open a mortgage lender and broker's office at 4090-A Lafayette Center Drive, Chantilly, VA
 BAN20032482 Mortgage Group, USA Inc. - To open a mortgage broker's office at 635 Park Meadow Road, Suite 107, Westerville, OH
 BAN20032483 Mortgage South, Inc. - To open a mortgage lender and broker's office at 3616 Rigsby Road, Richmond, VA
 BAN20032484 SLM Mortgage Corporation-VA - To open a mortgage lender and broker's office at 1007 Laurel Oak Road, Suite B, Voorhees, NJ
 BAN20032485 Olympia Mortgage Corp. - To relocate mortgage lender's office from 1413 Avenue J, Brooklyn, NY to 1716 Coney Island Avenue, Brooklyn, NY
 BAN20032486 Patriot First Mortgage, LLC - To relocate mortgage broker's office from 102 England Street, Ashland, VA to 100 England Street, Ashland, VA
 BAN20032487 NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 528 W. Seneca Street, Ithaca, NY to 407 E. Taughannock Boulevard, Ithaca, NY
 BAN20032488 Family Financial Group, Inc. - For a mortgage broker's license
 BAN20032489 Mortgage Now, Inc. - For a mortgage lender and broker license
 BAN20032490 Mortgage Warehouse LLC - For a mortgage broker's license
 BAN20032491 Genesis Financial Group, Inc. - For a mortgage broker's license
 BAN20032492 Integrity Residential Corp. - For a mortgage broker's license
 BAN20032493 Best Interest Rate Mortgage Company, LLC - For a mortgage broker's license
 BAN20032494 1st Liberty Mortgage Company - To relocate mortgage broker's office from 77 Green Bay Road, Winnetka, IL to 48 Scotland Hill Road, Chestnut Ridge, NY
 BAN20032495 Premier Mortgage Funding, Inc. - To open a mortgage broker's office at 22 West Padonia Road, Suite 324, Building B, Timonium, MD
 BAN20032496 Help Ministries Incorporated - To open a debt counseling office
 BAN20032497 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 26210 Emery Road, Suite 201, Warrensville Heights, OH
 BAN20032498 AmStar Mortgage Corporation - To open a mortgage broker's office at 1435 Crossways Boulevard, Suite 303, Chesapeake, VA
 BAN20032499 Crusader Cash Advance of Virginia, LLC - To open a payday lender's office at 2328 Orange Avenue, N.E., Roanoke, VA
 BAN20032500 FRMC Financial, Inc. - For additional mortgage authority
 BAN20032501 Allied Home Mortgage Capital Corporation - To open a mortgage lender and broker's office at 1417 North Battlefield Blvd., Suite 244, Chesapeake, VA
 BAN20032502 Mason Dixon Funding, Inc. - To open a mortgage lender and broker's office at 608 South Main Street, Culpeper, VA
 BAN20032503 Gateway Funding Diversified Mortgage Services, L.P. - For additional mortgage authority
 BAN20032504 Towne Bank - To merge into it Harbor Bank
 BAN20032505 Washington Mutual Finance, LLC - To open a consumer finance office
 BAN20032506 Washington Mutual Finance, LLC - To open a consumer finance office at 259 Zan Road, Charlottesville, VA
 BAN20032507 Washington Mutual Finance, LLC - To open a consumer finance office at 3408 Virginia Avenue, Collinsville, VA
 BAN20032508 Washington Mutual Finance, LLC - To open a consumer finance office at 798 Southpark Boulevard, Colonial Heights, VA
 BAN20032509 Washington Mutual Finance, LLC - To open a consumer finance office at 601 Meadowbrook Shopping Center, Culpeper County, VA
 BAN20032510 Washington Mutual Finance, LLC - To open a consumer finance office at 110 Exchange Street, Suite A, Danville, VA
 BAN20032511 Washington Mutual Finance, LLC - To open a consumer finance office at 7115 Leesburg Pike, Suite 102, Falls Church, VA
 BAN20032512 Washington Mutual Finance, LLC - To open a consumer finance office at 1506 S. Main Street, Unit 10, Farmville, VA
 BAN20032513 Washington Mutual Finance, LLC - To open a consumer finance office at 1100-142 Armory Drive, Franklin, VA
 BAN20032514 Washington Mutual Finance, LLC - To open a consumer finance office at 2189 Cunningham Drive, Hampton, VA
 BAN20032515 Washington Mutual Finance, LLC - To open a consumer finance office at 2225 Lakeside Drive, Unit C-1, Lynchburg, VA
 BAN20032516 Washington Mutual Finance, LLC - To open a consumer finance office at 7460 Lee Highway, Pulaski County, VA
 BAN20032517 Washington Mutual Finance, LLC - To open a consumer finance office at 7112-A Hull Street Road, Chesterfield County, VA
 BAN20032518 Washington Mutual Finance, LLC - To open a consumer finance office at 7801 W. Broad Street, Suite 9, Henrico County, VA
 BAN20032519 Washington Mutual Finance, LLC - To open a consumer finance office at 3129 Mechanicsville Turnpike, Oak Hill Plaza, Henrico County, VA
 BAN20032520 Washington Mutual Finance, LLC - To open a consumer finance office at 1301 Town Square Boulevard, Roanoke, VA
 BAN20032521 Washington Mutual Finance, LLC - To open a consumer finance office at 4019 Halifax Road, Suite B, South Boston, VA
 BAN20032522 Washington Mutual Finance, LLC - To open a consumer finance office at 5386 Kemps River Drive, Suite 108, Virginia Beach, VA
 BAN20032523 Washington Mutual Finance, LLC - To open a consumer finance office at 2522 Jefferson Highway Suite 102, Waynesboro, VA
 BAN20032524 Washington Mutual Finance, LLC - To open a consumer finance office at 2210 Wilson Boulevard, Winchester, VA
 BAN20032525 Washington Mutual Finance, LLC - To open a consumer finance office at 800 E. Main Street, Suite 330, Wytheville, VA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20032526	Washington Mutual Finance, LLC - To conduct consumer finance business where open-end lending will also be conducted
BAN20032527	Washington Mutual Finance, LLC - To conduct consumer finance business where mortgage lending will also be conducted
BAN20032528	Washington Mutual Finance, LLC - To conduct consumer finance business where sales finance business will also be conducted
BAN20032529	Washington Mutual Finance, LLC - To conduct consumer finance business where term life insurance business will also be conducted
BAN20032530	First Tennessee Bank National Association - To open a branch at 12170 Sunset Hills Road, Reston, VA
BAN20032531	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 11214 Patterson Avenue, Richmond, VA
BAN20032532	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 711-B North Lombardy Street, Richmond, VA
BAN20032533	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 6464 Lincolnia Road, Falls Church, VA
BAN20032534	MainStreet Bank - To open a bank at 727 Elden Street, Herndon, VA
BAN20032535	Monarch Bank - To open a branch at 626 Olney Road, Norfolk, VA
BAN20032536	Spectra Financial, Inc. - For a mortgage broker's license
BAN20032537	EMG Acquisition Company of VA, LLC - For a payday lender license
BAN20032538	LFG Processing Corporation - For a mortgage broker's license
BAN20032539	Consumer Credit Counseling Service of Maryland and Delaware, Inc. - To open a debt counseling office
BAN20032540	Stacy Snyder - To acquire 25 percent or more of CapitalBanc Mortgage, Corporation
BAN20032541	Commonwealth Mortgage Corporation - To open a mortgage broker's office at 13105 Booker T. Washington Highway, Hardy, VA
BAN20032542	Washington Capitol Financial Corp. - To open a mortgage broker's office at 1700 Research Boulevard, Suite 210, Rockville, MD
BAN20032543	Advisa Mortgage Corporation - To open a mortgage broker's office at 8101 Valley Lane, Ellicott City, MD
BAN20032544	Home Loan Corporation - To open a mortgage lender and broker's office at 2725 Franklin Turnpike, Suite B, Danville, VA
BAN20032545	Mortgage Access Corp. d/b/a Weichert Financial Services - To open a mortgage lender's office at 7515 Somerset Crossing Drive, Gainesville, VA
BAN20032546	Mortgage Access Corp. d/b/a Weichert Financial Services - To open a mortgage lender's office at 43150 Broadlands Center Plaza, Suite 104, Ashburn, VA
BAN20032547	American Residential Funding, Inc. - To open a mortgage lender and broker's office at 18141 Beach Boulevard, Suite 185, Huntington Beach, CA
BAN20032548	Centex Home Equity Company, LLC - To open a mortgage lender and broker's office at 300 Welsh Road, Suite 205, Horsham, PA
BAN20032549	National Credit Counseling Services, Inc. d/b/a National Credit Counseling Services - To open an additional debt counseling office at 2101 Park Center Drive, Suite 330, Orlando, FL
BAN20032550	American Mortgage Express Corp. - To open a mortgage lender and broker's office at 3700 Mansell Road, Alpharetta, GA
BAN20032551	Profina Debt Solutions, Inc. d/b/a Profina Debt Solutions - To open an additional debt counseling office at 2101 Park Center Drive, Suite 320, Orlando, FL
BAN20032552	GMAC Mortgage Corporation d/b/a Ditech.Com - To relocate mortgage lender broker's office from 470 West Patrick Street, Frederick, MD to 129 East Patrick Street, Frederick, MD
BAN20032553	Mortgage Quest, Incorporated - To relocate mortgage broker's office from 4306 Evergreen Lane, Suite 203, Annandale, VA to 1897 Preston White Drive, Suite 202, Reston, VA
BAN20032554	Buckeye Check Cashing of Virginia, Inc. d/b/a CheckSmart - To open a payday lender's office at 4411 Indian River Road, Chesapeake, VA
BAN20032555	Stratus Home Loans, Inc. - For a mortgage broker's license
BAN20032556	U.S. Mortgage Corporation of Virginia (Used in VA by: U.S. Mortgage Corporation) - To open a mortgage lender and broker's office at 1216 King Street, Suite 200, Alexandria, VA
BAN20032557	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage broker's office at 5855 Allentown Road, Suite 100, Camp Springs, MD
BAN20032558	Lincoln Mortgage, LLC - To open a mortgage broker's office at 122 Morning Glory Drive, Winchester, VA
BAN20032559	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 7340 Executive Way, Suite M, Frederick, MD to 176 Thomas Johnson Drive, Suite 104, Frederick, MD
BAN20032560	Mauricio Romero - To open a check casher at 5739 Hull Street Road, Richmond, VA
BAN20032561	River City Bank - To open a bank at 7486 Lee Davis Road, Mechanicsville, VA
BAN20032562	1st American Trust Mortgage Corporation - For a mortgage broker's license
BAN20032563	Loan America, Inc. - For additional mortgage authority
BAN20032564	Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To open a mortgage broker's office at 1186 Cambria Terrace, Leesburg, VA
BAN20032565	Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To open a mortgage broker's office at 121 Montgomery Place, Alexandria, VA
BAN20032566	Pacific Shore Funding Corporation (Used in VA by: Pacific Shore Funding) - To relocate mortgage lender's office from 85 Enterprise, Suite 200, Aliso Viejo, CA to 23046 Avenida de la Carlota, Suite 656, Laguna Hills, CA
BAN20032567	Sunset Mortgage Company L.P. - To open a mortgage lender and broker's office at 104 Fox Road, Bridgeton, NJ
BAN20032568	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 2503B West Ash Street, Columbia, MO to 403 Vandiver Drive, Suite B, Columbia, MO
BAN20032569	CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 1100-142 Armory Drive, Franklin, VA
BAN20032570	CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 2210 Wilson Boulevard, Winchester, VA
BAN20032571	CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 4019 Halifax Road, Suite B, South Boston, VA
BAN20032572	CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 5386 Kemps River Drive, Suite 108, Virginia Beach, VA
BAN20032573	CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 2522 Jefferson Highway, Suite 102, Augusta County, VA
BAN20032574	CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 1301 Towne Square Boulevard, Roanoke, VA

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20032575 CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 800 E. Main Street, Suite 330, Wytheville, VA

BAN20032576 CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 2225 Lakeside Drive, Unit C-1, Lynchburg, VA

BAN20032577 CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 7460 Lee Highway, Pulaski County, VA

BAN20032578 CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 2189 Cunningham Drive, Hampton, VA

BAN20032579 CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 1506 S. Main Street, Unit 10, Farmville, VA

BAN20032580 CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 7112-A Hull Street Road, Chesterfield County, VA

BAN20032581 CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 7801 W. Broad Street, Suite 9, Henrico County, VA

BAN20032582 CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 3129 Mechanicsville Turnpike, Henrico County, VA

BAN20032583 CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 7115 Leesburg Pike, Suite 102, Fairfax County, VA

BAN20032584 CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 601 Meadowbrook Shopping Center, Culpeper County, VA

BAN20032585 CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 204 Westover Drive, Danville, VA

BAN20032586 CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 110 Exchange Street, Suite A, Danville, VA

BAN20032587 CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 259 Zan Road, Charlottesville, VA

BAN20032588 CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 3408 Virginia Avenue, Collinsville, VA

BAN20032589 CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To open a consumer finance office at 798 Southpark Boulevard, Suite 30, Colonial Heights, VA

BAN20032590 Republic Mortgage LLC - For a mortgage lender and broker license

BAN20032591 NextDoor Mortgage Corporation - For a mortgage broker's license

BAN20032592 The Fauquier Bank - To open a branch at 6207 Station Drive, Bealeton, VA

BAN20032593 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 3344 Southwestern Boulevard, Suite 100, Orchard Park, NY

BAN20032594 Allied Home Mortgage Capital Corporation - To open a mortgage lender and broker's office at 516 N. Charles Street, Suite 411, Baltimore, MD

BAN20032595 Allied Home Mortgage Capital Corporation - To open a mortgage lender and broker's office at 10021 Park Cedar Drive, Suite 300, Charlotte, NC

BAN20032596 Bay Capital Corp. - To open a mortgage lender and broker's office at 6478 Putnam Ford Drive, Suite 201, Woodstock, GA

BAN20032597 123Loan, LLC - To relocate mortgage lender broker's office from 23046 Avenida de la Carlota, Suite 656, Laguna Hills, CA to 85 Enterprise, Suite 200, Aliso Viejo, CA

BAN20032598 Sunset Mortgage Company L.P. - To relocate mortgage lender broker's office from 110 S. Washington Street, Rockville, MD to 2401 Research Boulevard, Suite 250, Rockville, MD

BAN20032599 First Fidelity Centers, Inc. - For a mortgage broker's license

BAN20032600 Coast Banc LLC - For a mortgage broker's license

BAN20032601 Assured Home Equity, Corp. - For a mortgage broker's license

BAN20032602 Home Financial Corporation - For a mortgage broker's license

BAN20032603 Landmark Financial of Alexandria, LLC - For a mortgage broker's license

BAN20032604 Washtenaw Mortgage Company - For a mortgage lender's license

BAN20032605 Added Edge Financial Services, Inc. - For a mortgage broker's license

BAN20032606 Southern Financial Bancorp, Inc. - To acquire Essex Bancorp, Inc.

BAN20032607 Atlantic Bay Mortgage Group, L.L.C. - To open a mortgage lender and broker's office at 3959 Electric Road, Suite 190, Roanoke, VA

BAN20032608 America's Mortgage Broker, L.L.C. d/b/a Affordable Home Funding - To relocate mortgage lender broker's office from 10037 East Adamo Drive, Tampa, FL to 1020 Elder Court, Suite 102, Herndon, VA

BAN20032609 Primary Residential Mortgage, Inc. - To relocate mortgage lender broker's office from 745 Fort Street Mall, Suite 200, Topa, Honolulu, HI to 745 Fort Street Mall, Suite 609, Topa Financial Center, W. Tower, Honolulu, HI

BAN20032610 American Home Mortgage Co. LLC - To relocate mortgage broker's office from 5603 Iona Way, Alexandria, VA to 1190 Siesta Key Circle, Port Orange, FL

BAN20032611 American Home Mortgage Acceptance, Inc. - For a mortgage lender and broker license

BAN20032612 Charles Kenneth Bartz - To acquire 25 percent or more of Service First Mortgage, L.C.

BAN20032613 CitiFinancial Services, Inc. /b/a Washington Mutual Finance (In 21 Offices) - To relocate consumer finance office from 164 River James Shopping Center, Madison Heights, VA to 119 B Seminole Plaza, Madison Heights, VA

BAN20032614 CitiFinancial, Inc. - To relocate mortgage lender's office from 164 River James Shopping Center, Madison Heights, VA to 119 B Seminole Plaza, Madison Heights, VA

BAN20032615 Greater Washington Mortgage LLC - For a mortgage broker's license

BAN20032616 Capital City Mortgage Group, Inc. - For a mortgage broker's license

BAN20032617 1st American Banc Corporation - For additional mortgage authority

BAN20032618 USA Home Loans, Inc. - For additional mortgage authority

BAN20032619 NovaStar Home Mortgage, Inc - To open a mortgage lender and broker's office at 1901 South Congress Avenue, Suite 250, Boynton Beach, FL

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20032620	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 26-20 212th Street, Bayside, NY to 505 Northern Boulevard, Suite 313, Great Neck, NY
BAN20032621	Fast Payday Loans, Inc. - To open a payday lender's office at 840 Greenville Avenue, Staunton, VA
BAN20032622	Fast Payday Loans, Inc. - To open a payday lender's office at 3712 Holland Road, Virginia Beach, VA
BAN20032623	Fast Payday Loans, Inc. - To open a payday lender's office at 4802 Melrose Avenue, Roanoke, VA
BAN20032624	Gateway Mortgage Group, LLC - To open a mortgage lender and broker's office at 4855 Finlay Street, Richmond, VA
BAN20032625	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at One Cherry Hill, One Mall Drive, Cherry Hill, NJ
BAN20032626	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 795 SE Port St. Lucie Boulevard, Port St. Lucie, FL
BAN20032627	Key Mortgage Company, Inc. - To relocate mortgage broker's office from 6806 Patterson Avenue, Richmond, VA to 9020 Stony Point Parkway, Suite 360, Richmond, VA
BAN20032628	Edward D. Jones & Co., L.P. d/b/a EdwardJones - To open a mortgage broker's office at 1215 Central Park Boulevard, Fredericksburg, VA
BAN20032629	Metrociti Mortgage LLC - To relocate mortgage lender broker's office from 16030 Ventura Boulevard, Suite 402, Encino, CA to 15301 Ventura Boulevard, Suite D300, Sherman Oaks, CA
BAN20032630	Nationwide Financial Group LLC - For a mortgage broker's license
BAN20032631	Louviers Mortgage Corp. - For a mortgage broker's license
BAN20032632	Compass Home Loans, LLC - For a mortgage broker's license
BAN20032633	Premier Mortgage Group, Ltd., LLC - For additional mortgage authority
BAN20032634	G Squared Financial, LLC - For additional mortgage authority
BAN20032635	Buckeye Check Cashing of Virginia, Inc. d/b/a CheckSmart - To open a payday lender's office at 3137 Western Branch Boulevard, Chesapeake, VA
BAN20032636	Service First Mortgage, L.C. - To open a mortgage lender and broker's office at 111 South Broadway, Baltimore, MD
BAN20032637	Bankers First Mortgage Inc. - To open a mortgage lender's office at 609 East High Street, Charlottesville, VA
BAN20032638	ABC Home Mortgage, Inc. - To open a mortgage broker's office at 10043 Midlothian Turnpike, Richmond, VA
BAN20032639	First American Home Equity, Inc. - To relocate mortgage broker's office from 1248 West Danville Street, South Hill, VA to 100 N. Carter Street, Suites 13 and 14, LaCrosse, VA
BAN20032640	Pinnacle Direct Funding Corporation - To relocate mortgage lender's office from 3457 Parkway Center Court, Orlando, FL to 1500 Lee Road, Suite 200, Orlando, FL
BAN20032641	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To relocate mortgage broker's office from 206 Wakely Terrace, Bel Air, MD to 3160 Freysville Road, Red Lion, PA
BAN20032642	CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To conduct consumer finance business where open-end lending will also be conducted
BAN20032643	CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To conduct consumer finance business where a non-credit related life insurance business will also be conducted
BAN20032644	CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To conduct consumer finance business where sales finance business will also be conducted
BAN20032645	CitiFinancial Services, Inc. d/b/a Washington Mutual Finance (In 21 Offices) - To conduct consumer finance business where mortgage lending will also be conducted
BAN20032646	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 500 Montgomery Street, Alexandria, VA
BAN20032647	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 7010 Little River Turnpike, Annandale, VA
BAN20032648	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 4600 Lee Highway, Arlington, VA
BAN20032649	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 4800 South 31st Street, Arlington, VA
BAN20032650	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 44031 Ashburn Shopping Plaza, Suite 287, Ashburn, VA
BAN20032651	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 6045 Burke Center Parkway, Burke, VA
BAN20032652	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 14260 C Centreville Square, Centreville, VA
BAN20032653	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 12 Jefferson Crossing, Charlestown, WV
BAN20032654	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 200 N. Battlefield Boulevard, Suite 10A, Chesapeake, VA
BAN20032655	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 9510 Iron Bridge Road, Chesterfield, VA
BAN20032656	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 4421 Dale Boulevard, Woodbridge, VA
BAN20032657	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 13135 Lee Jackson Highway, Fairfax, VA
BAN20032658	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 3918 Prosperity Avenue, Fairfax, VA
BAN20032659	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 6299 Leesburg Pike, Falls Church, VA
BAN20032660	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 1910 William Street, Fredericksburg, VA
BAN20032661	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 9841 Georgetown Pike, Great Falls, VA
BAN20032662	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 3181 Shore Drive, Virginia Beach, VA
BAN20032663	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 5702 Grove Avenue, Richmond, VA
BAN20032664	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 6150 Mechanicsville Turnpike, Mechanicsville, VA
BAN20032665	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 5000 West Village Green Drive, Midlothian, VA
BAN20032666	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 150 Elden Street, Herndon, VA
BAN20032667	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 11600 Busy Street, Richmond, VA
BAN20032668	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 4435 Waterfront Drive, Glen Allen, VA
BAN20032669	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 15221 Carrollton Boulevard, Suite 200, Carrollton, VA
BAN20032670	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 5224 Indian River Road, Suite 118, Virginia Beach, VA
BAN20032671	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 5801 Patterson Avenue, Richmond, VA
BAN20032672	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 562 Lynnhaven Parkway, Suite 101, Virginia Beach, VA
BAN20032673	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 508 East Market Street, Leesburg, VA
BAN20032674	Prosperity Mortgage Company - To open a mortgage lender and broker's office at 10748 Sudley Manor Drive, Manassas, VA

BAN20032675 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 6862 Elm Street, Suite 100, McLean, VA
 BAN20032676 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 1311 A Dolley Madison Boulevard, McLean, VA
 BAN20032677 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 9321 Midlothian Turnpike, Richmond, VA
 BAN20032678 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 2000-13 Colonial Avenue, Norfolk, VA
 BAN20032679 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 317 30th Street, Virginia Beach, VA
 BAN20032680 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 8411 Patterson Avenue, Richmond, VA
 BAN20032681 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 720 J. Clyde Morris Boulevard, Newport News, VA
 BAN20032682 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 1675 F Reston Parkway, Reston, VA
 BAN20032683 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 1831 Wiehle Avenue, Reston, VA
 BAN20032684 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 3332 Pump Road, Richmond, VA
 BAN20032685 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 601 Southpark Boulevard, Colonial Heights, VA
 BAN20032686 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 7277 Commerce Street, Springfield, VA
 BAN20032687 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 231 Garrisonville Road, Stafford, VA
 BAN20032688 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 46191 Westlake Drive, Sterling, VA
 BAN20032689 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 2800 Buford Road, Suite 105, Bon Air, VA
 BAN20032690 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 8804 Patterson Avenue, Richmond, VA
 BAN20032691 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 305 W. Maple Avenue, Suite A, Vienna, VA
 BAN20032692 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 8227 Old Courthouse Road, 1st Floor, Vienna, VA
 BAN20032693 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 412 Libbie Avenue, Richmond, VA
 BAN20032694 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 211 Broadview Avenue, Warrenton, VA
 BAN20032695 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 5451 Old Alexandria Turnpike, Warrenton, VA
 BAN20032696 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 3933 Portsmouth Boulevard, Chesapeake, VA
 BAN20032697 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 4655-101 Monticello Avenue, Williamsburg, VA
 BAN20032698 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 2070 Old Bridge Road, Suite 201, Woodbridge, VA
 BAN20032699 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 5007 E. Victory Boulevard, Yorktown, VA
 BAN20032700 Prosperity Mortgage Company - To open a mortgage lender and broker's office at 5845 Richmond Highway, Alexandria, VA
 BAN20032701 Global Mortgage Group, Inc. - To open a mortgage broker's office at 900 Ashwood Parkway, Suite 300, Atlanta, GA
 BAN20032702 ESECONDMORTGAGE.COM, INC. d/b/a Dollar Realty Mortgage - To open a mortgage lender and broker's office at 4860 W. Kennedy Boulevard, Suite 170, Tampa, FL
 BAN20032703 Salem Mortgage Corporation - For a mortgage broker's license
 BAN20032704 Advent Financial Group, Inc. - For a mortgage broker's license
 BAN20032705 Liberty One Financial, Inc. - For a mortgage lender and broker license
 BAN20032706 Payne's Check Cashing, Inc. - To open a check casher at 81 South Carlton Street, Harrisonburg, VA
 BAN20032707 Earth Mortgage, L.P. - For a mortgage lender and broker license
 BAN20032708 MortgageStar, Inc. - To relocate a mortgage lender broker's office from 4827 Bethesda Avenue, Bethesda, MD to 7735 Old Georgetown Road, Suite 800, Bethesda, MD
 BAN20032709 American Mortgage Express Corp. - To relocate mortgage lender broker's office from 1111 Marlcross Road, Suite 100, Cherry Hill, NJ to 136 Gaither Drive, Mount Laurel, NJ
 BAN20032710 Superior Home Mortgage Corporation (Used in VA by: Superior Mortgage Corporation) - To open a mortgage lender and broker's office at 322 Route 46, West, Parsippany, NJ
 BAN20032711 Superior Home Mortgage Corporation (Used in VA by: Superior Mortgage Corporation) - To open a mortgage lender and broker's office at 2019 Woodbrook Court, Charlottesville, VA
 BAN20032712 Accredited Home Lenders, Inc. - To open a mortgage lender's office at 80 Orville Drive, Suite 100, Bohemia, NY
 BAN20032713 Interglobal Mortgage Corporation - For a mortgage broker's license
 BAN20032714 1st Financial, Inc. - For additional mortgage authority
 BAN20032715 Dean E. Archer d/b/a Advance Check Cashing - To open a check casher at 2602 Jefferson Avenue, Newport News, VA
 BAN20032716 Franklin Mortgage Corporation - To open a mortgage broker's office at 2001 Chesbay Court, Richmond, VA
 BAN20032717 Premier Mortgage Funding, Inc. - To open a mortgage broker's office at 6495 New Hampshire Avenue, Suite LL100-X, Hyattsville, MD
 BAN20032718 Premier Mortgage Funding, Inc. - To open a mortgage broker's office at 4061 Powder Mill Road, Suite 700, Calverton, MD
 BAN20032719 Premier Mortgage Funding, Inc. - To open a mortgage broker's office at 4938 Hampden Lane, Suite 327, Bethesda, MD
 BAN20032720 Sterling Mortgage Corporation - To open a mortgage lender and broker's office at 20047 Jefferson Davis Highway, Ruther Glen, VA
 BAN20032721 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 4335 SE 28th, Suite B, Del City, OK
 BAN20032722 Streamline 1st Mortgage Corp. - For a mortgage broker's license
 BAN20032723 First Tennessee Bank National Association - To open a branch at 6661 Old Dominion Drive, McLean, VA
 BAN20032724 First Tennessee Bank National Association - To open a branch at 4736 Lee Highway, Arlington County, VA
 BAN20032725 Molton, Allen & Williams Mortgage Company, L.L.C. - To relocate mortgage lender broker's office from 10472 Armstrong Street, Fairfax, VA to 10555 Main Street, Suite 250, Fairfax, VA
 BAN20032726 Montgomery Capital Mortgage Corporation (Used in VA by: Montgomery Capital Corporation) - To open a mortgage broker's office at 2 East Rolling Crossroads, Suite 259, Catonsville, MD
 BAN20032727 Independent Realty Capital Corporation - To open a mortgage lender and broker's office at 1628 East State Street, Heritage, PA
 BAN20032728 NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 340 Maple Street, Marlboro, MA
 BAN20032729 Heartland Home Finance, Inc. - To open a mortgage lender and broker's office at 11960 Westline Industrial Drive, Suite 350, St. Louis, MO
 BAN20032730 Haworth & Associates, Inc. - For a mortgage broker's license
 BAN20032731 Chantilly Mortgage Corporation - For a mortgage broker's license
 BAN20032732 Mortgage One Home Loans Corporation - For a mortgage broker's license
 BAN20032733 The Kimberlie Financial Group, Inc. - For a mortgage broker's license
 BAN20032734 Transport Inc. - To open a check casher at 498 Arnett Boulevard, Danville, VA
 BAN20032735 Cavalier Mortgage Group, L.L.C. - To relocate mortgage broker's office from 2221 Commerce Parkway, Virginia Beach, VA to 629 Phoenix Drive, Suite 175, Virginia Beach, VA
 BAN20032736 Lincoln Mortgage, LLC - To open a mortgage broker's office at 139 South Main Street, Woodstock, VA
 BAN20032737 Equity Consultants, LLC - To open a mortgage broker's office at 11350 North Meridian St., Suite 600, Carmel, IN

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BAN20032738	Equity Consultants, LLC - To open a mortgage broker's office at 2912 Springboro West, Suite 104, Oryden Center, 75 Office Center, Moraine, OH
BAN20032739	ALDA Financial Services, Inc. d/b/a ALDA Home Mortgage - To relocate mortgage broker's office from 7700 Little River Turnpike, Suite 405, Annandale, VA to 7700 Little River Turnpike, Suite 101, Annandale, VA
BAN20032740	SunTrust Bank - To open a branch at 7451 Mount Vernon Square, Fairfax County, VA
BAN20032741	Tyson's Mortgage, Inc. - For a mortgage broker's license
BAN20032742	mortgage.shop LLC - For a mortgage lender and broker license
BAN20032743	Nationsfirst Financial, Inc. - For a mortgage broker's license
BAN20032744	W.C. Financial, Inc. - For a mortgage broker's license
BAN20032745	RTM Mortgage, Inc. - For a mortgage broker's license
BAN20032746	American Residential Funding, Inc. - To open a mortgage lender and broker's office at 206 East Woodlawn Road, Suite 232, Charlotte, NC
BAN20032747	Mortgage Lenders of America, L.L.C. - To relocate mortgage lender broker's office from 8400 West 110th Street, Suite 130, Overland Park, KS to 8400 West 110th Street, Suite 500, Overland Park, KS
BAN20032748	SunTrust Bank - To open a branch at intersection of Lightner Road and James Madison Highway, Haymarket, VA
BAN20032749	SunTrust Bank - To open a branch at intersection of Loudoun County Parkway and U.S. Highway 50, South Riding, VA
BAN20032750	New Day Financial, LLC - For a mortgage lender and broker license
BAN20032751	First Madison Mortgage Corp. - For a mortgage broker's license
BAN20032752	Southern Fidelity Mortgage Corporation - For a mortgage broker's license
BAN20032753	William A. McNair II LLC - For a mortgage broker's license
BAN20032754	Fairmont Funding LTD - For a mortgage lender's license
BAN20032755	Universal Mortgage Company LLC - For a mortgage broker's license
BAN20032756	First Trust Mortgage Group, LLC - For a mortgage lender and broker license
BAN20032757	Centennial Mortgage Corp. - For a mortgage broker's license
BAN20032758	HomeComings Financial Network, Inc. - For a mortgage lender's license
BAN20032759	Fast Payday Loans, Inc. - To open a payday lender's office at 1206 Azalea Avenue, Richmond, VA
BAN20032760	Fast Payday Loans, Inc. - To open a payday lender's office at 1851 Seminole Trail, Charlottesville, VA
BAN20032761	Fast Payday Loans, Inc. - To open a payday lender's office at 4802 Melrose Avenue, Roanoke, VA
BAN20032762	Fast Payday Loans, Inc. - To open a payday lender's office at 2498 Airline Boulevard, Portsmouth, VA
BAN20032763	Heartland Home Finance, Inc. - To relocate mortgage lender broker's office from 12101 Woodcrest Executive Center, St. Louis, MO to 9666 Olive Boulevard, Suite 650, Olivette, MO
BAN20032764	Buckingham Mortgage Corporation - To relocate mortgage lender broker's office from 15245 Shady Grove Road, Suite 430, Rockville, MD to 1593 Spring Hill Road, Suite 300, Vienna, VA
BAN20032765	Rasim S. Tugberk - To acquire 25 percent or more of Buckingham Mortgage Corporation
BAN20032766	Amerifund Financial, Inc. d/b/a All Fund Mortgage - To open a mortgage lender and broker's office at 904 Sunset Drive, Suite 6A, Johnson City, TN
BAN20032767	Wilmington Finance, Inc - To open a mortgage lender and broker's office at One Mallard Place, 11020 David Taylor Drive, Suite 405, Charlotte, NC
BAN20032768	Wilmington Finance, Inc. - To open a mortgage lender and broker's office at 6258 Preston Avenue, Livermore, CA
BAN20032769	Wilmington Finance, Inc. - To open a mortgage lender and broker's office at 6133 Rockside Road, Suite 302, Independence, OH
BAN20032770	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 70 James Street, Suite 270, Worcester, MA
BAN20032771	NovaStar Home Mortgage, Inc. - To open a mortgage lender and broker's office at 2070 Chain Bridge Road, Suite 510, Vienna, VA
BAN20032772	NovaStar Home Mortgage, Inc. - To relocate mortgage lender broker's office from 332 St. Tropez, Laguna Beach, CA to 1120 Pacific Coast Highway, Suite A, Huntington Beach, CA
BAN20032773	Superior Mortgage Corporation - To open a mortgage lender and broker's office at 722 D Durham Road, Roxboro, NC
BAN20032774	Primerica Financial Services Home Mortgages, Inc. - To relocate mortgage broker's office from 281 Independence Boulevard, Virginia Beach, VA to 293 Independence Boulevard, Suite 516, Virginia Beach, VA
BAN20032775	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 7582 West Broad Street, Unit 37, Richmond, VA
BAN20032776	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 2576 Stuarts Draft Highway, Stuarts Draft, VA
BAN20032777	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 13037-B Lee Jackson Memorial Hwy., Fairfax, VA
BAN20032778	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To open a payday lender's office at 1412 West 211 Bypass, Unit K, Luray, VA
BAN20032779	First NLC Financial Services, LLC - To open a mortgage lender and broker's office at 444 West Ocean Boulevard, Suite 420, Long Beach, CA
BAN20032780	Fulton Financial Corporation - To acquire Resource Bankshares Corporation
BAN20032781	Accent Mortgage Services, Inc. - To open a mortgage broker's office at 5238 Westhaven Crescent, Virginia Beach, VA
BAN20032782	AEGIS Funding Corporation d/b/a AEGIS Home Equity - To relocate mortgage lender's office from 21700 East Copley Drive, Suite 320, Diamond Bar, CA to 5 Peters Canyon Road, Suite 220, Irvine, CA
BAN20032783	Independent Realty Capital Corporation - To open a mortgage lender and broker's office at 1628 East State, Hermitage, PA
BAN20032784	Primary Residential Mortgage, Inc. - To open a mortgage lender and broker's office at 4 E. Industrial Park Drive, Waldorf, MD
BAN20032785	Regal Online Mortgage.com, Inc. (Used in Virginia by: Regal Mortgage Company) - To open a mortgage broker's office at 1525 N. Hayden, Suite F2, Scottsdale, AZ
BAN20032786	Millican Mortgage Corporation - To open a mortgage broker's office at 112 Crittenden Lane, Newport News, VA
BAN20032787	American Cash Exchange Enterprise of Virginia, L.L.C. d/b/a 1st Choice Cash Advance - To open a payday lender's office at 12061 Governor G. C. Peery Highway, Suite B, Cedar Bluff, VA
BAN20032788	DL King, LLC d/b/a King's Cash Advance - To relocate payday lender's office from 3130 Halifax Road, South Boston, VA to 924 Wilborn Avenue, South Boston, VA
BAN20032789	Aames Funding Corporation d/b/a Aames Home Loan - To open a mortgage lender and broker's office at 20 Waterview Boulevard, 3rd Floor, Parsippany, NJ

BAN20032790	University of Virginia Community Credit Union, Inc. - To relocate credit union office from 908 E. High Street, Charlottesville, VA to 300 Preston Avenue, Charlottesville, VA
BFI-2002-00009	Apple Tree Mortgage, Inc. - Alleged violation of VA Code § 6.1-418
BFI-2002-00033	Coastal Mortgage Corp. of Virginia - Alleged violation of VA Code § 6.1-413
BFI-2003-00002	American International Mortgage Bankers, Inc. - Alleged violation of VA Code § 6.1-413
BFI-2003-00003	FaithLoan, Inc. d/b/a Midas Mortgage - Alleged violation of VA Code § 6.1-413
BFI-2003-00004	The Portsmouth Post Office Credit Union, Incorporated and Northern Star Credit Union, Incorporated - For approval of merger
BFI-2003-00006	Solomon Russell Lucas, Jr. d/b/a Q Gardens Realty & Associates - Alleged violation of VA Code § 6.1-413
BFI-2003-00007	American Home Finance, Inc. - Alleged violation of laws and regulations under Chapter 16 of Title 6.1 of the Code of Virginia
BFI-2003-00008	Mortgage Finders of Virginia, Inc. d/b/a Excel Mortgage Bankers - Alleged violation of VA Code § 6.1-413
BFI-2003-00009	Dahabshil, Inc. - Alleged violation of VA Code § 6.1-371
BFI-2003-00010	Ameritrust Mortgage Company, LLC - Alleged violation of VA Code § 6.1-410
BFI-2003-00012	Faithloan, Inc. d/b/a Midas Mortgage - For reinstatement of license
BFI-2003-00013	Alexandria Postal Credit Union - For approval of emergency merger with CommonwealthOne FCU
BFI-2003-00014	Washington Home Mortgage, LLC - Alleged violation of 10 VAC 5-160-50
BFI-2003-00016	Americorp Credit Corporation - Alleged violation of VA Code § 6.1-418
BFI-2003-00017	Beacon Home Mortgage, LLC - Alleged violation of VA Code § 6.1-418
BFI-2003-00019	First American Mortgage Services, Inc. - Alleged violation of VA Code § 6.1-418
BFI-2003-00020	First Virginia Carolina Mortgage, Inc. - Alleged violation of VA Code § 6.1-418
BFI-2003-00021	Infinity Mortgage Company, Inc. (Boston) (Used in Virginia by: Infinity Mortgage Company, Inc.) - Alleged violation of VA Code § 6.1-418
BFI-2003-00022	Innovation Funding, Inc. - Alleged violation of VA Code § 6.1-418
BFI-2003-00024	Metfund Mortgage Corporation - Alleged violation of VA Code § 6.1-418
BFI-2003-00028	Olympia Mortgage Group, Inc. formerly known as Olympic Mortgage Group, Inc. - Alleged violation of VA Code § 6.1-418
BFI-2003-00029	Pumphrey Financial Group, Inc. d/b/a Ameican Mortgage Services, A Divison of Pumphrey Financial Group, Inc. - Alleged violation of VA Code § 6.1-418
BFI-2003-00031	RLI Mortgage Services, LLC - Alleged violation of VA Code § 6.1-418
BFI-2003-00032	Skyline Mortgage Group, L.C. - Alleged violation of VA Code § 6.1-418
BFI-2003-00034	Wholesale Express Mortgage Corporation, Inc. - Alleged violation of VA Code § 6.1-418
BFI-2003-00035	Challange Financial Investors Corp. - Alleged violation of Chapter 16 of Title 6.1
BFI-2003-00036	Deidre A. Connor - Alleged violation of VA Code § 6.1-416.1
BFI-2003-00037	Accent Management Group, LLC - Alleged violation of VA Code § 6.1-416.1
BFI-2003-00038	Prosperity Mortgage Company - Alleged violation of VA Code § 6.1-416 B
BFI-2003-00039	Farbod Smith Zohouri - Alleged violation of VA Code § 6.1-416.1
BFI-2003-00043	FlexCheck of Virginia, LLC - Alleged violation of VA Code § 6.1-445 B
BFI-2003-00044	Relocation Financial Services, Inc. - Alleged violation of VA Code § 6.1-413
BFI-2003-00045	ServiMex, Inc. - Alleged violaiton of VA Code § 6.1-370
BFI-2003-00047	Ex Parte: Fees - Annual fees for licensed payday lenders
BFI-2003-00048	Empire Acceptance Company, Inc. - Alleged violation of VA Code § 6.1-413
BFI-2003-00053	Beacon Home Mortgage, LLC - Alleged violation of 10 VAC 5-160-50
BFI-2003-00056	Ocean Trust Mortgage Corp. - Alleged violation of VA Code § 6.1-413
BFI-2003-00057	Thomas A. Yost, Sr. - Alleged violation of VA Code § 6.1-416.1
BFI-2003-00060	Ex Parte: Regulation - Proposed Credit Union Regulation
BFI-2003-00061	Empire Acceptance Company, Inc. - For reinstatement of license

CLK: CLERK'S OFFICE

CLK-2002-00005	The Employment Company, Inc. - For dissolution of corporation and termination of corporate existence pursuant to VA Code § 13.1-911
CLK-2003-00003	Faithway Church of Jesus of the Apostolic Faith, Inc., Petitioner v. Ernest R. Sutton - For rescission of certificate of authority
CLK-2003-00004	Atlee Commerce Center II, L.L.C., Dickens Place, L.L.C. and SK Realty, LLC - For rescission of certificate of merger
CLK-2003-00005	XENERGY, INC. - Alleged violation of VA Code §§ 13.1-760 C and 13.1-615.1 B
CLK-2003-00006	Community Innovations - For order terminating corporate existence
CLK-2003-00007	Southern Service Corporation and Virginia Properties, Inc. - For nullification of merger
CLK-2003-00008	Thornycroft, Giles & Co., Inc. and TGC Acquisition Corporation - For order nullifying merger
CLK-2003-00009	The Fireman's Relief Association of Lynchburg, Virginia - For dissolution of Association

INS: BUREAU OF INSURANCE

INS-2002-00104	United Wisconsin Life Insurance Co. - Alleged violation of VA Code §§ 38.2-3407.15 B 1, et al.
INS-2002-00106	Sound Settlement Incorporated - Alleged violation of VA Code § 38.2-1809
INS-2002-00107	Ex Parte: Rules - In the matter of Adopting Revisions to the Rules Governing Settlement Agents
INS-2002-00112	Humana Insurance Company - Alleged violation of VA Code §§ 38.2-3407.15 B, et al.
INS-2002-00130	Partners National Health Plans of North Carolina, Inc. - Alleged violation of VA Code §§ 38.2-316 A, 38.2-316 B, et al.
INS-2002-00141	Piedmont Community Healthcare, Inc. - Alleged violation of VA Code § 38.2-316 A
INS-2002-00205	Jefferson W. Johnson, Jr. - Alleged violation of VA Code § 38.2-1813
INS-2002-00216	American Family Life Assurance Company of Columbus - Alleged violation of VA Code § 38.2-610
INS-2002-00248	Don N. Lerner - Alleged violation of VA Code § 38.2-5020
INS-2002-00249	Denise D. Lester - Alleged violation of VA Code § 38.2- 5020
INS-2002-00250	Zachary T. Levine - Alleged violation of VA Code § 38.2- 5020
INS-2002-00251	Matthew D. Levy - Alleged violation of VA Code § 38.2-5020
INS-2002-00252	Stephen A. Lewis - Alleged violation of VA Code § 38.2-5020

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

INS-2002-00254 Angelike P. Liappis - Alleged violation of VA Code § 38.2-2050
 INS-2002-00255 Anne O. Lidor - Alleged violation of VA Code § 38.2-5020
 INS-2002-00257 Douglas W. Lienesch - Alleged violation of VA Code § 38.2-5020
 INS-2002-00259 Jeff J. Ligon - Alleged violation of VA Code § 38.2-5020
 INS-2002-00260 Zenen C. Limbo-Perez - Alleged violation of VA Code § 38.2-5020
 INS-2002-00262 Brenna L. Lindsay - Alleged violation of VA Code § 38.2-5020
 INS-2002-00264 Deborah P. Lindsey - Alleged violation of VA Code § 38.2-5020
 INS-2002-00265 Jeffrey B. Lipscomb - Alleged violation of VA Code § 38.2-5020
 INS-2002-00267 Zewdu Lissanu - Alleged violation of VA Code § 38.2-5020
 INS-2002-00269 Frederick M. Litton - Alleged violation of VA Code § 38.2-5020
 INS-2002-00271 Martha L. Ljung - Alleged violation of VA Code § 38.2-5020
 INS-2002-00274 Rhea A. Lloyd - Alleged violation of VA Code § 38.2-5020
 INS-2002-00275 Beth A. Lloyd - Alleged violation of VA Code § 38.2-5020
 INS-2002-00277 Clyde F. Lloyd - Alleged violation of VA Code § 38.2-5020
 INS-2002-00280 John H. Lobban - Alleged violation of VA Code § 38.2-5020
 INS-2002-00282 Gary B. Loden - Alleged violation of VA Code § 38.2-5020
 INS-2002-00284 Rodolfo L. Lopez - Alleged violation of VA Code § 38.2-5020
 INS-2002-00287 Mark C. Lopiano - Alleged violation of VA Code § 38.2-5020
 INS-2002-00292 R. T. Lowry - Alleged violation of VA Code § 38.2-5020
 INS-2002-00293 Patrick C. Lowry - Alleged violation of VA Code § 38.2-5020
 INS-2002-00294 Jay M. Lustbader - Alleged violation of VA Code § 38.2-5020
 INS-2002-00295 Sylvia J. Luther - Alleged violation of VA Code § 38.2-5020
 INS-2002-00296 Ann M. Lux - Alleged violation of VA Code § 38.2-5020
 INS-2002-00297 Robert Lynn - Alleged violation of VA Code § 38.2-5020
 INS-2002-00298 Donna L. MacCarthy - Alleged violation of VA Code § 38.2-5020
 INS-2002-00299 Paul J. Mackoul - Alleged violation of VA Code § 38.2-5020
 INS-2002-00301 Quentin MacManus - Alleged violation of VA Code § 38.2-5020
 INS-2002-00302 Emmanuel C. Maduakor - Alleged violation of VA Code § 38.2-5020
 INS-2002-00303 Khalid Mahmood - Alleged violation of VA Code § 38.2-5020
 INS-2002-00307 Kiran A. Majmudar - Alleged violation of VA Code § 38.2-5020
 INS-2002-00309 Zelalem Makonnen - Alleged violation of VA Code § 38.2-5020
 INS-2002-00310 Thomas D. Makres - Alleged violation of VA Code § 38.2-5020
 INS-2002-00312 Sidney J. Malawer - Alleged violation of VA Code § 38.2-5020
 INS-2002-00314 Martin M. Malawer - Alleged violation of VA Code § 38.2-5020
 INS-2002-00325 Rajesh K. Malik - Alleged violation of VA Code § 38.2-5020
 INS-2002-00327 Gerald F. O'Malley - Alleged violation of VA Code § 38.2-5020
 INS-2002-00329 Bernard Manatu - Alleged violation of VA Code § 38.2-5020
 INS-2002-00331 Amy J. Mangrum - Alleged violation of VA Code § 38.2-5020
 INS-2002-00345 Ramona L. Austin - Alleged violation of VA Code § 38.2-5020
 INS-2002-00365 Jeannie H. Manis - Alleged violation of VA Code § 38.2-5020
 INS-2002-00368 James E. Manning IV - Alleged violation of VA Code § 38.2-5020
 INS-2002-00370 Matthew A. Manning - Alleged violation of VA Code § 38.2-5020
 INS-2002-00372 Gary D. Marano - Alleged violation of VA Code § 38.2-5020
 INS-2002-00373 Victoria F. Marcelino - Alleged violation of VA Code § 38.2-5020
 INS-2002-00375 Saeed Marefat - Alleged violation of VA Code § 38.2-5020
 INS-2002-00377 Stanley C. Marinoff - Alleged violation of VA Code § 38.2-5020
 INS-2002-00379 Philip J. Marion - Alleged violation of VA Code § 38.2-5020
 INS-2002-00381 Paul A. Marquette - Alleged violation of VA Code § 38.2-5020
 INS-2002-00384 Maria L. Marquez - Alleged violation of VA Code § 38.2-5020
 INS-2002-00387 Pamela H. Martin - Alleged violation of VA Code § 38.2-5020
 INS-2002-00388 Michael L. Martino - Alleged violation of VA Code § 38.2-5020
 INS-2002-00389 Isabella C. Martire - Alleged violation of VA Code § 38.2-5020
 INS-2002-00390 Minda D. Massengale - Alleged violation of VA Code § 38.2-5020
 INS-2002-00391 M. M. Massumi - Alleged violation of VA Code § 38.2-5020
 INS-2002-00394 Abraham Mathew - Alleged violation of VA Code § 38.2-5020
 INS-2002-00397 Ambalavanapil Mathivannan - Alleged violation of VA Code § 38.2-5020
 INS-2002-00400 Raj P. Mathur - Alleged violation of VA Code § 38.2-5020
 INS-2002-00407 Christiaan A. Maurer - Alleged violation of VA Code § 38.2-5020
 INS-2002-00411 Emmanuel T. Mbualungu - Alleged violation of VA Code § 38.2-5020
 INS-2002-00413 Carol M. McCammon - Alleged violation of VA Code § 38.2-5020
 INS-2002-00414 Michael D. McCarthy - Alleged violation of VA Code Sec. 38.2-5020
 INS-2002-00415 Willie L. McCloud - Alleged violation of VA Code § 38.2-5020
 INS-2002-00416 George G. McCormack - Alleged violation of VA Code § 38.2-5020
 INS-2002-00417 Shelly R. McDonald-Pinket - Alleged violation of VA Code § 38.2-5020
 INS-2002-00425 Crystal M. McGinty - Alleged violation of VA Code § 38.2-5020
 INS-2002-00426 Francis X. McGuigan - Alleged violation of VA Code § 38.2-5020
 INS-2002-00427 Robert E. McLaughlin - Alleged violation of VA Code § 38.2-5020
 INS-2002-00428 Mary A. McLaurin - Alleged violation of VA Code § 38.2-5020
 INS-2002-00430 Jeffrey L. McLeod - Alleged violation of VA Code § 38.2-5020
 INS-2002-00432 David P. McPherson - Alleged violation of VA Code § 38.2-5020
 INS-2002-00434 Alda T. McReddie - Alleged violation of VA Code § 38.2-5020
 INS-2002-00435 Mary H. Megson - Alleged violation of VA Code § 38.2-5020

INS-2002-00437 George J. Mehfoud - Alleged violation of VA Code § 38.2-5020
INS-2002-00439 Gholam R. Mehryar - Alleged violation of VA Code § 38.2-5020
INS-2002-00441 Frank M. Melvin - Alleged violation of VA Code § 38.2-5020
INS-2002-00444 Bernardo Mendoza - Alleged violation of VA Code § 38.2-5020
INS-2002-00445 Eric E. Merrill - Alleged violation of VA Code § 38.2-5020
INS-2002-00446 Robert E. Metts - Alleged violation of VA Code § 38.2-5020
INS-2002-00447 Carole M. Meyers - Alleged violation of VA Code § 38.2-5020
INS-2002-00448 Rim Mghir - Alleged violation of VA Code § 38.2-5020
INS-2002-00449 Mark A. Miani - Alleged violation of VA Code § 38.2-5020
INS-2002-00450 Sara S. Miles - Alleged violation of VA Code § 38.2-5020
INS-2002-00451 Kirk D. Miller - Alleged violation of VA Code § 38.2-5020
INS-2002-00452 Julie M. Miller - Alleged violation of VA Code § 38.2-5020
INS-2002-00453 Milton R. Mills - Alleged violation of VA Code § 38.2-5020
INS-2002-00454 John S. Minasi - Alleged violation of VA Code § 38.2-5020
INS-2002-00476 Donald L. Mingione - Alleged violation of VA Code § 38.2-5020
INS-2002-00477 Kenneth R. Mirkin - Alleged violation of VA Code § 38.2-5020
INS-2002-00478 Atique A. Mirza - Alleged violation of VA Code § 38.2-5020
INS-2002-00479 Faryal S. Mirza - Alleged violation of VA Code § 38.2-5020
INS-2002-00480 Brajendra N. Misra - Alleged violation of VA Code § 38.2-5020
INS-2002-00481 Brenda E. Mitchell - Alleged violation of VA Code § 38.2-5020
INS-2002-00482 Nader Moinfar - Alleged violation of VA Code § 38.2-5020
INS-2002-00483 Stacey N. Mollis - Alleged violation of VA Code § 38.2-5020
INS-2002-00484 Sean P. Montgomery - Alleged violation of VA Code § 38.2-5020
INS-2002-00486 Eva M. Morell - Alleged violation of VA Code § 38.2-5020
INS-2002-00488 Emily L. Morin - Alleged violation of VA Code § 38.2-5020
INS-2002-00490 Robert C. Morrow - Alleged violation of VA Code § 38.2-5020
INS-2002-00493 Arman C. Moshyedi - Alleged violation of VA Code § 38.2-5020
INS-2002-00495 Stephen H. Mott - Alleged violation of VA Code § 38.2-5020
INS-2002-00498 Asha Moudgil - Alleged violation of VA Code § 38.2-5020
INS-2002-00501 Peter M. Moy - Alleged violation of VA Code § 38.2-5020
INS-2002-00503 Perry F. Mullinax - Alleged violation of VA Code § 38.2-5020
INS-2002-00505 Mark A. Mullins - Alleged violation of VA Code § 38.2-5020
INS-2002-00508 Manfreds Munters - Alleged violation of VA Code § 38.2-5020
INS-2002-00530 Neal J. Musselman - Alleged violation of VA Code § 38.2-5020
INS-2002-00537 Mahmoud H. Mustafa - Alleged violation of VA Code § 38.2-5020
INS-2002-00539 Jeff L. Myers - Alleged violation of VA Code § 38.2-5020
INS-2002-00540 Janet N. Myers - Alleged violation of VA Code § 38.2-5020
INS-2002-00541 Ross S. Myerson - Alleged violation of VA Code § 38.2-5020
INS-2002-00542 Sunil k. Nachnani - Alleged violation of VA Code § 38.2-5020
INS-2002-00544 Laurie L. Nadal - Alleged violation of VA Code § 38.2-5020
INS-2002-00545 Kanwaljit K. Nagi - Alleged violation of VA Code § 38.2-5020
INS-2002-00546 Haramol K. Nagi - Alleged violation of VA Code § 38.2-5020
INS-2002-00549 Akram Najib - Alleged violation of VA Code § 38.2-5020
INS-2002-00550 Puneet Narayan - Alleged violation of VA Code § 38.2-5020
INS-2002-00559 James K. Nashed - Alleged violation of VA Code § 38.2-5020
INS-2002-00560 Ramzy I. Nassif - Alleged violation of VA Code § 38.2-5020
INS-2002-00561 Prasad M. Nataraj - Alleged violation of VA Code § 38.2-5020
INS-2002-00562 Steven D. Nathan - Alleged violation of VA Code § 38.2-5020
INS-2002-00563 Joel A. Nations - Alleged violation of VA Code § 38.2-5020
INS-2002-00564 Jafar Nazemian - Alleged violation of VA Code § 38.2-5020
INS-2002-00571 Husam M. Nazer - Alleged violation of VA Code § 38.2-5020
INS-2002-00573 Paul F. Nee - Alleged violation of VA Code § 38.2-5020
INS-2002-00587 Yeheyis T. Negussie - Alleged violation of VA Code § 38.2-5020
INS-2002-00588 Samir R. Neimat - Alleged violation of VA Code § 38.2-5020
INS-2002-00590 Jacalyn A. Nelson - Alleged violation of VA Code § 38.2-5020
INS-2002-00591 John F. Dombrowski - Alleged violation of VA Code § 38.2-5020
INS-2002-00592 Michael A. Donato - Alleged violation of VA Code § 38.2-5020
INS-2002-00593 George D. Nelson - Alleged violation of VA Code § 38.2-5020
INS-2002-00594 Daniel M. Donato, Jr. - Alleged violation of VA Code § 38.2-5020
INS-2002-00595 Dorothy S. Nesmith - Alleged violation of VA Code § 38.2-5020
INS-2002-00596 Kofi A. Doonquah - Alleged violation of VA Code § 38.2-5020
INS-2002-00597 Venita C. Newby - Alleged violation of VA Code § 38.2-5020
INS-2002-00598 Kimberly K. Doty - Alleged violation of VA Code § 38.2-5020
INS-2002-00599 David E. Newton - Alleged violation of VA Code § 38.2-5020
INS-2002-00600 Marion A. Douglass - Alleged violation of VA Code § 38.2-5020
INS-2002-00601 Ronald I. Dozoretz - Alleged violation of VA Code § 38.2-5020
INS-2002-00602 Thanh Nguyen-Dinh - Alleged violation of VA Code § 38.2-5020
INS-2002-00603 George H. Drakes - Alleged violation of VA Code § 38.2-5020
INS-2002-00604 David R. Dufour - Alleged violation of VA Code § 38.2-5020
INS-2002-00605 Ali Niak - Alleged violation of VA Code § 38.2-5020
INS-2002-00606 Mary A. Duke - Alleged violation of VA Code § 38.2-5020
INS-2002-00607 Anthony A. Dunkwu - Alleged violation of VA Code § 38.2-5020

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

INS-2002-00608 Allen B. Nichols - Alleged violation of VA Code § 38.2-5020
 INS-2002-00609 John T. Dunn - Alleged violation of VA Code § 38.2-5020
 INS-2002-00610 Floyd E. Nicley - Alleged violation of VA Code § 38.2-5020
 INS-2002-00611 Joseph H. Duvert - Alleged violation of VA Code § 38.2-5020
 INS-2002-00612 Robert F. Dyer - Alleged violation of VA Code § 38.2-5020
 INS-2002-00613 Arnauld E. Nicogossian - Alleged violation of VA Code § 38.2-5020
 INS-2002-00614 Harry W. Easterly, III - Alleged violation of VA Code § 38.2-5020
 INS-2002-00615 Emmanuel A. Nidhiry - Alleged violation of VA Code § 38.2-5020
 INS-2002-00616 Sol S. Edelstein - Alleged violation of VA Code § 38.2-5020
 INS-2002-00617 Peter J. Edgerton - Alleged violation of VA Code § 38.2-5020
 INS-2002-00618 Mariana J. Niemtsoff - Alleged violation of VA Code § 38.2-5020
 INS-2002-00620 Narieman A. Nik - Alleged violation of VA Code § 38.2-5020
 INS-2002-00621 Richard R. Edwards - Alleged violation of VA Code § 38.2-5020
 INS-2002-00622 Edward P. Nikicicz - Alleged violation of VA Code § 38.2-5020
 INS-2002-00623 James H. Egan - Alleged violation of VA Code § 38.2-5020
 INS-2002-00624 Hazem A. Elariny - Alleged violation of VA Code § 38.2-5020
 INS-2002-00625 Ahmad O. Noori - Alleged violation of VA Code § 38.2-5020
 INS-2002-00626 Robert A. Nooy - Alleged violation of VA Code § 38.2-5020
 INS-2002-00627 Richard E. Norfleet - Alleged violation of VA Code § 38.2-5020
 INS-2002-00628 Richard C. Norton - Alleged violation of VA Code § 38.2-5020
 INS-2002-00629 Antonia C. Novello - Alleged violation of VA Code § 38.2-5020
 INS-2002-00630 Raymond O. Nwadiuko - Alleged violation of VA Code § 38.2-5020
 INS-2002-00631 Agodichi U. Nwosu - Alleged violation of VA Code § 38.2-5020
 INS-2002-00632 William J. O'Neill - Alleged violation of VA Code § 38.2-5020
 INS-2002-00633 Jay A. Ocuin - Alleged violation of VA Code § 38.2-5020
 INS-2002-00634 William S. Ogden - Alleged violation of VA Code § 38.2-5020
 INS-2002-00635 Deborah M. Elder - Alleged violation of VA Code § 38.2-5020
 INS-2002-00636 Yong W. Oh - Alleged violation of VA Code § 38.2-5020
 INS-2002-00637 Mahmoud D. Elfath - Alleged violation of VA Code § 38.2-5020
 INS-2002-00638 Sai H. Oh - Alleged violation of VA Code § 38.2-5020
 INS-2002-00639 Charles I. Okorie - Alleged violation of VA Code § 38.2-5020
 INS-2002-00640 Yetunde O. Olowe - Alleged violation of VA Code § 38.2-5020
 INS-2002-00641 Gina M. Orton - Alleged violation of VA Code § 38.2-5020
 INS-2002-00642 Ramin Oskoui - Alleged violation of VA Code § 38.2-5020
 INS-2002-00643 Jose R. Ossorio - Alleged violation of VA Code § 38.2-5020
 INS-2002-00644 Niels H. Oster - Alleged violation of VA Code § 38.2-5020
 INS-2002-00645 Yasser H. Ousman - Alleged violation of VA Code § 38.2-5020
 INS-2002-00646 Josephine B. Owusu-Sakyi - Alleged violation of VA Code § 38.2-5020
 INS-2002-00647 Karel Pacak - Alleged violation of VA Code § 38.2-5020
 INS-2002-00648 Herman Padilla - Alleged violation of VA Code § 38.2-5020
 INS-2002-00649 Alan G. Palestine - Alleged violation of VA Code § 38.2-5020
 INS-2002-00650 Patrick W. Palumbo - Alleged violation of VA Code § 38.2-5020
 INS-2002-00651 Arti Pandya - Alleged violation of VA Code § 38.2-5020
 INS-2002-00652 Chris C. Park - Alleged violation of VA Code § 38.2-5020
 INS-2002-00653 Leonard M. Parver - Alleged violation of VA Code § 38.2-5020
 INS-2002-00654 Vianmar G. Pascual - Alleged violation of VA Code § 38.2-5020
 INS-2002-00655 Antonio Pastor - Alleged violation of VA Code § 38.2-5020
 INS-2002-00656 Joyce A. Pastore - Alleged violation of VA Code § 38.2-5020
 INS-2002-00657 Ronald E. Elliott - Alleged violation of VA Code § 38.2-5020
 INS-2002-00658 Nils S. Erikson - Alleged violation of VA Code § 38.2-5020
 INS-2002-00659 Herschel L. Estep - Alleged violation of VA Code § 38.2-5020
 INS-2002-00660 Gregg R. Eure - Alleged violation of VA Code § 38.2-5020
 INS-2002-00661 Stephens R. Evans - Alleged violation of VA Code § 38.2-5020
 INS-2002-00662 Catherine C. Fallick - Alleged violation of VA Code § 38.2-5020
 INS-2002-00663 Ayman H. Fanous - Alleged violation of VA Code § 38.2-5020
 INS-2002-00664 Dipa H. Patel - Alleged violation of VA Code § 38.2-5020
 INS-2002-00665 Rointan Farahi-Far - Alleged violation of VA Code § 38.2-5020
 INS-2002-00666 Deepak R. Patel - Alleged violation of VA Code § 38.2-5020
 INS-2002-00667 Ali Farahnakian - Alleged violation of VA Code § 38.2-5020
 INS-2002-00668 Herman W. Farber - Alleged violation of VA Code § 38.2-5020
 INS-2002-00669 Suresh A. Patel - Alleged violation of VA Code § 38.2-5020
 INS-2002-00670 Walther J. Farrell, Jr. - Alleged violation of VA Code § 38.2-5020
 INS-2002-00671 Sonal D. Patel - Alleged violation of VA Code § 38.2-5020
 INS-2002-00672 Ketan H. Patel - Alleged violation of VA Code § 38.2-5020
 INS-2002-00673 Smita H. Patel - Alleged violation of VA Code § 38.2-5020
 INS-2002-00674 Nicholas J. Patronas - Alleged violation of VA Code § 38.2-5020
 INS-2002-00675 Jeffrey C. Patterson - Alleged violation of VA Code § 38.2-5020
 INS-2002-00676 Scott M. Paul - Alleged violation of VA Code § 38.2-5020
 INS-2002-00677 William D. Payne - Alleged violation of VA Code § 38.2-5020
 INS-2002-00678 Asa A. Peek - Alleged violation of VA Code § 38.2-5020
 INS-2002-00679 Roger Peele - Alleged violation of VA Code § 38.2-5020
 INS-2002-00680 Robert S. Penczak - Alleged violation of VA Code § 38.2-5020

INS-2002-00681 Vendel I. Peresleny - Alleged violation of VA Code § 38.2-5020
INS-2002-00682 Frederick A. Feddeman - Alleged violation of VA Code § 38.2-5020
INS-2002-00683 Ronald S. Perlman - Alleged violation of VA Code § 38.2-5030
INS-2002-00684 John P. Feola - Alleged violation of VA Code § 38.2-5020
INS-2002-00685 Angela F. Perry - Alleged violation of VA Code § 38.2-5020
INS-2002-00686 Joseph M. Ferguson - Alleged violation of VA Code § 38.2-5020
INS-2002-00687 Jon D. Peters - Alleged violation of VA Code § 38.2-5020
INS-2002-00688 Dante J. Feriozi - Alleged violation of VA Code § 38.2-5020
INS-2002-00689 Karl B. Finley - Alleged violation of VA Code § 38.2-5020
INS-2002-00690 Laura S. Phieffer - Alleged violation of VA Code § 38.2-5020
INS-2002-00691 Susan K. Fitzgerald - Alleged violation of VA Code § 38.2-5020
INS-2002-00692 Thomas L. Pinckert - Alleged violation of VA Code § 38.2-5020
INS-2002-00693 Americo Financial Life and Annuity Insurance Company - Alleged violation of VA Code § 38.2-610
INS-2002-00694 Michael J. Flaherty - Alleged violation of VA Code § 38.2-5020
INS-2002-00695 Robert L. Fleck - Alleged violation of VA Code § 38.2-5020
INS-2002-00696 Gilbert A. Fleming - Alleged violation of VA Code § 38.2-5020
INS-2002-00697 Kevin F. Flynn - Alleged violation of VA Code § 38.2-5020
INS-2002-00698 Jason E. Fond - Alleged violation of VA Code § 38.2-5020
INS-2002-00699 Olimpo F. Fonseca - Alleged violation of VA Code § 38.2-5020
INS-2002-00700 Ronald O. Forbes - Alleged violation of VA Code § 38.2-5020
INS-2002-00701 John P. Ford - Alleged violation of VA Code § 38.2-5020
INS-2002-00702 Ellen E. Fox - Alleged violation of VA Code § 38.2-5020
INS-2002-00703 Daniele F. Fragnul - Alleged violation of VA Code § 38.2-5020
INS-2002-00704 Acquanetta L. Frazier - Alleged violation of VA Code § 38.2-5020
INS-2002-00705 Ted D. Friehling - Alleged violation of VA Code § 38.2-5020
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INS-2002-00711 Richard L. Gaertner - Alleged violation of VA Code § 38.2-5020
INS-2002-00712 Gregory J. Gagnon - Alleged violation of VA Code § 38.2-5020
INS-2002-00713 Hemlata K. Gala - Alleged violation of VA Code § 38.2-5020
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INS-2002-00715 William J. Gallagher - Alleged violation of VA Code § 38.2-5020
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INS-2002-00726 Jan Polissar - Alleged violation of VA Code § 38.2-5020
INS-2002-00727 Deepak R. Gelot - Alleged violation of VA Code § 38.2-5020
INS-2002-00728 Meredith L. Porter - Alleged violation of VA Code § 38.2-5020
INS-2002-00729 Jason K. Gentry - Alleged violation of VA Code § 38.2-5020
INS-2002-00730 Stuart M. Portnoy - Alleged violation of VA Code § 38.2-5020
INS-2002-00731 Francis H. George - Alleged violation of VA Code § 38.2-5020
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INS-2002-00733 Melvin D. Gerald - Alleged violation of VA Code § 38.2-5020
INS-2002-00734 James B. Powell - Alleged violation of VA Code § 38.2-5020
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INS-2002-00736 Mark A. Powell - Alleged violation of VA Code § 38.2-5020
INS-2002-00737 Mohamad A. Gharagozloo - Alleged violation of VA Code § 38.2-5020
INS-2002-00738 John H. Powers - Alleged violation of VA Code § 38.2-5020
INS-2002-00739 Bijan Ghovanlou - Alleged violation of VA Code § 38.2-5020
INS-2002-00740 Cecilia B. Pranzarone - Alleged violation of VA Code § 38.2-5020
INS-2002-00741 Richard L. Prass - Alleged violation of VA Code § 38.2-5020
INS-2002-00742 Adebowale Prest - Alleged violation of VA Code § 38.2-5020
INS-2002-00743 Jerold J. Principato - Alleged violation of VA Code § 38.2-5020
INS-2002-00744 Girish Purohit - Alleged violation of VA Code § 38.2-5020
INS-2002-00745 George J. Gibeily - Alleged violation of VA Code § 38.2-5020
INS-2002-00746 Steve G. Gibson - Alleged violation of VA Code § 38.2-5020
INS-2002-00747 Amer G. Qazi - Alleged violation of VA Code § 38.2-5020
INS-2002-00748 Anjum G. Qazi - Alleged violation of VA Code § 38.2-5020
INS-2002-00749 Cedric A. Quick - Alleged violation of VA Code § 38.2-5020
INS-2002-00750 Troy T. Quiz - Alleged violation of VA Code § 38.2-5020
INS-2002-00751 Nadeemuddin Qureshi - Alleged violation of VA Code § 38.2-5020
INS-2002-00752 Jessica J. Radcliffe - Alleged violation of VA Code § 38.2-5020
INS-2002-00753 Steven J. Radley - Alleged violation of VA Code § 38.2-5020

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

INS-2002-00754 Ernest G. Rafey - Alleged violation of VA Code § 38.2-5020
 INS-2002-00755 Mansur Rahnema - Alleged violation of VA Code § 38.2-5020
 INS-2002-00756 Timothy L. Raines - Alleged violation of VA Code § 38.2-5020
 INS-2002-00757 Wayne P. Gilbert - Alleged violation of VA Code § 38.2-5020
 INS-2002-00758 Christina M. Gillespie - Alleged violation of VA Code § 38.2-5020
 INS-2002-00759 Maryann Giordano - Alleged violation of VA Code § 38.2-5020
 INS-2002-00760 Julian L. Givens - Alleged violation of VA Code § 38.2-5020
 INS-2002-00761 Robert E. Gladsden - Alleged violation of VA Code § 38.2-5020
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 INS-2002-00763 Marc A. Ralston - Alleged violation of VA Code § 38.2-5020
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 INS-2002-00765 Tracey K. Goessel - Alleged violation of VA Code § 38.2-5020
 INS-2002-00766 Jay N. Ramage - Alleged violation of VA Code § 38.2-5020
 INS-2002-00767 Rowland D. Goff, Jr. - Alleged violation of VA Code § 38.2-5020
 INS-2002-00768 Gilma F. Ramirez - Alleged violation of VA Code § 38.2-5020
 INS-2002-00769 Kimberly G. Ramsdell - Alleged violation of VA Code § 38.2-5020
 INS-2002-00770 Ramaswamy I. Rangarajan - Alleged violation of VA Code § 38.2-5020
 INS-2002-00771 Neerada Rao - Alleged violation of VA Code § 38.2-5020
 INS-2002-00772 Khurram Rashid - Alleged violation of VA Code § 38.2-5020
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 INS-2002-00774 Michael J. Rauzzino - Alleged violation of VA Code § 38.2-5020
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 INS-2002-00776 John E. Reed - Alleged violation of VA Code § 38.2-5020
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 INS-2002-00781 Howard N. Reynolds - Alleged violation of VA Code § 38.2-5020
 INS-2002-00782 Luzviminda V. Ricardo - Alleged violation of VA Code § 38.2-5020
 INS-2002-00783 Roselyn J. Rice - Alleged violation of VA Code § 38.2-5020
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 INS-2002-00787 Monira K. Rifaat - Alleged violation of VA Code § 38.2-5020
 INS-2002-00788 Monica L. Riley - Alleged violation of VA Code § 38.2-5020
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 INS-2002-00791 Hubert M. Rimple - Alleged violation of VA Code § 38.2-5020
 INS-2002-00792 Christopher B. Gordon - Alleged violation of VA Code § 38.2-5020
 INS-2002-00793 David G. Goss - Alleged violation of VA Code § 38.2-5020
 INS-2002-00794 Ronald L. Rish - Alleged violation of VA Code § 38.2-5020
 INS-2002-00795 Joan B. Ritter - Alleged violation of VA Code § 38.2-5020
 INS-2002-00796 Jose D. Rivera - Alleged violation of VA Code § 38.2-5020
 INS-2002-00797 Pamela R. Roberts - Alleged violation of VA Code § 38.2-5020
 INS-2002-00798 Dennis H. Robinson, Jr. - Alleged violation of VA Code § 38.2-5020
 INS-2002-00799 Audrey K. Robinson - Alleged violation of VA Code § 38.2-5020
 INS-2002-00800 Thomas A. Rockoff - Alleged violation of VA Code § 38.2-5020
 INS-2002-00801 Padma G. Gowda - Alleged violation of VA Code § 38.2-5020
 INS-2002-00802 Jose H. Rodriguez - Alleged violation of VA Code § 38.2-5020
 INS-2002-00803 R. M. Graham - Alleged violation of VA Code § 38.2-5020
 INS-2002-00804 Jill M. Roehr - Alleged violation of VA Code § 38.2-5020
 INS-2002-00805 Monica O. Granovsky - Alleged violation of VA Code § 38.2-5020
 INS-2002-00806 Lori M. Rogers - Alleged violation of VA Code § 38.2-5020
 INS-2002-00807 Christopher A. Graw - Alleged violation of VA Code § 38.2-5020
 INS-2002-00808 Fred B. Greear, Jr. - Alleged violation of VA Code § 38.2-5020
 INS-2002-00809 Andrea E. Green - Alleged violation of VA Code § 38.2-5020
 INS-2002-00810 Timothy J. Greenan - Alleged violation of VA Code § 38.2-5020
 INS-2002-00811 Paul J. Greene - Alleged violation of VA Code § 38.2-5020
 INS-2002-00812 Robert E. Greenspan - Alleged violation of VA Code § 38.2-5020
 INS-2002-00813 Jacqueline D. Griffiths - Alleged violation of VA Code § 38.2-5020
 INS-2002-00814 Steven M. Griswold - Alleged violation of VA Code § 38.2-5020
 INS-2002-00815 Shawna J. Gugel - Alleged violation of VA Code § 38.2-5020
 INS-2002-00816 Dakshinamurthy N. Gullapalli - Alleged violation of VA Code § 38.2-5020
 INS-2002-00817 Stephen F. Gunther - Alleged violation of VA Code § 38.2-5020
 INS-2002-00818 Yudh V. Gupta - Alleged violation of VA Code § 38.2-5020
 INS-2002-00819 Patricia A. Gurny - Alleged violation of VA Code § 38.2-5020
 INS-2002-00820 Gregory A. Haase - Alleged violation of VA Code § 38.2-5020
 INS-2002-00821 Afsane Haddad-Mashad - Alleged violation of VA Code § 38.2-5020
 INS-2002-00822 Violet Q. Habwe - Alleged violation of VA Code § 38.2-5020
 INS-2002-00823 James A. Rollins - Alleged violation of VA Code § 38.2-5020
 INS-2002-00824 Aleli G. Romero - Alleged violation of VA Code § 38.2-5020
 INS-2002-00825 Leslie W. Rose - Alleged violation of VA Code § 38.2-5020

INS-2002-00826 Mark D. Rose - Alleged violation of VA Code § 38.2-5020
 INS-2002-00827 Brian A. Rosenfeld - Alleged violation of VA Code § 38.2-5020
 INS-2002-00828 Tammy Z. Rosenthal - Alleged violation of VA Code § 38.2-5020
 INS-2002-00829 Richard B. Rosse - Alleged violation of VA Code § 38.2-5020
 INS-2002-00830 Mezgebe Haile - Alleged violation of VA Code § 38.2-5020
 INS-2002-00831 David J. Rothfeld - Alleged violation of VA Code § 38.2-5020
 INS-2002-00832 Dennis M. Hall - Alleged violation of VA Code § 38.2-5020
 INS-2002-00833 David B. Hammer - Alleged violation of VA Code § 38.2-5020
 INS-2002-00834 Soo W. Han - Alleged violation of VA Code § 38.2-5020
 INS-2002-00835 William A. Hanff - Alleged violation of VA Code § 38.2-5020
 INS-2002-00836 Medhat S. Hannallah - Alleged violation of VA Code § 38.2-5020
 INS-2002-00837 Charles E. Hannan - Alleged violation of VA Code § 38.2-5020
 INS-2002-00838 Kirsten A. Hanson - Alleged violation of VA Code § 38.2-5020
 INS-2002-00839 Richard D. Happel - Alleged violation of VA Code § 38.2-5020
 INS-2002-00840 Ahsanul Haque - Alleged violation of VA Code § 38.2-5020
 INS-2002-00843 Leo M. Rozmarny - Alleged violation of VA Code § 38.2-5020
 INS-2002-00844 Martin J. Hara - Alleged violation of VA Code § 38.2-5020
 INS-2002-00845 M. E. Rueda-Pedraza - Alleged violation of VA Code § 38.2-5020
 INS-2002-00846 Patricia H. Hardenbergh - Alleged violation of VA Code § 38.2-5020
 INS-2002-00847 Joe M. Rupe - Alleged violation of VA Code § 38.2-5020
 INS-2002-00848 Angelo Russo - Alleged violation of VA Code § 38.2-5020
 INS-2002-00849 Michael J. Ryan - Alleged violation of VA Code § 38.2-5020
 INS-2002-00850 Michael T. Ryan - Alleged violation of VA Code § 38.2-5020
 INS-2002-00851 Arthur E. Ryan - Alleged violation of VA Code § 38.2-5020
 INS-2002-00852 Mustafa A. Saad-El-Deen - Alleged violation of VA Code § 38.2-5020
 INS-2002-00853 Gregory B. Saathoff - Alleged violation of VA Code § 38.2-5020
 INS-2002-00854 Massound Saberinia - Alleged violation of VA Code § 38.2-5020
 INS-2002-00855 Zia Sabet - Alleged violation of VA Code § 38.2-5020
 INS-2002-00856 Stephen C. Saddler - Alleged violation of VA Code § 38.2-5020
 INS-2002-00857 Farideh Sadeghi - Alleged violation of VA Code § 38.2-5020
 INS-2002-00858 William J. Sadlack - Alleged violation of VA Code § 38.2-5020
 INS-2002-00859 Inderneel Sahai - Alleged violation of VA Code § 38.2-5020
 INS-2002-00860 Delfin B. Salazar - Alleged violation of VA Code § 38.2-5020
 INS-2002-00861 Julio A. Salcedo - Alleged violation of VA Code § 38.2-5020
 INS-2002-00862 Tariq Saleem - Alleged violation of VA Code § 38.2-5020
 INS-2002-00864 Mandeep Sandhu - Alleged violation of VA Code § 38.2-5020
 INS-2002-00865 Kumaresan Sankaran - Alleged violation of VA Code § 38.2-5020
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 INS-2002-00867 Pamela J. Santina - Alleged violation of VA Code § 38.2-5020
 INS-2002-00868 Satyajit Sarangi - Alleged violation of VA Code § 38.2-5020
 INS-2002-00869 Truman M. Sasaki - Alleged violation of VA Code § 38.2-5020
 INS-2002-00870 Srinivas M. Sastry - Alleged violation of VA Code § 38.2-5020
 INS-2002-00871 Lakshmi S. Sastry - Alleged violation of VA Code § 38.2-5020
 INS-2002-00872 Cynthia K. Satterwhite - Alleged violation of VA Code § 38.2-5020
 INS-2002-00873 Sharmila S. Saxena - Alleged violation of VA Code § 38.2-5020
 INS-2002-00874 Marta C. Sayers - Alleged violation of VA Code § 38.2-5020
 INS-2002-00875 John D. Schaefer - Alleged violation of VA Code § 38.2-5020
 INS-2002-00876 Charles A. Schehl Jr. - Alleged violation of VA Code § 38.2-5020
 INS-2002-00877 Andrew W. Hargroves, Jr. - Alleged violation of VA Code § 38.2-5020
 INS-2002-00878 Earl H. Harley - Alleged violation of VA Code § 38.2-5020
 INS-2002-00879 John S. Harman - Alleged violation of VA Code § 38.2-5020
 INS-2002-00880 Thomas A. Harrington, Jr. - Alleged violation of VA Code § 38.2-5020
 INS-2002-00881 William O. Harris - Alleged violation of VA Code § 38.2-5020
 INS-2002-00882 Marcia A. Harris - Alleged violation of VA Code § 38.2-5020
 INS-2002-00883 Patricia Hartwell - Alleged violation of VA Code § 38.2-5020
 INS-2002-00884 Ziaollah Hashemi - Alleged violation of VA Code § 38.2-5020
 INS-2002-00885 Sassan Hassassian - Alleged violation of VA Code § 38.2-5020
 INS-2002-00886 Susan M. Hasselquist - Alleged violation of VA Code § 38.2-5020
 INS-2002-00887 Karen M. Hatch - Alleged violation of VA Code § 38.2-5020
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 INS-2002-00892 Wesley C. Henwood - Alleged violation of VA Code § 38.2-5020
 INS-2002-00893 Daniel J. Hermes - Alleged violation of VA Code § 38.2-5020
 INS-2002-00894 Ahmed Y. Heshmat - Alleged violation of VA Code § 38.2-5020
 INS-2002-00895 John M. Hess - Alleged violation of VA Code § 38.2-5020
 INS-2002-00896 Briana M. Hill - Alleged violation of VA Code § 38.2-5020
 INS-2002-00897 Augustus H. Hill - Alleged violation of VA Code § 38.2-5020
 INS-2002-00898 Eurica S. Hill - Alleged violation of VA Code § 38.2-5020
 INS-2002-00899 Richard Hill - Alleged violation of VA Code § 38.2-5020
 INS-2002-00900 Robert S. Hines, Jr. - Alleged violation of VA Code § 38.2-5020

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

INS-2002-00901 Brenda J. Hines - Alleged violation of VA Code § 38.2-5020
 INS-2002-00902 Waheeda M. Hirani - Alleged violation of VA Code § 38.2-5020
 INS-2002-00903 Jayant P. Hirpara - Alleged violation of VA Code § 38.2-5020
 INS-2002-00904 Jo E. Hirsch - Alleged violation of VA Code § 38.2-5020
 INS-2002-00905 Anthony D. Hirtz - Alleged violation of VA Code § 38.2-5020
 INS-2002-00906 My D. Hoang - Alleged violation of VA Code § 38.2-5020
 INS-2002-00907 Timothy L. Hodges - Alleged violation of VA Code § 38.2-5020
 INS-2002-00909 Charles R. Hoidal - Alleged violation of VA Code § 38.2-5020
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 INS-2002-00911 Gerald B. Holzman - Alleged violation of VA Code § 38.2-5020
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 INS-2002-00913 Carol K. Hook - Alleged violation of VA Code § 38.2-5020
 INS-2002-00914 Stuart Q. Hopkins - Alleged violation of VA Code § 38.2-5020
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 INS-2002-00916 Mohammad E. Hoque - Alleged violation of VA Code § 38.2-5020
 INS-2002-00917 William S. Hotchkiss - Alleged violation of VA Code § 38.2-5020
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 INS-2002-00929 Keith B. Hummel - Alleged violation of VA Code § 38.2-5020
 INS-2002-00930 Diah E. Hussein - Alleged violation of VA Code § 38.2-5020
 INS-2002-00931 John W. Schmeling - Alleged violation of VA Code § 38.2-5020
 INS-2002-00932 Samar A. Hussein - Alleged violation of VA Code § 38.2-5020
 INS-2002-00933 Tarin A. Schmidt-Dalton - Alleged violation of VA Code § 38.2-5020
 INS-2002-00934 Robert S. Hutcheson, Jr. - Alleged violation of VA Code § 38.2-5020
 INS-2002-00935 Robert M. Hutt - Alleged violation of VA Code § 38.2-5020
 INS-2002-00936 Corinna T. Schrankel - Alleged violation of VA Code § 38.2-5020
 INS-2002-00937 Jimmy J. Hwang - Alleged violation of VA Code § 38.2-5020
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 INS-2002-00940 James M. Hylton - Alleged violation of VA Code § 38.2-5020
 INS-2002-00941 Adebola Ibirogbá - Alleged violation of VA Code § 38.2-5020
 INS-2002-00942 Raymond Iglecia-Fernande - Alleged violation of VA Code § 38.2-5020
 INS-2002-00943 Emelina S. Ilagan - Alleged violation of VA Code § 38.2-5020
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 INS-2002-00945 Ulumenfo Imoisili - Alleged violation of VA Code § 38.2-5020
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 INS-2002-00949 Cara S. Schultz - Alleged violation of VA Code § 38.2-5020
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 INS-2002-00951 Jerome E. Schulz - Alleged violation of VA Code § 38.2-5020
 INS-2002-00952 Gerald D. Schuster - Alleged violation of VA Code § 38.2-5020
 INS-2002-00953 Collins P. Sein - Alleged violation of VA Code § 38.2-5020
 INS-2002-00954 Ikemba I. Iweala - Alleged violation of VA Code § 38.2-5020
 INS-2002-00955 Lawrence A. Jacklin - Alleged violation of VA Code § 38.2-5020
 INS-2002-00956 Charles B. Jackson - Alleged violation of VA Code § 38.2-5020
 INS-2002-00957 Ronnie L. Jacobs - Alleged violation of VA Code § 38.2-5020
 INS-2002-00958 Kamal Jajodia - Alleged violation of VA Code § 38.2-5020
 INS-2002-00959 Joseph A. James - Alleged violation of VA Code § 38.2-5020
 INS-2002-00960 Niranjan N. Jani - Alleged violation of VA Code § 38.2-5020
 INS-2002-00961 Todd S. Jarosz - Alleged violation of VA Code § 38.2-5020
 INS-2002-00962 Vidya Jayawardena - Alleged violation of VA Code § 38.2-5020
 INS-2002-00963 Nicole M. Jennings - Alleged violation of VA Code § 38.2-5020
 INS-2002-00964 Jenny A. John - Alleged violation of VA Code § 38.2-5020
 INS-2002-00965 Sarah A. John - Alleged violation of VA Code § 38.2-5020
 INS-2002-00966 Karen E. Johnson - Alleged violation of VA Code § 38.2-5020
 INS-2002-00967 William T. Johnson, Jr. - Alleged violation of VA Code § 38.2-5020
 INS-2002-00968 William A. Johnson - Alleged violation of VA Code § 38.2-5020
 INS-2002-00969 Burton A. Johnson - Alleged violation of VA Code § 38.2-5020
 INS-2002-00970 Michael E. Johnson - Alleged violation of VA Code § 38.2-5020
 INS-2002-00971 Rena M. Johnson - Alleged violation of VA Code § 38.2-5020
 INS-2002-00972 William C. Jones - Alleged violation of VA Code § 38.2-5020
 INS-2002-00973 Howard W. Jones - Alleged violation of VA Code § 38.2-5020

INS-2002-00974 Cheryl W. Jones - Alleged violation of VA Code § 38.2-5020
INS-2002-00975 Vincent K. Jones - Alleged violation of VA Code § 38.2-5020
INS-2002-00976 Louis C. Jordan - Alleged violation of VA Code § 38.2-5020
INS-2002-00977 Krishna Joseph - Alleged violation of VA Code § 38.2-5020
INS-2002-00978 Tracey F. Julian - Alleged violation of VA Code § 38.2-5020
INS-2002-00980 Behzad Kalaghchi - Alleged violation of VA Code § 38.2-5020
INS-2002-00981 Anthony J. Kameen - Alleged violation of VA Code § 38.2-5020
INS-2002-00982 Praveen K. Kanaparti - Alleged violation of VA Code § 38.2-5020
INS-2002-00983 Anil G. Kankaria - Alleged violation of VA Code § 38.2-5020
INS-2002-00984 Vaidehi H. Kannan - Alleged violation of VA Code § 38.2-5020
INS-2002-00985 Zen L. Kao - Alleged violation of VA Code § 38.2-5020
INS-2002-00986 Manohar L. Kapur - Alleged violation of VA Code § 38.2-5020
INS-2002-00987 Isaac V. Karithanom - Alleged violation of VA Code § 38.2-5020
INS-2002-00988 Nina Kashtelyan - Alleged violation of VA Code § 38.2-5020
INS-2002-00989 Elizabeth D. Kassapidis - Alleged violation of VA Code § 38.2-5020
INS-2002-00990 Hasan M. Kattan - Alleged violation of VA Code § 38.2-5020
INS-2002-00991 Michael J. Kaufman - Alleged violation of VA Code § 38.2-5020
INS-2002-00992 Balbinder Kaur - Alleged violation of VA Code § 38.2-5020
INS-2002-00993 Rupinder D. Kaur - Alleged violation of VA Code § 38.2-5020
INS-2002-00994 Aditya K. Kaza - Alleged violation of VA Code § 38.2-5020
INS-2002-00995 Adel S. Kebaish - Alleged violation of VA Code § 38.2-5020
INS-2002-00996 John J. Keeling - Alleged violation of VA Code § 38.2-5020
INS-2002-00997 Scott A. Keffer - Alleged violation of VA Code § 38.2-5020
INS-2002-00998 Theresa E. Kehoe - Alleged violation of VA Code § 38.2-5020
INS-2002-00999 John J. Kelly - Alleged violation of VA Code § 38.2-5020
INS-2002-01000 Mark A. Kendall - Alleged violation of VA Code § 38.2-5020
INS-2002-01001 David J. Kersbergen - Alleged violation of VA Code § 38.2-5020
INS-2002-01002 Abolhasan Keshmiri - Alleged violation of VA Code § 38.2-5020
INS-2002-01003 Michael R. Keverline - Alleged violation of VA Code § 38.2-5020
INS-2002-01004 Falah A. Khalifa - Alleged violation of VA Code § 38.2-5020
INS-2002-01005 Nassar F. Khan - Alleged violation of VA Code § 38.2-5020
INS-2002-01006 Mohammad Asgar Khan - Alleged violation of VA Code § 38.2-5020
INS-2002-01007 Amal M. Khidir - Alleged violation of VA Code § 38.2-5020
INS-2002-01008 Mohamed A. Khodr - Alleged violation of VA Code § 38.2-5020
INS-2002-01009 Hung T. Khong - Alleged violation of VA Code § 38.2-5020
INS-2002-01010 Christopher Y. Kim - Alleged violation of VA Code § 38.2-5020
INS-2002-01011 Young D. Kim - Alleged violation of VA Code § 38.2-5020
INS-2002-01012 Suk K. Kim - Alleged violation of VA Code § 38.2-5020
INS-2002-01013 Stacey Groome Price and Virginia's Preferred Insurance Agency, Inc. - Alleged violation of VA Code § 38.2-1822
INS-2002-01014 Edwin H. Kim - Alleged violation of VA Code § 38.2-5020
INS-2002-01015 Jong W. Kim - Alleged violation of VA Code § 38.2-5020
INS-2002-01016 Laurie E. King - Alleged violation of VA Code § 38.2-5020
INS-2002-01017 Neil M. King - Alleged violation of VA Code § 38.2-5020
INS-2002-01018 Lisa J. King - Alleged violation of VA Code § 38.2-5020
INS-2002-01019 Patricia Y. King-Jones - Alleged violation of VA Code § 38.2-5020
INS-2002-01020 Thornton S. Kinney - Alleged violation of VA Code § 38.2-5020
INS-2002-01021 Susan L. Kinnison - Alleged violation of VA Code § 38.2-5020
INS-2002-01022 Kenneth D. Kiser - Alleged violation of VA Code § 38.2-5020
INS-2002-01023 Maryida Klimowicz - Alleged violation of VA Code § 38.2-5020
INS-2002-01024 James F. Knudsen - Alleged violation of VA Code § 38.2-5020
INS-2002-01025 Han-Jong Koh - Alleged violation of VA Code § 38.2-5020
INS-2002-01026 Rudy E. Kokich - Alleged violation of VA Code § 38.2-5020
INS-2002-01027 Suchitra Koneru - Alleged violation of VA Code § 38.2-5020
INS-2002-01028 Bertha H. Koomson - Alleged violation of VA Code § 38.2-5020
INS-2002-01029 Mahesh M. Koppikar - Alleged violation of VA Code § 38.2-5020
INS-2002-01030 Ralph L. Kramer - Alleged violation of VA Code § 38.2-5020
INS-2002-01031 Lloyd I. Kramer - Alleged violation of VA Code § 38.2-5020
INS-2002-01032 Deborah W. Kredich - Alleged violation of VA Code § 38.2-5020
INS-2002-01033 Nicholas M. Kredich - Alleged violation of VA Code § 38.2-5020
INS-2002-01035 Shyam Krishnan - Alleged violation of VA Code § 38.2-5020
INS-2002-01036 Steven E. Kruis - Alleged violation of VA Code § 38.2-5020
INS-2002-01037 Seema P. Kumar - Alleged violation of VA Code § 38.2-5020
INS-2002-01038 Pullatikurthi P. Kumar - Alleged violation of VA Code § 38.2-5020
INS-2002-01039 Lisa H. Kurtz - Alleged violation of VA Code § 38.2-5020
INS-2002-01040 Andres D. Lagoc - Alleged violation of VA Code § 38.2-5020
INS-2002-01041 Charles S. Lambdin - Alleged violation of VA Code § 38.2-5020
INS-2002-01042 Diane H. Landauer - Alleged violation of VA Code § 38.2-5020
INS-2002-01043 Jeffrey A. Landman - Alleged violation of VA Code § 38.2-5020
INS-2002-01044 Herbert E. Lane, III - Alleged violation of VA Code § 38.2-5020
INS-2002-01045 Frank C. Lane - Alleged violation of VA Code § 38.2-5020
INS-2002-01046 Bela Lang - Alleged violation of VA Code § 38.2-5020
INS-2002-01048 Vida V. Lara-Capalao - Alleged violation of VA Code § 38.2-5020

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

INS-2002-01049 Mary E. Latimer - Alleged violation of VA Code § 38.2-5020
 INS-2002-01050 Gabor G. Laufer - Alleged violation of VA Code § 38.2-5020
 INS-2002-01051 Peter E. Lavine - Alleged violation of VA Code § 38.2-5020
 INS-2002-01052 Keith W. Lawhorn - Alleged violation of VA Code § 38.2-5020
 INS-2002-01053 Man Q. Le - Alleged violation of VA Code § 38.2-5020
 INS-2002-01054 Linda Leatherbury - Alleged violation of VA Code § 38.2-5020
 INS-2002-01055 Tamar C. Ledbetter - Alleged violation of VA Code § 38.2-5020
 INS-2002-01056 Yung M. Lee - Alleged violation of VA Code § 38.2-5020
 INS-2002-01057 Jung H. Lee - Alleged violation of VA Code § 38.2-5020
 INS-2002-01058 Doohi Lee - Alleged violation of VA Code § 38.2-5020
 INS-2002-01059 Frank C. Lee - Alleged violation of VA Code § 38.2-5020
 INS-2002-01060 Insook I. Lee - Alleged violation of VA Code § 38.2-5020
 INS-2002-01061 Susan A. Leggett-Johnson - Alleged violation of VA Code § 38.2-5020
 INS-2002-01062 Roy H. Leiboff - Alleged violation of VA Code § 38.2-5020
 INS-2002-01063 Ian H. Leibowitz - Alleged violation of VA Code § 38.2-5020
 INS-2002-01064 Okafor M. Lekwuwa - Alleged violation of VA Code § 38.2-5020
 INS-2002-01065 Kathy E. Seward - Alleged violation of VA Code § 38.2-5020
 INS-2002-01066 Warren B. Shaffer - Alleged violation of VA Code § 38.2-5020
 INS-2002-01067 Mehnaz A. Shafi - Alleged violation of VA Code § 38.2-5020
 INS-2002-01068 Samantha R. Shah - Alleged violation of VA Code § 38.2-5020
 INS-2002-01069 Harikant C. Shah - Alleged violation of VA Code § 38.2-5020
 INS-2002-01070 Nirmal K. Shah - Alleged violation of VA Code § 38.2-5020
 INS-2002-01071 Daniel J. Threat, Jr. - Alleged violation of VA Code § 38.2-5020
 INS-2002-01072 Nathan J. Tickel - Alleged violation of VA Code § 38.2-5020
 INS-2002-01073 Lillian M. Tidler - Alleged violation of VA Code § 38.2-5020
 INS-2002-01074 Chou-Chik Ting - Alleged violation of VA Code § 38.2-5020
 INS-2002-01075 Sikiru A. Tinubu - Alleged violation of VA Code § 38.2-5020
 INS-2002-01076 Imelda V. Tobias - Alleged violation of VA Code § 38.2-5020
 INS-2002-01077 Joseph Tokaruk - Alleged violation of VA Code § 38.2-5020
 INS-2002-01078 Michael R. Torkelson - Alleged violation of VA Code § 38.2-5020
 INS-2002-01079 Frank J. Tortorella - Alleged violation of VA Code § 38.2-5020
 INS-2002-01080 Carol A. Trakimas - Alleged violation of VA Code § 38.2-5020
 INS-2002-01081 Amy H. Traylor - Alleged violation of VA Code § 38.2-5020
 INS-2002-01082 Evelyn Y. Treackle - Alleged violation of VA Code § 38.2-5020
 INS-2002-01083 Juan A. Trinidad - Alleged violation of VA Code § 38.2-5020
 INS-2002-01084 Mary G. Tucker - Alleged violation of VA Code § 38.2-5020
 INS-2002-01085 Ingolf A. Tuerk - Alleged violation of VA Code § 38.2-5020
 INS-2002-01086 William W. Tullner - Alleged violation of VA Code § 38.2-5020
 INS-2002-01087 Rhodora C. Tumanon - Alleged violation of VA Code § 38.2-5020
 INS-2002-01088 Robert T. Turner - Alleged violation of VA Code § 38.2-5020
 INS-2002-01089 Anthony M. Turner - Alleged violation of VA Code § 38.2-5020
 INS-2002-01090 Jadwiga W. Tvarian - Alleged violation of VA Code § 38.2-5020
 INS-2002-01091 Oparaugo I. Udebiuwa - Alleged violation of VA Code § 38.2-5020
 INS-2002-01092 Ebere M. Ugwanyi - Alleged violation of VA Code § 38.2-5020
 INS-2002-01093 David Upton - Alleged violation of VA Code § 38.2-5020
 INS-2002-01094 Ronald H. Uscinski - Alleged violation of VA Code § 38.2-5020
 INS-2002-01095 Sohail A. Usman - Alleged violation of VA Code § 38.2-5020
 INS-2002-01096 Rosalina S. Uy - Alleged violation of VA Code § 38.2-5020
 INS-2002-01097 Prehlad S. Vachher - Alleged violation of VA Code § 38.2-5020
 INS-2002-01098 Mary H. Valley - Alleged violation of VA Code § 38.2-5020
 INS-2002-01099 Yonne Varese - Alleged violation of VA Code § 38.2-5020
 INS-2002-01100 Donald W. Varner - Alleged violation of VA Code § 38.2-5020
 INS-2002-01101 Saqib M. Shah - Alleged violation of VA Code § 38.2-5020
 INS-2002-01102 Joseph K. Vaughan, Jr. - Alleged violation of VA Code § 38.2-5020
 INS-2002-01104 Rakesh P. Shah - Alleged violation of VA Code § 38.2-5020
 INS-2002-01105 William S. Vaughn - Alleged violation of VA Code § 38.2-5020
 INS-2002-01106 Samson Velena - Alleged violation of VA Code § 38.2-5020
 INS-2002-01107 Kandarp K. Shah - Alleged violation of VA Code § 38.2-5020
 INS-2002-01108 Raymond Vergne - Alleged violation of VA Code § 38.2-5020
 INS-2002-01109 Samuel D. Vernon - Alleged violation of VA Code § 38.2-5020
 INS-2002-01110 Shirish S. Shahane - Alleged violation of VA Code § 38.2-5020
 INS-2002-01111 Olmedo E. Villavicencio - Alleged violation of VA Code § 38.2-5020
 INS-2002-01112 Nagaraja Vishakantaiah - Alleged violation of VA Code § 38.2-5020
 INS-2002-01113 Aftab A. Shaikh - Alleged violation of VA Code § 38.2-5020
 INS-2002-01114 Tai-Chi Shan - Alleged violation of VA Code § 38.2-5020
 INS-2002-01115 Vandana R. Sharma - Alleged violation of VA Code § 38.2-5020
 INS-2002-01116 Ashok K. Sharma - Alleged violation of VA Code § 38.2-5020
 INS-2002-01117 Eric H. Sharp - Alleged violation of VA Code § 38.2-5020
 INS-2002-01118 Steven M. Sharpe - Alleged violation of VA Code § 38.2-5020
 INS-2002-01119 Larry O. Sharpe - Alleged violation of VA Code § 38.2-5020
 INS-2002-01122 Artie L. Shelton - Alleged violation of VA Code § 38.2-5020
 INS-2002-01123 Edite Vitols - Alleged violation of VA Code § 38.2-5020

INS-2002-01124 Boris G. Vlalukin - Alleged violation of VA Code § 38.2-5020
INS-2002-01125 Kirti Vohra - Alleged violation of VA Code § 38.2-5020
INS-2002-01126 Felix E. Shepard Jr. - Alleged violation of VA Code § 38.2-5020
INS-2002-01127 Larren Wade - Alleged violation of VA Code § 38.2-5020
INS-2002-01128 Michael R. Wagner - Alleged violation of VA Code § 38.2-5020
INS-2002-01129 Chingchai Wanidworanun - Alleged violation of VA Code § 38.2-5020
INS-2002-01130 Irina B. Sherman - Alleged violation of VA Code § 38.2-5020
INS-2002-01131 Steven R. Ward - Alleged violation of VA Code § 38.2-5020
INS-2002-01132 Bela Shestopalova - Alleged violation of VA Code § 38.2-5020
INS-2002-01133 Charles S. Warden - Alleged violation of VA Code § 38.2-5020
INS-2002-01134 Daniel C. Warren - Alleged violation of VA Code § 38.2-5020
INS-2002-01135 John A. Weaver - Alleged violation of VA Code § 38.2-5020
INS-2002-01136 David C. Weintritt - Alleged violation of VA Code § 38.2-5020
INS-2002-01137 Mark Weirich - Alleged violation of VA Code § 38.2-5020
INS-2002-01138 Angela R. Weirich - Alleged violation of VA Code § 38.2-5020
INS-2002-01139 Sandra L. Welner - Alleged violation of VA Code § 38.2-5020
INS-2002-01140 John A. Wentz, Jr. - Alleged violation of VA Code § 38.2-5020
INS-2002-01141 Frederick G. Wenzel - Alleged violation of VA Code § 38.2-5020
INS-2002-01142 Donald R. Weymann - Alleged violation of VA Code § 38.2-5020
INS-2002-01143 Inez J. White - Alleged violation of VA Code § 38.2-5020
INS-2002-01144 Mary C. Whitmore - Alleged violation of VA Code § 38.2-5020
INS-2002-01145 Mark E. Whitten - Alleged violation of VA Code § 38.2-5020
INS-2002-01146 Deborah J. Wiese - Alleged violation of VA Code § 38.2-5020
INS-2002-01147 Sidney A. Wike - Alleged violation of VA Code § 38.2-5020
INS-2002-01148 Gloria A. Wilderbrathwait - Alleged violation of VA Code § 38.2-5020
INS-2002-01149 Marciana W. Wilkerson - Alleged violation of VA Code § 38.2-5020
INS-2002-01150 George H. Williams - Alleged violation of VA Code § 38.2-5020
INS-2002-01151 Gaylord S. Williams - Alleged violation of VA Code § 38.2-5020
INS-2002-01152 Edwin L. Williams - Alleged violation of VA Code § 38.2-5020
INS-2002-01153 Annie L. Williams - Alleged violation of VA Code § 38.2-5020
INS-2002-01154 Norman L. Wilson - Alleged violation of VA Code § 38.2-5020
INS-2002-01155 Charles C. Wilson - Alleged violation of VA Code § 38.2-5020
INS-2002-01156 Birgit Winther - Alleged violation of VA Code § 38.2-5020
INS-2002-01158 Bernard F. Wittkamp - Alleged violation of VA Code § 38.2-5020
INS-2002-01159 William P. Wolcott - Alleged violation of VA Code § 38.2-5020
INS-2002-01160 Carolee E. Wolford - Alleged violation of VA Code § 38.2-5020
INS-2002-01163 Labora M. Wouters - Alleged violation of VA Code § 38.2-5020
INS-2002-01164 Mofikpara A. Wright - Alleged violation of VA Code § 38.2-5020
INS-2002-01165 John S. Xenos - Alleged violation of VA Code § 38.2-5020
INS-2002-01166 Edwardo M. Yambo - Alleged violation of VA Code § 38.2-5020
INS-2002-01167 Ting-Wei Yang - Alleged violation of VA Code § 38.2-5020
INS-2002-01168 Manuel S. Yepes - Alleged violation of VA Code § 38.2-5020
INS-2002-01169 Peter W. Yim - Alleged violation of VA Code § 38.2-5020
INS-2002-01170 David K. Yoo - Alleged violation of VA Code § 38.2-5020
INS-2002-01171 Insook Yoon - Alleged violation of VA Code § 38.2-5020
INS-2002-01172 Susan D. Yost - Alleged violation of VA Code § 38.2-5020
INS-2002-01173 Ziad H. Younes - Alleged violation of VA Code § 38.2-5020
INS-2002-01174 William H. Young, Jr. - Alleged violation of VA Code § 38.2-5020
INS-2002-01175 Mary E. Young - Alleged violation of VA Code § 38.2-5020
INS-2002-01176 Charles C. Young - Alleged violation of VA Code § 38.2-5020
INS-2002-01177 Mohammad W. Younus - Alleged violation of VA Code § 38.2-5020
INS-2002-01178 Norma C. Yu - Alleged violation of VA Code § 38.2-5020
INS-2002-01179 Peter G. Zack - Alleged violation of VA Code § 38.2-5020
INS-2002-01180 Mohammad N. Zafar - Alleged violation of VA Code § 38.2-5020
INS-2002-01181 Pedro J. Zaiter - Alleged violation of VA Code § 38.2-5020
INS-2002-01182 Mario G. Zapata - Alleged violation of VA Code § 38.2-5020
INS-2002-01183 Nathan D. Zasler - Alleged violation of VA Code § 38.2-5020
INS-2002-01184 Alois Zauner - Alleged violation of VA Code § 38.2-5020
INS-2002-01185 Xiaochun Zhang - Alleged violation of VA Code § 38.2-5020
INS-2002-01186 Mohsen Ziai - Alleged violation of VA Code § 38.2-5020
INS-2002-01187 David H. Zontine - Alleged violation of VA Code § 38.2-5020
INS-2002-01188 Rebecca A. Zurbier - Alleged violation of VA Code § 38.2-5020
INS-2002-01189 Yetunde A. Shitta-Bey - Alleged violation of VA Code § 38.2-5020
INS-2002-01190 Elbert F. Sholar - Alleged violation of VA Code § 38.2-5020
INS-2002-01191 Christopher W. Sholes - Alleged violation of VA Code § 38.2-5020
INS-2002-01192 Hassan Sibay - Alleged violation of VA Code § 38.2-5020
INS-2002-01193 Roslind I. Sibley - Alleged violation of VA Code § 38.2-5020
INS-2002-01194 Anthony F. Sibley - Alleged violation of VA Code § 38.2-5020
INS-2002-01195 Jacqueline M. Sicari - Alleged violation of VA Code § 38.2-5020
INS-2002-01196 Anita Sikand - Alleged violation of VA Code § 38.2-5020
INS-2002-01197 Robert A. Sikora, Jr. - Alleged violation of VA Code § 38.2-5020
INS-2002-01198 Hassan F. Silwadi - Alleged violation of VA Code § 38.2-5020

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

INS-2002-01199 Sangeeta S. Simlote - Alleged violation of VA Code § 38.2-5020
 INS-2002-01200 Dale S. Simmonds - Alleged violation of VA Code § 38.2-5020
 INS-2002-01201 Charanjit P. Singh - Alleged violation of VA Code § 38.2-5020
 INS-2002-01202 Stanley M. Sinkford, III - Alleged violation of VA Code § 38.2-5020
 INS-2002-01203 Heidi T. Siuta - Alleged violation of VA Code § 38.2-5020
 INS-2002-01204 Kolinjavadi N. Sivasubramanian - Alleged violation of VA Code § 38.2-5020
 INS-2002-01205 Michael H. Sketch, Jr. - Alleged violation of VA Code § 38.2-5020
 INS-2002-01206 Jerome Smith - Alleged violation of VA Code § 38.2-5020
 INS-2002-01207 Peter R. Smith - Alleged violation of VA Code § 38.2-5020
 INS-2002-01208 Yolande F. Smith - Alleged violation of VA Code § 38.2-5020
 INS-2002-01209 Karl D. Smith - Alleged violation of VA Code § 38.2-5020
 INS-2002-01210 Alan M. Smith - Alleged violation of VA Code § 38.2-5020
 INS-2002-01211 Jeffrey P. Smith - Alleged violation of VA Code § 38.2-5020
 INS-2002-01212 Claude A. Smith - Alleged violation of VA Code § 38.2-5020
 INS-2002-01213 Michael L. Smith - Alleged violation of VA Code § 38.2-5020
 INS-2002-01214 Richard A. Smith - Alleged violation of VA Code § 38.2-5020
 INS-2002-01215 Gregory W. Snodgrass - Alleged violation of VA Code § 38.2-5020
 INS-2002-01216 Stanley O. Snyder - Alleged violation of VA Code § 38.2-5020
 INS-2002-01217 Kevin J. Soden - Alleged violation of VA Code § 38.2-5020
 INS-2002-01218 Dina E. Soliman - Alleged violation of VA Code § 38.2-5020
 INS-2002-01219 Rakesh K. Sood - Alleged violation of VA Code § 38.2-5020
 INS-2002-01220 Steven D. Spady - Alleged violation of VA Code § 38.2-5020
 INS-2002-01222 William S. Stage - Alleged violation of VA Code § 38.2-5020
 INS-2002-01223 Julia C. Stanford - Alleged violation of VA Code § 38.2-5020
 INS-2002-01224 Heather K. Stanley-Christia - Alleged violation of VA Code § 38.2-5020
 INS-2002-01225 Elizabeth Stanton - Alleged violation of VA Code § 38.2-5020
 INS-2002-01226 Eric T. Stedje-Larsen - Alleged violation of VA Code § 38.2-5020
 INS-2002-01227 Robert F. Stephens - Alleged violation of VA Code § 38.2-5020
 INS-2002-01228 Patrick M. Sterling - Alleged violation of VA Code § 38.2-5020
 INS-2002-01229 Paul L. Stevenson - Alleged violation of VA Code § 38.2-5020
 INS-2002-01230 Eleanor S. Stewart - Alleged violation of VA Code § 38.2-5020
 INS-2002-01231 Thomas M. Stiles - Alleged violation of VA Code § 38.2-5020
 INS-2002-01232 Robert L. Stokes - Alleged violation of VA Code § 38.2-5020
 INS-2002-01233 Samuel S. Stopak - Alleged violation of VA Code § 38.2-5020
 INS-2002-01234 Robert Stough - Alleged violation of VA Code § 38.2-5020
 INS-2002-01235 Rick A. Stough - Alleged violation of VA Code § 38.2-5020
 INS-2002-01236 Brian M. Strain - Alleged violation of VA Code § 38.2-5020
 INS-2002-01237 Constantine A. Stratakis - Alleged violation of VA Code § 38.2-5020
 INS-2002-01238 William J. Strudwick - Alleged violation of VA Code § 38.2-5020
 INS-2002-01239 Warren J. Strudwick - Alleged violation of VA Code § 38.2-5020
 INS-2002-01240 Thomas W. Sturgill - Alleged violation of VA Code § 38.2-5020
 INS-2002-01241 Khalil M. Suaray - Alleged violation of VA Code § 38.2-5020
 INS-2002-01242 Pyung J. Suh - Alleged violation of VA Code § 38.2-5020
 INS-2002-01243 Lucian O. Sulica - Alleged violation of VA Code § 38.2-5020
 INS-2002-01244 Patrick F. Sullivan - Alleged violation of VA Code § 38.2-5020
 INS-2002-01245 Richard J. Summers - Alleged violation of VA Code § 38.2-5020
 INS-2002-01246 Gregory T. Summers - Alleged violation of VA Code § 38.2-5020
 INS-2002-01247 Hema A. Sundaram - Alleged violation of VA Code § 38.2-5020
 INS-2002-01248 Franklin J. Sutherland - Alleged violation of VA Code § 38.2-5020
 INS-2002-01249 Grace E. Suttle - Alleged violation of VA Code § 38.2-5020
 INS-2002-01250 Thaddeus G. Sutton - Alleged violation of VA Code § 38.2-5020
 INS-2002-01251 Elizabeth F. Swallow - Alleged violation of VA Code § 38.2-5020
 INS-2002-01252 Forrest S. Swan, Jr. - Alleged violation of VA Code § 38.2-5020
 INS-2002-01253 Nina K. Sweeney - Alleged violation of VA Code § 38.2-5020
 INS-2002-01254 Gabriel G. Szego - Alleged violation of VA Code § 38.2-5020
 INS-2002-01255 Ali R. Tabassian - Alleged violation of VA Code § 38.2-5020
 INS-2002-01256 Mohammad F. Taleghani - Alleged violation of VA Code § 38.2-5020
 INS-2002-01257 Nancy A. Tanchel - Alleged violation of VA Code § 38.2-5020
 INS-2002-01258 Denia Tapscott - Alleged violation of VA Code § 38.2-5020
 INS-2002-01259 Richard S. Tate - Alleged violation of VA Code § 38.2-5020
 INS-2002-01260 Gail L. Taylor - Alleged violation of VA Code § 38.2-5020
 INS-2002-01261 Nelson S. Teague - Alleged violation of VA Code § 38.2-5020
 INS-2002-01262 Kuldeep Teja - Alleged violation of VA Code § 38.2-5020
 INS-2002-01263 Gregory A. Tetrault - Alleged violation of VA Code § 38.2-5020
 INS-2002-01264 Shalini Tewari - Alleged violation of VA Code § 38.2-5020
 INS-2002-01265 Muljibhai J. Thakkar - Alleged violation of VA Code § 38.2-5020
 INS-2002-01266 John B. Theobalds - Alleged violation of VA Code § 38.2-5020
 INS-2002-01267 Martin A. Thiel - Alleged violation of VA Code § 38.2-5020
 INS-2002-01268 Bridget A. Thill - Alleged violation of VA Code § 38.2-5020
 INS-2002-01269 Wendy A. Thomas - Alleged violation of VA Code § 38.2-5020
 INS-2002-01270 Mark O. Thornton - Alleged violation of VA Code § 38.2-5020
 INS-2002-01271 Robert H. Thrasher - Alleged violation of VA Code § 38.2-5020

INS-2002-01272 Kenneth D. Thrasher - Alleged violation of VA Code § 38.2-5020
 INS-2002-01276 William J. Elias - Alleged violation of VA Code § 38.2-5020
 INS-2002-01277 Frederick L. Glauser - Alleged violation of VA Code § 38.2-5020
 INS-2002-01278 G. Watson J. James - Alleged violation of VA Code § 38.2-5020
 INS-2002-01279 Christoph R. Kaufmann - Alleged violation of VA Code § 38.2-5020
 INS-2002-01280 Mohammad Agig Khan - Alleged violation of VA Code § 38.2-5020
 INS-2002-01282 Stephanie E. Nagy-Agren - Alleged violation of VA Code § 38.2-5020
 NS-2002-01283 John L. Pellegrini - Alleged violation of VA Code § 38.2-5020
 INS-2002-01298 Robert E Watson, III - Alleged violation of VA Code §§ 38.2-503, et al.
 INS-2002-01302 Centennial Homes, Inc d/b/a Trendmaker Homes' - For review of HOW Insurance Company, et al. Deputy Receiver's Determination of Appeal
 INS-2002-01307 Thomas M. Weeks, Sr. - Alleged violation of VA Code §§ 38.2-512 and 38.2-1804
 INS-2002-01310 Harleysville Mutual Insurance Company - For approval of an assumption reinsurance agreement pursuant to VA Code § 38.2-136 C
 INS-2002-01314 Unum Life Insurance Company - Alleged violation of VA Code §§ 38.2-510 A 2, et al.
 INS-2002-01315 Dental Benefit Providers of Maryland, Inc. - Alleged violation of VA Code §§ 38.2-316 A, et al.
 INS-2002-01316 Delta Dental Plan of Virginia - Alleged violation of VA Code §§ 38.2-316 A, et al.
 INS-2002-01317 Anthem Health Plans of Virginia, Inc., Healthkeepers, Inc., Peninsula Health Care, Inc. and Priority Health Care, Inc. - Alleged violations of 14 VAC 5-215-20 B and 14 VAC 5-215-50 I
 INS-2002-01318 Ex Parte: Rules - In the matter of Adopting Rules Governing Claims-Made Liability Insurance Policies
 INS-2003-00001 JustDental of Delmarva, Inc. - Alleged violation of VA Code § 38.2-1812
 INS-2003-00002 Gordon B. Marshall, Jr. - Alleged violation of VA Code §§ 38.2-512 and 38.2-1813
 INS-2003-00003 Penn Treaty Network America Insurance Company - For review of decision of Bureau of Insurance
 INS-2003-00004 Aon Risk Services, Inc. of Michigan - Alleged violation of VA Code § 38.2-4806 D
 INS-2003-00005 Emily Eleanore Johnson - Alleged violation of VA Code § 38.2-4806 D
 INS-2003-00006 D. H. Lloyd & Associates, Inc. - Alleged violation of VA Code § 38.2-4806 D
 INS-2003-00007 Christine Joann Riddell - Alleged violation of VA Code § 38.2-4806 D
 INS-2003-00008 GE Financial Assurance Holdings, Inc. - For refund of retaliatory costs incurred during 2001 taxable year
 INS-2003-00009 Keystone Insurance Company - Alleged violation of VA Code §§ 38.2-305, et al.
 INS-2003-00010 Acceptance Insurance Company - For suspension of license pursuant to VA Code §§ 38.2-1038 and 38.2-1040
 INS-2003-00011 Gabriel George Gustafson - For review of the Bureau of Insurance's ruling
 INS-2003-00012 Nationwide Mutual Insurance Co, Nationwide Mutual Fire Insurance Co., Nationwide General Insurance Co. and Nationwide Assurance Co. - Alleged violation of VA Code §§ 38.2-305 A, et al.
 INS-2003-00013 Valley First Settlement Agency, LLC - Alleged violation of VA Code § 6.1-2.21
 INS-2003-00014 Mildred B. Moorefield - Alleged violation of VA Code § 38.2-1813
 INS-2003-00016 Leonard Harrington and Harrington Settlement Company, LLC - Alleged violation of VA Code §§ 6.1-2.26 and 38.2-809
 INS-2003-00018 Fenchurch Financial Services - Alleged violation of VA Code §§ 38.2-503, et al.
 INS-2003-00019 Golden Rule Insurance Company - Alleged violation of 14 VAC 5-234-40 C
 INS-2003-00020 United Healthcare Insurance Company - Alleged violation of 14 VAC 5-234-40 C
 INS-2003-00021 Kevin J. Owens - Alleged violation of VA Code §§ 38.2-1804, et al.
 INS-2003-00022 Ex Parte: Rates - 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-2003-00023 Diversified Real Estate Services, Inc. - Alleged violation of VA Code § 6.1-2.21
 INS-2003-00024 Reciprocal of America, in Receivership and The Reciprocal Group, in Receivership - For Order in Aid of Receivership
 INS-2003-00025 Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. - Alleged violation of VA Code §§ 38.2-503, et al.
 INS-2003-00026 American Republic Insurance Company - Alleged violation of VA Code §§ 38.2-503, et al.
 INS-2003-00027 James R. Shuck - Alleged violation of VA Code §§ 38.2-1804, et al.
 INS-2003-00028 Fidelity & Guaranty Life Insurance Company - Alleged violation of VA Code § 38.2-610
 INS-2003-00029 Peter Umlauf and National House of Insurance - Alleged violation of VA Code §§ 38.2-512, et al.
 INS-2003-00030 Advantage Equity Services, Inc. - Alleged violation of VA Code § 6.1-2.21
 INS-2003-00031 Atlanta Life Insurance Company - Alleged violation of VA Code § 38.2-610
 INS-2003-00032 Charles Wayne Berry - Alleged violation of VA Code §§ 38.2-503, et al.
 INS-2003-00033 CIGNA Dental Health of Virginia, Inc. - Alleged violation of VA Code §§ 38.2-1833 A, et al.
 INS-2003-00034 Industry Partners Title, LLC - Alleged violation of VA Code § 6.1-2.26 and 14 VAC 5-395-30
 INS-2003-00035 Erie Insurance Company & Erie Insurance Exchange - Alleged violation of VA Code §§ 38.2-510 A 10, et al.
 INS-2003-00037 Ex Parte: Rules - In the matter of Adopting Revisions to the Rules Governing Annual Audited Financial Reports
 INS-2003-00038 Bruce D. Moreton - For review of HOW Insurance Company et al. Deputy Receiver's Determination of Appeal
 INS-2003-00039 AA Carr Insurance Agency - Alleged violation of VA Code §§ 38.2-310, et al.
 INS-2003-00040 Chrystal M. Clinedinst - Alleged violation of VA Code §§ 38.2-310, et al.
 INS-2003-00041 Kevin Jerome Carr - Alleged violation of VA Code §§ 38.2-310, et al.
 INS-2003-00042 Michelle Carr - Alleged violation of VA Code §§ 38.2-310, et al.
 INS-2003-00043 First National Life Insurance Company of America - For revocation of license pursuant to VA Code § 38.2-1040
 INS-2003-00044 Cigna HealthCare of Virginia, Inc. - Alleged violation of VA Code §§ 38.2-510 A 15, et al.
 INS-2003-00045 Monitor Life Insurance Company of New York - To eliminate impairment and restore surplus to minimum amount required by law
 INS-2003-00046 Professional Service, Inc. & Hong Gao - Alleged violation of VA Code § 38.2-1822 A
 INS-2003-00047 Brickell Financial Services Motor Club, Inc. - Alleged violation of VA Code § 38.2-1833
 INS-2003-00048 Swafford & Hayes Settlement Services, Inc. - Alleged violation of VA Code §§ 6.1-2.21, et al.
 INS-2003-00050 First Colony Life Insurance Company - Alleged violation of VA Code § 38.2-3126 B
 INS-2003-00051 Motor Club of America Enterprises, Inc. - Alleged violation of VA Code §§ 38.2-1812 and 38.2-1833
 INS-2003-00052 Anthony J. Carrea and Senior Retirement Services, Inc. - Alleged violation of VA Code §§ 38.2-502 1, et al.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

INS-2003-00053 Peerless Insurance Company - Alleged violation of VA Code §§ 38.2-304, et al.
 INS-2003-00055 Keith Allen Bolen - For revocation of license pursuant to VA Code §§ 38.2-512 and 38.2-1813
 INS-2003-00056 Superior Insurance Company - Alleged violation of VA Code §§ 38.2-510 A 3, et al.
 INS-2003-00057 Evergreen Settlement Company, Inc. - Alleged violation of VA Code § 6.1-2.21
 INS-2003-00058 Sherry A. Short & Hometown Insurance Agency, Inc. - Alleged violation of VA Code §§ 38.2-1804, et al.
 INS-2003-00059 United Teacher Associates Insurance Company - Alleged violation of VA Code § 38.2-316 C
 INS-2003-00060 Continental General Insurance Company - Alleged violation of VA Code § 38.2-316 C 2
 INS-2003-00062 Victoria Fire & Casualty Insurance Co., Victoria Select Insurance Co. and Victoria Automobile Insurance Co. - Alleged violation of VA Code §§ 38.2-510 A 1, et al..
 INS-2003-00063 Reliance Universal Insurance Company - Alleged violation of VA Code § 38.2-1040
 INS-2003-00064 The Cincinnati Insurance Company and The Cincinnati Indemnity Company - Alleged violation of VA Code §§ 38.2-231 A, et al.
 INS-2003-00065 Integon Indemnity Corporation - Alleged violation of VA Code § 38.2-2212 F 1
 INS-2003-00066 Doctors Insurance Reciprocal, RRG, In Receivership, American National Lawyers Insurance Reciprocal, RRG, In Receivership and The Reciprocal Alliance, RRG, In Receivership - For Order in Aid of Receiverships and Request for Expedited Review and Relief
 INS-2003-00067 Optimum Choice, Inc. - Alleged violation of VA Code §§ 38.2-510 A 1, et al.
 INS-2003-00068 MAMSI Life & Health Insurance Company - Alleged violation of VA Code § 38.2-3405 B
 INS-2003-00069 MD-Individual Practice Association, Inc. - Alleged violation of VA Code § 38.2-3405 B
 INS-2003-00070 Peoples Bonding, Inc. - Alleged violation of VA Code § 38.2-510 A 6
 INS-2003-00071 Edward M. Schwab - Alleged violation of VA Code §§ 38.2-502 and 38.2-2-512
 INS-2003-00072 Elizabeth A. Kaehler - Alleged violation of VA Code § 38.2-1813
 INS-2003-00073 Joseph H. Smith & Smith Insurance Agency - Alleged violation of VA Code §§ 38.2-1804 and 38.2-1813
 INS-2003-00074 Joseph Michael Smith - Alleged violation of VA Code § 38.2-1813
 INS-2003-00075 Lawrence J. O'Donohue, Jr. & Total Insurance Marketing, LLC - Alleged violation of VA Code §§ 38.2-1809 and 38.2-1813
 INS-2003-00077 Jefferson Pilot Financial Insurance Company - Alleged violation of VA Code § 38.2-610
 INS-2003-00078 N. Suzanne March & Licensing Coordinators - Alleged violation of VA Code § 38.2-512
 INS-2003-00079 BB&T Corporation - For approval of acquisition of First Virginia Life Insurance Company
 INS-2003-00080 Kevin Young and Morris and Young Insurance Agency, LLC - Alleged violation of VA Code §§ 38.2-1813 and 38.2-1822
 INS-2003-00081 Principal Life Insurance Company - Alleged violation of VA Code §§ 38.2-3407.15 B 1, et al.
 INS-2003-00082 Stephen J. Acker - Alleged violation of VA Code § 38.2-512
 INS-2003-00083 The Insurance Corporation of New York - For suspension of license pursuant to VA Code § 38.2-1040
 INS-2003-00084 Life Settlements International, LLC - For suspension of license pursuant to VA Code § 38.2-5701
 INS-2003-00085 Benchmark Insurance Company - Alleged violation of VA Code § 38.2-3407.1
 INS-2003-00086 Shawpin Jong and Realty Title - Alleged violations of VA Code §§ 38.2-502 and 38.2-1822
 INS-2003-00087 David S. Kantor - Alleged violation of VA Code §§ 38.2-502 and 38.2-512
 INS-2003-00088 Ruby L. Wayne - Alleged violation of VA Code §§ 38.2-512 and 38.2-1813
 INS-2003-00089 Darrell Wayne Mack - Alleged violation of VA Code §§ 38.2-1804, et al.
 INS-2003-00090 Crown Title Corporation - Alleged violation of VA Code § 6.1-2.23 and 14 VAC 5-395-60
 INS-2003-00091 Liberty Life Insurance Company - Approval of a regulatory settlement by and between Liberty Life Ins Co., and the Director of Insurance for the state of South Carolina, for and on behalf of the State of South Carolina, the Virginia Bureau of Insurance and the Insurance Regulators of the affected states in the United States and the District of Columbia
 INS-2003-00092 Doctors Insurance Reciprocal, RRG, In Receivership, American National Lawyers Insurance Reciprocal, RRG, in Receivership, and The Reciprocal Alliance, RRG, In Receivership - For Expedited Review of Claims and Deputy Receiver's Determination of Appeal
 INS-2003-00093 Freedom Life Insurance Company of America - Alleged violation of VA Code §§ 38.2-316 A, et al.
 INS-2003-00094 Allstate Insurance Company and Allstate Indemnity Company - Alleged violation of VA Code §§ 38.2-510 A 1, et al.
 INS-2003-00099 Richard B. Jackson - For Review Of HOW Insurance Company, et al. Deputy Receiver's Determination of Appeal
 INS-2003-00100 UnitedHealthcare of the Mid-Atlantic, Inc. - Alleged violation of VA Code §§ 38.2-316 B, et al.
 INS-2003-00101 Mack V. Robinson - Alleged violation of VA Code § 38.2-512
 INS-2003-00102 Danny Foran - Alleged violation of VA Code § 38.2-512
 INS-2003-00103 North American Company for Life and Health Insurance - Alleged violation of VA Code §§ 38.2-608 D and 38.2-610
 INS-2003-00104 Ex Parte: Rules - In the matter of Adopting Revisions to the Rules Governing Viatical Settlement Providers and Viatical Settlement Brokers
 INS-2003-00105 AmPro Financial Services, Inc. - Alleged violation of VA Code §§ 6.1-2.26 and 14 VAC 5-395-30
 INS-2003-00106 Liberty Title & Escrow Company - Alleged violation of VA Code § 6.1-2.21
 INS-2003-00107 Shelby Lorraine Brown - For revocation of license
 INS-2003-00108 Southern Title Company of South Carolina, LLC - Alleged violation of VA Code § 6.1-21
 INS-2003-00109 Theresa Stone and T. A. Stone, Inc. t/a Pinecrest Insurance Services - Alleged violation of VA Code § 38.2-1813
 INS-2003-00110 Edward O. Crouch and Crouch Insurance Service, Inc. - Alleged violation of VA Code § 38.2-1813
 INS-2003-00111 JMIC Life Insurance Company - Alleged violation of VA Code § 38.2-610
 INS-2003-00112 Superior Insurance Company - Alleged violation of VA Code § 38.2-1904
 INS-2003-00115 Paul H. Isaac - Alleged violaiton of VA Code § 38.2-1802
 INS-2003-00116 Gary J. Wasserman - Alleged violation of VA Code § 38.2-1802
 INS-2003-00117 All American Abstract Company, Inc. - Alleged violation of VA Code § 6.1-2.23 and 14 VAC 5-395-60
 INS-2003-00119 Michael J. Wexler and Wexler Insurance Agency, Inc. - Alleged violation of VA Code §§ 38.2-1802 and 38.2-1812
 INS-2003-00120 Allstate Insurance Company & Allstate Indemnity Company - Alleged violation of VA Code § 38.2-1906 D
 INS-2003-00121 United Healthcare Insurance Company - Alleged violation of VA Code §§ 38.2-510 A 15, et al.
 INS-2003-00122 HCC Insurance Holdings, Inc. - For approval of acquisition of control of Colony Insurance Company and Colony National Insurance Company
 INS-2003-00123 Monumental Life Insurance Company - Approval of a regulatory Consent Order by and between Monumental Life Insurance Company, and the Insurance Commissioner for the Maryland Insurance Administration, for and on behalf of the State of Maryland, the Virginia Bureau of Insurance and the Insurance Regulators of all states in the United States and the District of Columbia
 INS-2003-00124 Keith P. Hicks and Hicks Bonding Company - Alleged violation of VA Code §§ 38.2-512, et al.
 INS-2003-00125 Group Hospitalization and Medical Services, Inc. - Alleged violation of VA Code § 38.2-3407.14

INS-2003-00126	Central United Life Insurance Company - For approval of an assumption reinsurance agreement pursuant to VA Code § 38.2-136 C
INS-2003-00127	Hartford Life & Accident Insurance Company – For approval of Assumption Certificates without the required right to consent language
INS-2003-00128	Countryway Insurance Company - Alleged violation of VA Code §§ 38.2-1833 C and 38.2-1833 E
INS-2003-00129	Millers Capital Insurance Company - Alleged violation of VA Code §§ 38.2-1833 C and 38.2-1833 E
INS-2003-00130	Farmers Insurance Exchange and Mid Century Insurance Company - Alleged violation of VA Code §§ 38.2-305, et al.
INS-2003-00131	Michael David Partlow - Alleged violation of VA Code § 38.2-403
INS-2003-00132	Fee Simple Escrow & Title Company, LLC - Alleged violation of VA Code §§ 38.2-1813, et al.
INS-2003-00133	Conseco Life Insurance Company - Alleged violation of 14 VAC 5-234-40 B
INS-2003-00134	New England Life Insurance Company - Alleged violation of 14 VAC 5-234-40 B
INS-2003-00135	Optima Health Plan - Alleged violation of 14 VAC 5-234-40 C
INS-2003-00136	Optima Health Insurance Company - Alleged violation of 14 VAC 5-234-40 C
INS-2003-00137	Ex Parte: Refunds – 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 2002
INS-2003-00138	Ex Parte: Refunds – In the matter of refunding overpayments of the premium license tax on direct gross premium income of surplus lines brokers for the taxable year 2002
INS-2003-00139	Sentara Health Plans, Inc. - Alleged violation of 14 VAC 5-234-40 C
INS-2003-00140	EquityQuest Financial LLC - Alleged violation of VA Code § 6.1-2.21
INS-2003-00141	Nationwide Appraisal Services Corporation - Alleged violation of VA Code §§ 6.1-2.21 and 6.1-2.23
INS-2003-00143	Christine Joann Ridell - Alleged violation of VA Code § 38.2-4806 D
INS-2003-00144	Ex Parte: Refunds – 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 2002
INS-2003-00145	Ex Parte: Refunds – In the matter of refunding overpayments of the Virginia State Police, Insurance Fraud Fund based on direct gross premium income of insurance companies for the assessable year 2002
INS-2003-00146	Lawyers Advantage Title Group, Inc. - Alleged violation of VA Code § 6.1-2.21
INS-2003-00147	Donna D. Lange - For review of Reciprocal of America and The Reciprocal Group Deputy Receiver's Determination of Appeal
INS-2003-00149	Craig M. Hanson - Alleged violaiton of VA Code §§ 38.2-509 and 38.2-512
INS-2003-00150	Kevin A. Gilsenan - Alleged violation of VA Code §§ 38.2-502 and 38.2-504
INS-2003-00152	RLI Insurance Company - Alleged violation of VA Code § 38.2-317
INS-2003-00153	Martin V. Patrick - Alleged violation of VA Code §§ 38.2-502, 38.2-504, et al.
INS-2003-00155	Virginia Premier Health Plan, Inc. - Alleged violation of VA Code §§ 38.2-510 A 5, et al.
INS-2003-00157	National Council on Compensation Insurance, Inc. - For revision of advisory loss costs and assigned risk workers' compensation insurance rates
INS-2003-00158	Kenneth R. Patterson - For review of Reciprocal of America and the Reciprocal Group Deputy Receiver's Determination of Appeal
INS-2003-00159	Massachusetts Mutual Life Insurance Company - Alleged violation of VA Code § 38.2-610
INS-2003-00161	W. Russell Smith t/a W Russell Smith & Associates - Alleged violation of VA Code §§ 38.2-1813 and 38.2-1822
INS-2003-00162	Safeguard Insurance Company - Alleged violation of VA Code §§ 38.2-2113 and 38.2-2114
INS-2003-00163	Judith A. Kelly - For review of Reciprocal of America and The Reciprocal Group Deputy Receiver's Determination of Appeal
INS-2003-00164	Roy L. Petty, Jr. - Alleged violation of VA Code §§ 38.2-502 and 38.2-503
INS-2003-00165	Ex Parte: Rules - In the matter of Adopting Revisions to the Rules Governing Actuarial Opinions and Memoranda
INS-2003-00167	William and Rose Haberberger - For review of HOW Insurance Co., et al. Deputy Receiver's Determination of Appeal
INS-2003-00168	America's First Title LLC - Alleged violation of VA Code §§ 6.1-2.23, 6.1-2.24 and 14 VAC 5-395-60
INS-2003-00169	Granite Settlement Services LLC - Alleged violation of VA Code § 6.1-2.23
INS-2003-00170	National Warranty Insurance Risk Retention Group - Alleged violation of VA Code § 38.2-5103 8 b
INS-2003-00171	PARTNERS National Health Plans of North Carolina, Inc. - For acceptance of voluntary consent order
INS-2003-00172	Tidewater Settlements, Inc. - Alleged violation of VA Code §§ 6.1-2.23, et al.
INS-2003-00173	United American Insurance Company - Alleged violation of VA Code § 38.2-610
INS-2003-00174	Lexington Retirement Community, Inc. - Alleged violation of VA Code § 38.2-4904
INS-2003-00175	VBA Benefits Corporation - Alleged violation of 14 VAC 5-410-40 D
INS-2003-00176	National Association of Social Workers Insurance Trust - Alleged violation of 14 VAC 5-410-40 D
INS-2003-00177	The United Service Industry Trust - Alleged violation of 14 VAC 15-410-40 D
INS-2003-00178	The United Wholesale Industry Trust - Alleged violation of 14 VAC 5-410-40 D
INS-2003-00179	The United Retail Industry Trust - Alleged violation of 14 VAC 5-410-40 D
INS-2003-00180	The United Plastics & Synthetic Materials Industry Trust - Alleged violation of 14 VAC 5-410-40 D
INS-2003-00181	The United Fabricated Metal Products Industry Trust - Alleged violation of 14 VAC 5-410-40 D
INS-2003-00182	Shoney's of Richmond, Inc., CD Restaurants, Inc. and Tidewater Restaurants, Inc. - Alleged violation of 14 VAC 5-410-40 D
INS-2003-00183	Newport Hospitality Group Inc. - Alleged violation of 14 VAC 5-410-40 D
INS-2003-00184	Lake Prince Center, Inc. - Alleged violation of VA Code §§ 38.2-4904 A and 38.2-4904 B
INS-2003-00185	National Health Insurance Company - Alleged violation of VA Code § 38.2-1036
INS-2003-00186	James G. Doughty, Jr. - Alleged violation of VA Code § 38.2-512 and 14 VAC 5-30-40
INS-2003-00188	U. S. Property and Appraisal Services Corporation - Alleged violation of VA Code § 6.1-2.21
INS-2003-00189	Richard C. Nagle - Alleged violation of VA Code § 38.2-512
INS-2003-00190	American Chiropractic Association Insurance Trust - Alleged violation of 14 VAC 5-410-40 D
INS-2003-00191	First Financial Title Agency of Virginia, Inc. - Alleged violation of VA Code § 6.1-2.23 and 14 VAC 5-395-60
INS-2003-00192	Quality Settlements, Inc. - Alleged violation of VA Code §§ 6.1-2.26, 38.2-1822 and 14 VAC 5-395-30
INS-2003-00194	Pro Med Casualty Insurance Company, Ltd. - Alleged violation of VA Code §§ 38.2-1024 and 38.2-1027
INS-2003-00195	James Insurance Agency of Petersburg - Alleged violation of VA Code §§ 38.2-1804, 38.2-1809 and 38.2-1813
INS-2003-00196	Peerless Title & Escrow, Inc. - Alleged violation of VA Code §§ 6.1-2.23, 6.1-2.26 and 14 VAC 5-395-30
INS-2003-00197	Richard Paul Caputo - Alleged violation of VA Code § 38.2-4806 D
INS-2003-00198	James Edward Hamerski - Alleged violation of VA Code § 38.2-4806 D
INS-2003-00199	Ronald C. Helveston - Alleged violation of VA Code § 38.2-4806 D
INS-2003-00200	Adams and Son, Inc. - Alleged violation of VA Code § 38.2-4806 D
INS-2003-00201	Near North Insurance Brokerage of Virginia, Inc. - Alleged violation of VA Code § 38.2-4806 D

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

INS-2003-00202	Derrick L. Morris - Alleged violation of VA Code § 38.2-512
INS-2003-00203	MIIX Insurance Company - Alleged violation of VA Code § 38.2-1040
INS-2003-00204	The United States Life Insurance Company in the City of New York - Alleged violation of VA Code § 38.2-3419.1 and 14 VAC 5-190-10
INS-2003-00206	First Virginia Reinsurance, Ltd. - For review of Reciprocal of America and The Reciprocal Group Deputy Receiver's Determination of Appeal
INS-2003-00208	Alpha Title & Settlement Company - Alleged violation of VA Code § 6.1-2.21
INS-2003-00210	Southside Settlements, LLC - Alleged violation of VA Code § 6.1-2.21
INS-2003-00211	Ex Parte: Refunds - In the matter of refunding overpayments of the MCHIP Fund assessment based on direct gross premium income of insurance companies for the assessable year 2001
INS-2003-00212	Ex Parte: Refunds - In the matter of refunding overpayments of the MCHIP Fund assessment based on direct gross premium income of insurance companies for the assessable year 2002
INS-2003-00213	Ex Parte: Refunds - In the matter of refunding overpayments of the premium license tax on direct gross premium income and retaliatory tax of insurance companies for the taxable year 2001
INS-2003-00214	Ex Parte: Refunds - 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 for 2001
INS-2003-00215	Ex Parte: Refunds - In the matter of refunding overpayments of the premium license tax on direct gross premium income and retaliatory tax of insurance companies for the taxable year 2002
INS-2003-00216	Ex Parte: Refunds - In the matter of refunding overpayments of the premium license tax on direct gross premium income and retaliatory tax of insurance companies for the taxable year 2002
INS-2003-00217	ACE American Insurance Co. - Alleged violation of VA Code § 38.2-1300
INS-2003-00218	ACE American Reinsurance Company - Alleged violation of VA Code § 38.2-1300
INS-2003-00219	ACE Fire Underwriters Insurance Co. - Alleged violation of VA Code § 38.2-1300
INS-2003-00220	ACE Indemnity Insurance Company - Alleged violation of VA Code § 38.2-1300
INS-2003-00221	Masami Ishii - For review of HOW Insurance Co. et al. Deputy Receiver's Determination of Appeal
INS-2003-00222	ACE Property & Casualty Insurance Company - Alleged violation of VA Code § 38.2-1300
INS-2003-00223	American General Indemnity Company - Alleged violation of VA Code § 38.2-1300
INS-2003-00224	Americas Insurance Company - Alleged violation of VA Code § 38.2-1300
INS-2003-00225	Bankers Standard Insurance Company - Alleged violation of VA Code § 38.2-1300
INS-2003-00226	Century Indemnity Company - Alleged violation of VA Code § 38.2-1300
INS-2003-00227	Civil Service Employees Insurance Company - Alleged violation of VA Code § 38.2-1300
INS-2003-00228	Indemnity Insurance Company of North America - Alleged violation of VA Code § 38.2-1300
INS-2003-00229	Insurance Company of North America - Alleged violation of VA Code § 38.2-1300
INS-2003-00230	Pacific Employers Insurance Company - Alleged violation of VA Code § 38.2-1300
INS-2003-00231	Lasonya T. Jennings - Alleged violation of VA Code §§ 38.2-1812.2 and 38.2-1822
INS-2003-00233	Jonathan L. Mills - Alleged violation of VA Code §§ 38.2-1812.2 and 38.2-1822
INS-2003-00235	Harry K. Elkins and H. Ken Elkins Insurance Agency - Alleged violation of VA Code §§ 38.2-1809 and 38.2-1813
INS-2003-00236	Netco, Inc. - Alleged violation of VA Code § 6.1-2.26 and 14 VAC 5-395-30
INS-2003-00237	All Drivers, Inc. - Alleged violation of VA Code §§ 38.2-502, 38.2-503 and 38.2-1822
INS-2003-00238	Ex Parte: Refunds - In the matter of refunding overpayments of the premium license tax on direct gross premium income and retaliatory tax of insurance companies for the taxable year 2000
INS-2003-00239	Reciprocal of America and The Reciprocal Group - For a determination whether certain workers' compensation insurance policy payments may be made to claimants formerly covered by SITs and GSIA's
INS-2003-00240	John L. Pate - Alleged violation of VA Code § 38.2-1802
INS-2003-00241	Chesapeake Appraisal and Settlement Services, Inc. - Alleged violation of VA Code §§ 6.1-2.26, et al.
INS-2003-00243	Noel S. Rose - Alleged violation of VA Code § 38.2-1826
INS-2003-00246	East Coast Abstract, Inc. - Alleged violation of VA Code § 6.1-2.23
INS-2003-00249	Caterpillar Insurance Services Corporation - Alleged violation of VA Code §§ 38.2-1812 and 38.2-1822
INS-2003-00251	Haulers Insurance Company, Inc. - Alleged violation of VA Code § 38.2-1906 D
INS-2003-00254	Ex Parte: Assessment - Assessment upon certain companies and surplus lines brokers to pay the expense of the Bureau of Insurance for the calendar year 2004
INS-2003-00255	Ex Parte: Assessment - Assessment upon certain insurers, health maintenance organizations, health services plans, and dental and optometric services plans to pay the expense of the Bureau of Insurance for the calendar year 2004
INS-2003-00261	Norma L. Kleinke - Alleged violation of VA Code §§ 38.2-512 and 38.2-1813
INS-2003-00263	Anthem, Inc. and WellPoint Health Networks Inc. - For approval of acquisition of control of or merger with a domestic insurer or health maintenance organization

PST:**DIVISION OF PUBLIC SERVICE TAXATION**

PST-2002-00045	Cable & Wireless USA of Virginia, Inc. - For review and correction of assessment of the value of property subject to local taxation-Tax Year 2002
PST-2003-00002	Community Electric Cooperative - For failure to collect and remit electric utility consumption taxes
PST-2003-00031	Nextel Communications of the Mid-Atlantic, Inc. - For abatement or exoneration of penalty
PST-2003-00032	Caroline Water Company, Inc. d/b/a Ladysmith Water Company - For failure to file an annual report for Tax Year 2003
PST-2003-00033	Shannon Forest Water Corporation - For failure to file an annual report for Tax Year 2003
PST-2003-00034	Williamsburg Court Water Company - For failure to file an annual report for Tax Year 2003
PST-2003-00035	Daleville Water Company - For failure to file an annual report for Tax Year 2003

PUC:**DIVISION OF COMMUNICATIONS**

PUC-2002-00102	American Fiber Network of Virginia, Inc. - For an extension of time to submit audited financial statements
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ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- PUC-2002-00221 Verizon Virginia Inc. and Cox Virginia Telcom Inc. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2002-00226 Central Telephone Company of Virginia and Maxcess of Virginia, Inc. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2002-00227 Central Telephone Company of Virginia, United Telephone-Southeast Inc. and MountaiNet Telephone Company- For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2002-00228 Yipes Enterprise Services, Inc. and Yipes Transmission, Inc. - For approval of transfer of control
- PUC-2002-00235 Teler Communications of Virginia, Inc. - For cancellation of certificates to provide local exchange and interexchange telecommunications services
- PUC-2003-00002 Concert Communications Sales of Virginia LLC - To cancel existing certificates and issue certificates reflecting new name
- PUC-2003-00003 France Telecom Corporate Solutions, L.L.C. - For a certificate to provide local exchange telecommunications services
- PUC-2003-00006 AT&T Broadband Phone of Virginia, Inc. - To cancel existing certificates to provide local exchange and interexchange telecommunications services and to reissue certificates reflecting the corporate name change
- PUC-2003-00008 Stickdog Telecom, Inc. - Regarding Notification of Disconnection from Verizon Virginia Inc.
- PUC-2003-00009 Alticom of Virginia, Inc. - For a certificate to provide local exchange telecommunications services
- PUC-2003-00010 Global NAPs South, Inc. - For approval of an interconnection agreement with Verizon Virginia Inc. under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00011 Central Telephone Company of Virginia, United Telephone-Southeast, Inc. and Teleconex of Virginia, Inc. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00012 Pembroke Telephone Cooperative and Cellco Partnership d/b/a Verizon Wireless - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00013 Yipes Transmission Virginia, Inc. - To cancel existing certificates and reissue certificates reflecting new name
- PUC-2003-00015 Verizon Virginia Inc. - To withdraw its request for exemption from physical collocation at its Madison, Remington, and the Crossings central offices
- PUC-2003-00016 Verizon Virginia Inc. - To withdraw its request for exemption from physical collocation at Lewinsville and Sterling Park central offices
- PUC-2003-00017 FeroNetworks, Inc. - For a certificate to provide local exchange telecommunications services
- PUC-2003-00019 Metro Teleconnect, Inc. - For injunction against Verizon Virginia Inc. and other Relief and Request for Emergency Expedited Relief
- PUC-2003-00020 Eureka Telecom, LLC - For certificates to provide local exchange and interexchange telecommunications services
- PUC-2003-00021 United Telephone-Southeast, Inc., Central Telephone Co. of Virginia and NOW Communications, Inc. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00022 United Telephone-Southeast, Inc., Central Telephone Company of Virginia and Citizens Communications Corporation - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00023 United Telephone-Southeast, Inc., Central Telephone Company of Virginia and East Tennessee Network, LLC - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00024 Central Telephone Company of Virginia, United Telephone-Southeast, Inc. and East Tennessee Network, LLC - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00026 Level 3 Communications of Virginia, Inc. - For certificates to provide local exchange and interexchange telecommunications services
- PUC-2003-00027 NTELOS Telephone, Inc., Roanoke & Botetourt Telephone Company, NTELOS Telephone LLC and R&B Telephone LLC - For approval of certain transactions pursuant to Chapter 4 of Title 56 of the Code of Virginia
- PUC-2003-00028 KDL of Virginia, Inc. - For certificates to provide local exchange and interexchange telecommunications services
- PUC-2003-00030 XO Long Distance Services (Virginia), LLC - For cancellation of certificate
- PUC-2003-00032 Central Telephone Company of Virginia, United Telephone-Southeast, Inc. and Citizens Communications Corporation - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00033 Verizon Virginia Inc. - To withdraw its request for exemption from physical collocation at its Bethia central office
- PUC-2003-00034 Metro Teleconnect, Inc. and Verizon Virginia Inc. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00035 PPL Prism, LLC - For a certificate to provide interexchange telecommunications services and for interim operating authority
- PUC-2003-00036 Ex Parte: Investigation - Investigation of revision to Verizon Virginia Inc.'s Network Service Interconnection Tariff S.C.C. Va.-No. 218
- PUC-2003-00038 NTELOS, Inc., NTELOS Telephone Company & Roanoke & Botetourt Telephone Company - For authority to guarantee obligations and execute security agreements
- PUC-2003-00039 Verizon Select Services of Virginia, Inc. - For a certificate to provide local exchange telecommunications services
- PUC-2003-00040 United Telephone-Southeast, Inc. and Central Telephone Company of Virginia - For approval of modification to the Companies' Alternative Regulatory Plan
- PUC-2003-00042 Cable & Wireless of Virginia, Inc. - To cancel existing certificates to provide local exchange and interexchange telecommunications services and to reissue certificates reflecting the corporate name change
- PUC-2003-00043 Focal Communications Corporation of Virginia - For approval to discontinue local exchange and interexchange telecommunications services
- PUC-2003-00045 Broadwing Communications Services of Virginia, Inc., C III Communications, LLC and C III Communications Operations, LLC - For approval to transfer assets and customers
- PUC-2003-00046 C III Communications Operations, LLC - For a certificate to provide interexchange telecommunications services
- PUC-2003-00047 United Telephone-Southeast, Inc., Central Telephone Company of Virginia and The City of Bristol d/b/a Bristol Virginia Utilities Board - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00048 NTELOS Inc., NTELOS Telephone, Inc., Roanoke & Botetourt Telephone Co., NTELOS Telephone, LLC, R&B Telephone, LLC and Virginia Independent Telephone Alliance, L.C. - For authority to continue arrangements under Chapter 4 of Title 56 of the Code of Virginia
- PUC-2003-00049 Essex Telecommunications of Virginia, Inc - For cancellation of certificate
- PUC-2003-00050 United Telephone-Southeast, Inc., Central Telephone Company of Virginia and US LEC of Virginia, L.L.C. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00051 KMC Telecom V, Inc., KMC Data Holdco, LLC and KMC Data Sub Holdings I LLC - For authority to transfer control of KMC Telecom V, Inc., from KMC Data Holdco, LLC, to KMC Data Sub Holdings I LLC

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- PUC-2003-00052 KMC Data, LLC, KMC Data Holdco, LLC and KMC Data Sub Holdings IV LLC - For authority to transfer control of KMC Data, LLC, from KMC Data Holdco, LLC, to KMC Data Sub Holdings IV LLC
- PUC-2003-00053 B. J., Inc. - Alleged violation of VA Code §§ 56-508.15, 56-508.16 and 20 VAC 5-407-40
- PUC-2003-00056 Frank J. Perry t/a Perri-Air Equipment Co. - Alleged violation of VA Code §§ 56-508.15, 56-508.16 and 20 VAC 5-407-40
- PUC-2003-00057 Desmond Augustine t/a D & E Payphones - Alleged violation of VA Code §§ 56-508.15, 56-508.16 and 20 VAC 5-407-40
- PUC-2003-00058 Janice L. Farrell t/a BJD Telecom, Inc. - Alleged violation of VA Code §§ 56-508.15, 56-508.16 and 20 VAC 5-407-40
- PUC-2003-00059 James B. Jaundoo t/a Payphone Solutions - Alleged violation of VA Code §§ 56-508.15, 56-508.16 and 20 VAC 5-407-40
- PUC-2003-00060 Metrophone Telecommunications, Inc. - Alleged violation of VA Code §§ 56-508.15, 56-508.16 and 20 VAC 5-407-40
- PUC-2003-00062 Meridian Interactive Communications, Inc. - Alleged violation of VA Code §§ 56-508.15, 56-508.16 and 20 VAC 5-407-40
- PUC-2003-00063 Enron Broadband Services of Virginia, Inc. - For cancellation of certificates
- PUC-2003-00064 AES Communications, L.L.C. - For cancellation of certificates to provide local exchange and interexchange telecommunications services
- PUC-2003-00065 The City of Staunton - For approval of authority to provide qualifying communications services pursuant to Article 5.1 to Title 56 of the Code of Virginia
- PUC-2003-00066 United Telephone-Southeast Inc., Central Telephone Company of Virginia and Virginia Global Communications Systems, Inc. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00067 Disputanta Exchange Customers - For Extended Local Service from Verizon South Inc.'s Disputanta Exchange to Verizon Virginia Inc.'s Dinwiddie Exchange
- PUC-2003-00069 The City of Salem - For a certificate to provide local exchange telecommunications services
- PUC-2003-00070 Verizon Virginia Inc. and Access Point of Virginia, Inc. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00072 Verizon South Inc. and Bullseye Telecom of Virginia, LLC - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00073 Verizon Virginia Inc. & Bullseye Telecom of Virginia, LLC - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00074 United Telephone-Southeast, Inc., Central Telephone Company of Virginia and Alticom of Virginia, Inc. - For approval of a master resale agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00075 Universal Access, Inc. and CityNet Telecommunications, Inc. - For authority for transfer of control
- PUC-2003-00077 NTELOS Inc., Debtor in Possession, NTELOS Telephone, Inc., Roanoke & Botetourt Telephone Co. and other affiliates - For approval of amendments to credit agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia
- PUC-2003-00078 Verizon South Inc. and CAT Communications International, Inc. d/b/a CCI - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00079 Verizon Virginia Inc. and CAT Communications International, Inc. d/b/a CCI - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00080 Verizon Virginia Inc. and NOW Communications of Virginia, Inc. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00081 Verizon Virginia Inc. and VIC-RMTS-DC, L.L.C. d/b/a Verizon Avenue - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00082 Cox Virginia Telcom, Inc. - For approval of an interconnection agreement with Verizon South Inc. under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00084 Verizon Virginia Inc. and DSLnet Communications VA, Inc. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00085 Verizon Virginia Inc. and LightWave Communications, LLC - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00086 Verizon South Inc. and Global Telecom Brokers of Virginia, Inc. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00087 NTELOS Telephone, Inc., Roanoke & Botetourt Telephone Co., MGW Telephone Co., Pembroke Telephone Cooperative and Highland Telephone Cooperative v. BARC Electric Cooperative., Shenandoah Valley Electric Cooperative and Craig-Botetourt Electric Cooperative - For application of §§ 56-41.1 and 56-466.1 of the Virginia Code to the pole attachment rates of BARC Electric Cooperative, Shenandoah Valley Electric Cooperative, and Craig-Botetourt Electric Cooperative
- PUC-2003-00088 Verizon Virginia Inc. and New Century Telcom, Inc. d/b/a CLM Telcom - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00089 Verizon South Inc. and New Century Telcom, Inc. d/b/a CLM Telcom - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00090 TeleCents of Virginia, Inc. - To cancel certificates to provide local telecommunications services
- PUC-2003-00091 AT&T Communications of Virginia, LLC - For reductions in the intrastate carrier access rates of Verizon Virginia Inc. and Verizon South Inc.
- PUC-2003-00092 Qwest Communications Corporation of Virginia and Qwest Interprise America, Inc. of Virginia - To Discontinue Certain Telecommunications Services in Virginia
- PUC-2003-00094 Global Crossing Ltd. and GC Acquisition Limited - For approval of the transfer of control of Global Crossing Ltd.'s Virginia Operating Subsidiaries to GC Acquisition Limited
- PUC-2003-00095 PPL Telcom, LLC - For a certificate to provide interexchange telecommunications services
- PUC-2003-00097 OneStar Communications, LLC - For an Order Directing Verizon Virginia Inc. to Cease and Desist from Disconnecting Service
- PUC-2003-00098 City of Bristol d/b/a Bristol Virginia Utilities Board - To cancel existing certificates and issue certificates reflecting new name
- PUC-2003-00099 MFN of VA L.L.C. and Metromedia Fiber Network, Inc. - For approval of transfer of control pursuant to Chapter 5 of Title 56 of the Code of Virginia
- PUC-2003-00100 NTELOS Inc., Debtor in Possession, a Virginia corporation, NTELOS Telephone Inc., Roanoke & Botetourt Telephone Co., NTELOS Subsidiaries, Capital Research and Management Co. and Morgan Stanley & Co. Incorporated -For authority under Chapters 3, 4 and 5 of Title 56 of the Code of Virginia
- PUC-2003-00101 United Telephone-Southeast, Inc., Central Telephone Company of Virginia and MetTel of VA, Inc. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
- PUC-2003-00102 The City of Manassas - For a certificate to provide local telecommunications services

PUC-2003-00103 Ex Parte: Rules - In the matter of establishing rules governing the provision of enhanced 911 services by local exchange carriers
 PUC-2003-00104 Mountain Communications of Virginia, LLC - For a certificate to provide local exchange telecommunications services
 PUC-2003-00105 NTELOS Telephone Inc. - For approval to enter into an amended affiliates agreement
 PUC-2003-00106 Roanoke & Botetourt Telephone Inc.- For approval to enter into an amended affiliates agreement
 PUC-2003-00107 United Telephone-Southeast, Inc. , Central Telephone Company of Virginia, Inc. and GCR Telecommunications, Inc. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
 PUC-2003-00108 Mountain Communications of Virginia, LLC - For cancellation of certificates
 PUC-2003-00109 Sunesys of Virginia, Inc. - For approval of transfer of control
 PUC-2003-00110 Ex Parte: Rules - Establishment of Rules for Service Quality Standards for the Provision of Local Exchange Telecommunications Service
 PUC-2003-00112 Verizon Advanced Data-Virginia Inc. and Verizon Virginia Inc. - For approval for Verizon Advanced Data-Virginia Inc. to transfer its remaining assets to Verizon Virginia Inc.
 PUC-2003-00113 Network Access Solutions Corporation, LLC - For cancellation of certificates to provide local exchange and interexchange telecommunications services in Virginia
 PUC-2003-00115 Economic Computer Systems, Inc. - For extension of time to file audited financial statements
 PUC-2003-00116 Verizon South Inc. and Cypress Communications Holding Company of Virginia, Inc. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
 PUC-2003-00117 Quantrex Communications Inc. - For cancellation of certificates to provide local exchange telecommunications services in Virginia
 PUC-2003-00118 Ex Parte: Rules - In the matter of establishing rules necessary to implement Article 5.1 to Title 56 of the Code of Virginia
 PUC-2003-00119 C III Communications Operations, LLC - To cancel existing certificates and reissue certificates reflecting new name
 PUC-2003-00120 Verizon South Inc. - To withdraw its request for exemption from physical collocation at its Dulles central office
 PUC-2003-00121 United Telephone-Southeast, Inc., Central Telephone Company of Virginia and TCG Virginia, Inc. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
 PUC-2003-00122 United Telephone-Southeast, Inc., Central Telephone Company of Virginia and AT&T Communications of Virginia, LLC - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
 PUC-2003-00123 United Telephone-Southeast, Inc., Central Telephone Company of Virginia and Business Telecom of Virginia, Inc. d/b/a BTI - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
 PUC-2003-00124 Verizon Virginia Inc. and OpenBand of Virginia, LLC - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
 PUC-2003-00125 Verizon Virginia Inc. and Premiere Network Services of Virginia, Inc.- For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
 PUC-2003-00126 Verizon Virginia, Inc. and Mountain Communications of Virginia, LLC d/b/a Procom.- For approval of interconnection agreement under § 252(e) of the Telecommunications Act of 1996
 PUC-2003-00127 Verizon South Inc. and Mountain Communications of Virginia LLC d/b/a Procom - For approval of an interconnection agreement
 PUC-2003-00128 Verizon South Inc. & OpenBand of Virginia, LLC - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
 PUC-2003-00129 Verizon Virginia Inc. and Amerivision Communications, Inc. d/b/a Lifeline Communications - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
 PUC-2003-00130 CTC Communications of Virginia, Inc. and Columbia Ventures Broadband LLC - For authority to transfer control
 PUC-2003-00131 DSLnet Communications VA, Inc. - For authority for minority transfer of control
 PUC-2003-00135 Verizon Virginia Inc. and Cypress Communications Holding Company of Virginia, Inc. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
 PUC-2003-00136 Verizon South Inc. and Economic Computer Systems, Inc. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
 PUC-2003-00137 Verizon Virginia Inc. and Economic Computer Systems, Inc. d/b/a Mid-Atlantic Broadband - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
 PUC-2003-00138 Verizon Virginia Inc. and TalkingNets Holdings, LLC. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
 PUC-2003-00139 PNG Telecommunications of Virginia, LLC - For a certificate to provide local exchange and interexchange telecommunications services
 PUC-2003-00142 Verizon Advanced Data - Virginia Inc. - For cancellation of certificates to provide local exchange and interexchange telecommunications services in Virginia
 PUC-2003-00143 MetEther Communications of Virginia, Inc. - For cancellation of certificates to provide local exchange and interexchange telecommunications services in Virginia
 PUC-2003-00144 Central Telephone Company of Virginia, United Telephone-Southeast, Inc. and Cingular Wireless, L.L.C. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
 PUC-2003-00145 Virginia Global Communications Systems, Inc. - For suspension of requirement to file a continuous performance or surety bond
 PUC-2003-00146 MFN of VA, L.L.C. - To cancel existing certificates to provide local exchange and interexchange telecommunications services and to reissue certificates reflecting the corporate name change
 PUC-2003-00147 United Telephone-Southeast, Inc., Central Telephone Company of Virginia and Metro Teleconnect, Inc. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
 PUC-2003-00148 Prism Virginia Operations, LLC - For cancellation of certificates to provide local exchange and interexchange telecommunications services
 PUC-2003-00149 U S West Interprise America of Virginia, Inc. - To cancel existing certificates and reissue certificates reflecting new name
 PUC-2003-00150 Broadwing Communications Services of Virginia, Inc. - For cancellation of its certificate to provide interexchange telecommunications services in Virginia
 PUC-2003-00152 Xspedius Management Co. of Virginia, LLC - To substitute continuous performance or surety bond
 PUC-2003-00153 Baltimore-Washington Telephone Company - For a certificate to provide local exchange telecommunications services
 PUC-2003-00154 BroadRiver Communications Corporation - For cancellation of a certificate to provide local exchange telecommunications services
 PUC-2003-00155 EZ Talk Communications, LLC and M & T Capital Group, L.L.C. - For approval of transfer of control
 PUC-2003-00156 Potomac Fiber, LLC, Formerly Known as Potomac Broadband, LLC - For certificates to provide local exchange and interexchange telecommunications services

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

PUC-2003-00157	Jones Telecommunications of Virginia, Inc. - To cancel existing certificate to provide local exchange telecommunications services and to reissue certificate reflecting the corporate name change
PUC-2003-00158	InSITE Fiber of Virginia, Inc. - For a certificate to provide interexchange telecommunications services
PUC-2003-00159	Dominion Resources, Inc., DFV Capital Corporation, DT Services, Inc. and Blue Ridge Telecom Trust – For approval to transfer membership interest
PUC-2003-00160	WillTel Communications of Virginia, Inc. - For approval of transfers of control
PUC-2003-00162	Central Telephone Company of Virginia, United Telephone - Southeast, Inc. and American Fiber Network of Virginia, Inc.- For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
PUC-2003-00163	Verizon South Inc. and VF Communications, Inc. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
PUC-2003-00164	Verizon Virginia Inc. and VF Communications, Inc. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
PUC-2003-00165	NTELOS Inc., NTELOS Telephone Inc. and NTELOS Communications Inc. - For authority to transfer common stock ownership and control
PUC-2003-00167	Cox Virginia Telcom, Inc. - For designation as an eligible telecommunications provider under 47 U.S.C. 214(e)(2)
PUC-2003-00169	Progress Telecom Virginia, LLC, Progress Telecom, LLC, Progress Telecommunications Corp., Caronet, Inc., EPIK Communications, Inc. and Odyssey Telecorp, Inc. - For approval of transfer of control of Progress Telecom Virginia, LLC to Odyssey Telecorp., Inc.
PUC-2003-00170	Verizon Virginia Inc. and Verizon South Inc. - For authority to cease providing unbundled switching in certain markets and unbundled dedicated transport on certain routes as unbundled network elements under 47 U.S.C. § 251(c)(3)
PUC-2003-00171	Ex Parte: Rules - In the matter of revising rules governing the filing of interconnection agreements
PUC-2003-00172	Central Telephone Co. of Virginia, United Telephone-Southeast, Inc., and Ernest Communications of Virginia, Inc. - For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996
PUC-2003-00173	Global Communications Integrators L.L.C . - For certificates to provide local exchange and interexchange telephone services
PUC-2003-00174	Citynet Virginia, LLC - For certificates provide local exchange interexchange telecommunications services
PUC-2003-00175	Amelia Telephone Corp., New Castle Telephone Co., Virginia Telephone Co., Telephone and Data Systems, Inc. and TDS Telecommunications Corp. - For approval of Master Affiliate Transaction Agreement pursuant to the Affiliates Act
PUC-2003-00178	United Telephone-Southeast, Inc., Central Telephone Company of Virginia and ACC Telecommunications of Virginia, LLC - For approval of a Master Interconnection and Resale Agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2003-00179	OneStar Communications, LLC - For approval to discontinue local exchange telecommunications services in Virginia and cancel certificate
PUC-2003-00183	WorldCom, Inc., MCIMetro Access Transmission Services of Virginia, Inc., Institutional Communications Company-Virginia, MCI WorldCom Communications of Virginia, Inc., Intermedia Communications of Virginia, Inc. and Virginia Metrotel, Inc. - For approval of transfer of control and cancellation of certificate
PUC-2003-00184	Adelphia Business Solutions of Virginia, LLC d/b/ TelCove - For approval of transfer of control

PUE:**DIVISION OF ENERGY REGULATION**

PUE-2001-00564	A.M.B. Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2002-00183	Pipeline Structures, Inc. - Alleged violation of VA Code § 56-265.24 D
PUE-2002-00188	E. H. Ives Corporation - Alleged violation of VA Code § 56-265.24 A
PUE-2002-00189	Judy Construction - Alleged violation of VA Code § 56-265.24 A
PUE-2002-00190	Kingery Bros, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2002-00194	Bell Bros., Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2002-00196	D. A. Foster Company - Alleged violation of VA Code § 56-265.24 A
PUE-2002-00199	Kalvin Ennis, Individually t/a Calvin Ennis Masonry, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2002-00203	Lawrence N. Brandt, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2002-00204	G. L. Pruett, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2002-00207	Garrett Johnson, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2002-00212	McLean Irrigation, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2002-00214	R C B General Contracting - Alleged violation of VA Code § 56-265.17 A
PUE-2002-00217	Superior Paving Corporation - Alleged violation of VA Code § 56-265.17 A
PUE-2002-00218	United Construction - Alleged violation of VA Code § 56-265.24 A
PUE-2002-00219	Premier Communications, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2002-00223	Virginia Natural Gas, Inc. - Alleged violation of VA Code § 56-265.19 A
PUE-2002-00245	Virginia-American Water Company, Inc. – Annual Information Filing for Calendar Year 2001
PUE-2002-00254	Costello Construction of Maryland, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2002-00257	Golden Eagle Construction Company, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2002-00261	LOBO Construction Company - Alleged violation of VA Code § 56-265.17 A
PUE-2002-00266	Atlantic Cable Service, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2002-00267	C. Lewis Waltrip, II, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2002-00271	Fanton Masonry - Alleged Violation of VA Code § 56-265.17 A
PUE-2002-00273	Innerview, Ltd. - Alleged violation of VA Code § 56-265.24 A
PUE-2002-00276	PSP Inc., D/B/A Pete Sullivan's Plumbing - Alleged violation of VA Code § 56-265.17 D
PUE-2002-00279	Tri-State Utilities Co. - Alleged violation of VA Code § 56-265.24 A
PUE-2002-00289	Mountain, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2002-00291	R. B. Hinkle Construction, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2002-00324	Virginia Underground Utility Protection Service, Inc. - Alleged violation of VA Code § 56-265.22 A
PUE-2002-00327	C. Lewis Waltrip, II, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2002-00330	G. C. R., Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2002-00344	Logos, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2002-00352	Kip's Erosion Control - Alleged violation of VA Code § 56-265.17 A
PUE-2002-00358	Warren & Associates, Incorporated - Alleged violation of VA Code § 56-265.17 A

PUE-2002-00365 Rockingham Construction Company, Inc. - Alleged violation of VA Code §§ 56-265.24 A, et al.
 PUE-2002-00370 Virginia Underground Utility Protection Service, Inc. - Alleged violation of VA Code §§ 56-265.15 A, et al.
 PUE-2002-00386 B & B Backhoe & Loader Service - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00387 Capital Plumbing, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00391 Lakeside Concrete, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00397 Teknicom Telecommunications - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00403 Mastec North America, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00414 Columbia Gas of Virginia, Inc. - Alleged violation of VA Code §§ 56-5.1, et al.
 PUE-2002-00428 A & M Concrete Corp. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00432 Contracting Enterprises, Inc. - Alleged violation of VA Code § 56-265.18
 PUE-2002-00438 Jack St. Clair, Inc. - Alleged violation of VA Code § 56-265.24 B
 PUE-2002-00440 Nationwide Homes, Incorporated - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00445 Mastec North America, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00446 Monarch Electric, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00448 Seaview Construction Company, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00451 Central Locating Service, Ltd. - Alleged violations of VA Code § 56-265.19 A
 PUE-2002-00464 Northern Virginia Utility Protection Service, Inc. - Alleged violation of Rule 20 VAC 5-300-90 C 6
 PUE-2002-00469 Mallory Electric Co. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00470 Owens Mobile Homes Transporting, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00471 R. S. M. Contracting - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00472 Strawderman & Son General Contractor - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00487 Rockingham Construction Co., Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00495 Central Locating Service, Ltd. (CLS) - Alleged violation of VA Code §§ 56-265.19 A, et al.
 PUE-2002-00497 Promark Utility Locators, Inc. - Alleged violation of VA Code §§ 56-265.19 A, et al.
 PUE-2002-00507 Orkin Pest Control - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00511 Richardson Enterprises, LLC - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00532 Rockingham Construction Co., Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00533 Seal-Tite Basement Waterproofing Co. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00534 Smithfield Lawn Services, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00535 Topping Contracting, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00537 Atlas Plumbing & Mechanical, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00542 Michael Scruggs - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00543 Newport Concrete, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00545 Olney Masonry Corporation - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00547 PrimeNet, Inc. - Alleged violation of VA Code § 56-265.17 C
 PUE-2002-00551 Counts & Dobyns, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00556 Osborne Irrigation, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00558 Ralph Rice Logging and Tree Work - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00559 Renaissance Gardens, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00562 Wilkins & Associates, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00566 Central Locating Service, Ltd. - Alleged violation of VA Code §§ 56-265.19 A and D, et al.
 PUE-2002-00567 Utiliquest, LLC - Alleged violation of VA Code §§ 56-265.19 A, et al.
 PUE-2002-00568 Washington Gas Light Company - Alleged violation of VA Code § 56-265.19 A
 PUE-2002-00577 Atkins Excavating, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00579 Byler Plumbing and Heating Company, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00580 Charles Jennings - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00582 Finley Asphalt & Sealing - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00583 Hart Irrigation Corporation - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00584 Hazelwood F L P and H - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00585 J. B. Strong Plumbing & Heating, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00586 J. G. Findlay, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00587 Kellam-Gerwitz Engineering, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00588 Maughan Construction Co., Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00589 Raymond C. Hawkins Construction Co., Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00590 Roche Bros., Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00591 Roger's Trucking, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00592 S. W. Rodgers Company, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00593 Silva Construction - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00594 Terminix International, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00596 Waterworks of Roanoke, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00597 A & W Contractors, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00598 Asphalt Roads & Materials Co., Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00599 Assured Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00600 C. A. Barrs Contractor, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00601 Cat-Track Excavating, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00602 DAC Underground - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00603 E. H. Ives Corporation - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00604 East Coast Custom Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00605 Hurricane Fence Co. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00608 Mike's Homes, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00609 Peninsula Feed & Seed - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00610 Suburban Grading & Utilities, Inc. - Alleged violation of VA Code § 56-265.24 A

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

PUE-2002-00611 Wolf Contractors, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00612 Absolute Plumbing, L.L.C. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00613 Breeden Mechanical, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00615 C. J. Fisher & Sons, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00616 Contracting Enterprises, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00617 Cooper & Claiborne Construction, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00618 Four Points Excavating, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00619 Hall Mechanical & Associates, Inc. - Alleged violation of VA Code § 56-265.17 C
 PUE-2002-00620 Hamel Construction, Inc. - Alleged violation of VA Code § 56-265.24 D
 PUE-2002-00621 Highgrove, L.C. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00622 Jagger Construction - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00623 Lakeside Concrete, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00624 National Cable Construction, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00625 RayFlor Concrete & General Contracting - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00626 The Berg Corporation - Alleged violation of VA Code § 56-265.17 C
 PUE-2002-00627 Waddell Construction Company, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00628 WCC Cable, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00629 William B. Hopke Co., Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00630 William Morrison Excavating - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00631 Aquasure, Inc. - Alleged violation of VA Code § 56-265.24 D
 PUE-2002-00632 Smith and Keene Electrical Service, Incorporated - Alleged violation of VA Code §§ 56-265.17 D, et al.
 PUE-2002-00633 Virginia Natural Gas, Inc. - Alleged violation of VA Code § 56-265.19 A
 PUE-2002-00634 Virginia Electric and Power Company - Alleged violation of VA Code §§ 56-265.24 A and 56-265.24
 PUE-2002-00635 Atlas Plumbing & Mechanical, Inc. - Alleged violation of VA Code §§ 56-265.17 D, et al.
 PUE-2002-00636 Henry S. Branscome, Inc. - Alleged violation of VA Code § 56-265.24 B
 PUE-2002-00637 William A. Hazel, Inc. - Alleged violation of VA Code §§ 56-265.17, et al.
 PUE-2002-00638 Washington Gas Light Company - Alleged violation of VA Code § 56-265.19 A
 PUE-2002-00639 Columbia Gas of Virginia, Inc. - Alleged violation of VA Code § 56-265.19 A
 PUE-2002-00640 D & F Construction, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00641 Central Locating Service, Ltd. - Alleged violation of VA Code § 56-265.19 A
 PUE-2002-00642 Utiliquist, LLC - Alleged violation of VA Code §§ 56-265.19 A, et al.
 PUE-2002-00656 Virginia Underground Utility Protection Service, Inc. - Alleged violation of VA Code §§ 56-265.22 A, et al.
 PUE-2002-00657 W. C. Spratt, Incorporated - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00658 Northern Virginia Utility Protection Service, Inc. - Alleged violation of VA Code §§ 56-265.16:1 E, et al.
 PUE-2002-00659 JSI Paving & Construction - Alleged violation of VA Code §§ 56-265.24 A, et al.
 PUE-2002-00660 Craig Construction Company - Alleged violation of VA Code §§ 56-265.24 A, et al.
 PUE-2002-00662 Anchor Construction Company, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00663 Bay Area Irrigation Company - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00664 Cooper & Claiborne Construction, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00665 K & S Cable, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00666 Leo Construction Company - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00668 Pine Knoll Construction Co. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00669 Southern Construction Company, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00670 A & A Builders - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00671 Brownmoore, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00672 A & W Contracting Corporation - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00673 C M Payne Hauling - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00674 Clark Realty Builders - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00675 Crowell Brothers Construction Co., Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00676 Granja Contracting, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00677 Promark Utility Locators, Inc. - Alleged violation of VA Code § 56-265.19 A
 PUE-2002-00678 Rockingham Construction Co., Inc. - Alleged violation of VA Code § 56-265.17 D
 PUE-2002-00679 Murphy Concrete, LLC - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00680 Appalachian Power Company - For authority to issue long-term debt
 PUE-2002-00681 Verizon Virginia, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00682 C. E. Henderson, Jr., Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00683 E. V. Williams, Inc. - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00684 Encompass Electrical Technologies - Alleged violation of VA Code § 56-265.24 A
 PUE-2002-00686 James River Nurseries, Inc. - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00687 Mastec North America, Inc. - Alleged violation of VA Code § 56-265.24 B
 PUE-2002-00688 R. A. Construction Company - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00689 Virginia Natural Gas, Inc. - Alleged violation of VA Code § 56-265.19 A
 PUE-2002-00690 Washington Gas Light Company - Alleged violation of VA Code § 56-265.19 A
 PUE-2002-00691 Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A
 PUE-2002-00692 D. L. B., Inc. - Alleged violation of VA Code § 56-265.17
 PUE-2002-00693 D. A. Foster Company - Alleged violation of VA Code §§ 56-265.17 D, et al.
 PUE-2002-00694 Branscome, Inc. - Alleged violation of VA Code §§ 56-265.24 B, et al.
 PUE-2002-00695 B & J Fencing - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00696 Central Locating Service, Ltd. - Alleged violation of VA Code §§ 56-265.19 A, et al.
 PUE-2002-00697 Utiliquist, LLC - Alleged violation of VA Code §§ 56-265.19 A, et al.
 PUE-2002-00698 Carlos M. Rodriguez - Alleged violation of VA Code § 56-265.17 A
 PUE-2002-00699 Virginia Gas Storage Company - For an Annual Information Filing

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

PUE-2002-00700 Virginia Gas Distribution Company - For an Annual Informational Filing
PUE-2002-00701 Virginia Gas Pipeline Company - 2002 Annual Informational Filing
PUE-2002-00702 Virginia Electric and Power Company d/b/a Dominion Virginia Power - For a certificate for facilities in Loudoun County: Brambleton-Greenway 230 kV Transmission Line
PUE-2003-00001 Prince George Sewerage & Water Co., Bexley LLC, Prince George Wastewater, LLC, Bexley Properties, LLC and Park Holdings Group, LLC - For authorization to transfer utility assets pursuant to the Utility Transfer Act
PUE-2003-00002 The Potomac Edison Company d/b/a Allegheny Power - Annual Informational Filing for Calendar Year 2002
PUE-2003-00003 Virginia Electric & Power Company d/b/a Dominion Virginia Power and Southside Electric Cooperative - For revision of certificates under the Utility Facilities Act
PUE-2003-00004 Virginia Natural Gas, Inc. - For an Annual Informational Filing
PUE-2003-00005 Virginia Electric & Power Company and Dominion Resources, Inc. - For exemption from filing and prior approval requirements of Chapter 4 of Title 56 or, in the alternative, approval of a parent company guaranty, and for expedited consideration
PUE-2003-00006 Metromedia Energy, Inc. - Regarding Washington Gas Light Company's Plan to Return Customers to Sales Service Effective February 1, 2003
PUE-2003-00007 Community Electric Cooperative - For approval of retail access tariffs and terms and conditions of service for retail access
PUE-2003-00008 Roanoke Gas Company - For a general increase in rates and to revise its tariff
PUE-2003-00009 Atmos Energy Corporation - For an Annual Informational Filing
PUE-2003-00010 Emcon/OWT, Inc. - Alleged violation of VA Code § 56-265.17 B 2
PUE-2003-00011 A-Annandale PHC, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00012 Blue Ridge Paving, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00013 Breeden Mechanical, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00014 Broadband Technologies, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00016 E. E. Lyons Const. Co., Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00017 Espina Stone Company - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00018 F. D. Neal Construction Co., Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00019 G. B. Foltz Contracting, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00020 James DeHaven Masonry - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00021 K & J Cable, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00022 Leo Construction Company - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00023 Massey Construction - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00024 Modern Concrete Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00025 Power Design, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00026 Raymond Wyatt - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00027 VA Cable, LLC - Alleged violation of VA Code § 56-265.17 B
PUE-2003-00028 C. M. P. Restoration Corporation - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00029 Dwight Snead Landscaping & Paving Co. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00030 Fox-Seko Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00031 Garcia Cable Company - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00032 Getebe, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00033 GHA, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00034 John Sanborn Contracting - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00035 J.S.C. Concrete Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00036 Laura Lee Scott Surveys, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00037 Ram Development Corporation - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00038 Seneca Excavation & Landscaping, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00039 V & E Construction - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00040 Wind River Environmental - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00041 Alejandro Sanchez - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00042 C W Contracting - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00043 E&P Electrical Contracting Company, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00044 Eddie Metzger Plumbing & Drain Company, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00045 Henderson, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00046 K & S Cable, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00047 L C J Enterprises, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00048 Partners Excavating Co. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00049 W. H. McCutcheon Plumbing and Contracting, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00050 Pike Electric, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00051 Maust Enterprises of Virginia - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00052 Mastec North America, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00053 Columbia Gas of Virginia, Inc. - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00054 Cooper & Claiborne Construction, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00055 Virginia Electric & Power Company - Alleged violation of VA Code §§ 56-265.24 A and B
PUE-2003-00056 Virginia Natural Gas, Inc. - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00057 Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00058 Central Locating Service, Ltd. - Alleged violation of VA Code §§ 56-265.19 A, et al.
PUE-2003-00059 Washington Gas Light Company - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00060 Utiliquest, LLC - Alleged violation of VA Code §§ 56-265.19 A, et al.
PUE-2003-00061 United American, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00062 Ex Parte: Recommendations - In the Matter of Developing Consensus Recommendations on Stranded Costs
PUE-2003-00063 Washington Gas Light Company - For an exemption under VA Code § 56-77 B from the filing and prior approval requirements of the Affiliates Act for certain construction contracts with an affiliate

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

PUE-2003-00064	Virginia Electric and Power Company d/b/a Dominion Virginia Power - For a certificate for facilities in the City of Chesapeake: Virginia portion of Fentress-Shawboro 230 kV Transmission Line
PUE-2003-00065	Kentucky Utilities Company d/b/a Old Dominion Power Company - For authority to issue securities under Chapter 3 of Title 56 of Code of Virginia and to engage in an affiliate transaction under Chapter 4 of Title 56 of the Code of Virginia
PUE-2003-00066	Rappahannock Electric Cooperative - For authority to issue long-term debt
PUE-2003-00067	The Potomac Edison Co. d/b/a Allegheny Power - For authority to enter into a tax allocation agreement among affiliates
PUE-2003-00068	Abba Construction, Incorporated - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00069	Armstrong Electric Co., Inc. - Alleged violation of VA Code § 56-265.17 D
PUE-2003-00070	Cable Communications and Engineering, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00071	Champion Fence - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00072	David F. Lucas Electrical Contractor, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00073	Eavers Brothers Excavating, Incorporated - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00074	G. B. Harris Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00075	Holladay Construction Co., Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00076	Mid-Atlantic Utilities, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00077	Penn Line Service, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00079	Scott's Handyman Service - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00080	Southern Cable Construction - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00081	A and L Construction, Incorporated - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00082	A & M Concrete Corp. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00083	Arlington Designer Homes, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00084	CPH Utilities, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00085	Four Points Excavating, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00086	H & S Construction Company - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00087	Hardaway Construction - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00088	Ideal Construction Services, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00089	Innerview, Ltd. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00090	Key Construction Company, Incorporated - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00091	Martin and Gass, Incorporated - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00092	Promark Utility Locators, Inc. - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00093	RAM Development Corporation - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00094	S and N Communications, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00095	Southland Concrete Corporation - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00096	William A. Hazel, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00097	Aaron J. Conner, General Contractor, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00098	Breeden Mechanical, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00099	D. L. B., Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00100	J & M Utilities Specialist, L.L.C. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00101	Northern Virginia Utility Protection Service, Inc. - Alleged violation of VA Code § 56-265.22 A
PUE-2003-00102	Pruitt Construction Company - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00103	Brandi Wine Water Works, L.T.D. - Alleged violation of VA Code § 56-265.16:1 A
PUE-2003-00105	Virginia Natural Gas, Inc. - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00106	Virginia Electric and Power Company - Alleged violation of VA Code §§ 56-265.18, et al.
PUE-2003-00107	Columbia Gas of Virginia, Inc. - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00108	Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00109	Washington Gas Light Company - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00110	Central Locating Service, Ltd. (CLS) - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00111	Utiliquest, LLC - Alleged violation of VA Code §§ 56-265.19 A, et al.
PUE-2003-00112	Atmos Energy Corporation - For authority to issue comm stock
PUE-2003-00113	East Coast Transport, Inc. and Tenaska Virginia Partners, L.P. - For authority to enter into affiliate transactions under Chapter 4 of Title 56 of the Code of Virginia
PUE-2003-00114	Ex Parte: Receiving comments on a draft memorandum of agreement between the State Water Control Board and the State Corporation Commission
PUE-2003-00115	Robert Lee Morris, Individually and T/A Ellicott City Underground, Inc. - For offer of settlement and compromise
PUE-2003-00116	Kentucky Utilities Company d/b/a Old Dominion Power Company - To revise its fuel factor pursuant to VA Code § 56-249.6
PUE-2003-00117	Appalachian Power Company - For approval to participate in a consolidated affiliates tax agreement between American Electric Power Co., Inc. and its subsidiaries under Chapter 4 of Title 56 of the Code of Virginia
PUE-2003-00118	Virginia Electric & Power Company d/b/a Dominion Virginia Power - For approval of retail access pilot programs
PUE-2003-00120	Roanoke Gas Company - For authority to issue short-term debt
PUE-2003-00121	Virginia Electric & Power Company - For approval of transactions with an affiliate
PUE-2003-00122	Delmarva Power & Light Company and Pepco Holdings, Inc. - For approval of the Federal and State Income Tax Allocation Agreement between Pepco Holdings, Inc. and its subsidiaries under Chapter 4 of Title 56 of the Code of Virginia
PUE-2003-00126	Virginia Electric & Power Co. and Dominion Resources, Inc. - For Exemption of a Tax Allocation Agreement and a Cash Contribution from the filing and prior approval requirements of Affiliates Act pursuant to § 56-56-77 B of the Code of Virginia, or in the alternative, approval to enter into such Agreement and Cash Contribution
PUE-2003-00127	Virginia Underground Utility Protection Service, Inc. - Alleged violation of VA Code § 56-265.22 A
PUE-2003-00128	Virginia Utility Protection Service Inc. - For certification as the notification center for the Commonwealth of Virginia pursuant to § 56-265.1:13B of the Underground Utility Damage Prevention Act.
PUE-2003-00129	NUI Corp., Virginia Gas Co., Virginia Gas Distribution Co., Virginia Gas Pipeline Co. and Virginia Gas Storage Co. - For approval of application for permission to distribute costs from parent holding company to subsidiary and affiliates under Chapter 4 of Title 56 of the Code of Virginia
PUE-2003-00130	Northern Virginia Electric Cooperative - For authority to issue long-term debt

PUE-2003-00131	Washington Gas Light Company - For approval of amendments to its gas tariff, Va S.C.C. No. 9, to implement daily balancing for gas suppliers serving interruptible customers
PUE-2003-00132	4% Realty, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00133	Allegheny Power - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00134	American Electric Power - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00136	Domus International, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00137	K. G. Johnson, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00138	Leo Construction Company - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00139	Lisbon Concrete Corporation, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00140	New Construction, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00141	Royal Concrete, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00142	Shenandoah Gas Company - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00143	Atlantic Drilling Service, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00144	Atlantic Foundations, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00145	Atlantis Communications Group, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00146	CallCom, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00147	Cornerstone Building Co., Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00148	Crews Construction Company, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00149	E. H. Ives Corporation - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00150	L B H Corporation - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00151	Maddox & Son Construction, Inc. - Alleged violation of VA Code § 56-265.17 D
PUE-2003-00153	Norton Concrete Co., Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00154	Valianos Grading & Clearing Contractors - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00155	Vico Construction Corporation - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00156	Virginia Commonwealth Builders, Inc. t/a Roger Bullivant of Virginia - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00157	Peters & White Construction Company - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00158	Mastec North America, Inc. - Alleged violation of VA Code §§ 56-265.24 A, et al.
PUE-2003-00159	D. A. Foster Company - Alleged violation of VA Code §§ 56-265.24 B, et al.
PUE-2003-00160	Southern Cable Construction - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00161	Promark Utility Locators, Inc. - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00162	Columbia Gas of Virginia, Inc. - Alleged violation of VA Code §§ 56-265.19 A
PUE-2003-00163	Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00164	Suburban Grading & Utilities, Inc. - Alleged violation of VA Code §§ 56-265-24 B, et al.
PUE-2003-00165	Virginia Natural Gas, Inc. - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00166	Central Locating Service, Ltd. - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00167	Washington Gas Light Company - Alleged violation of VA Code § 56-265-19 A
PUE-2003-00168	Utiliquest, LLC - Alleged violation of VA Code §§ 56-265.19 A, et al.
PUE-2003-00169	AM Broadband Services - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00170	D.C.F. Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00171	Delmarva Power & Light Company - For authority to issue up to \$225,000,000 of debt securities and/or preferred stock
PUE-2003-00172	AMVEST Oil & Gas, Inc. - To furnish natural gas service pursuant to VA Code § 56-265.4:5
PUE-2003-00173	Delmarva Power & Light Company – Annual Informational Filing
PUE-2003-00174	Virginia Electric & Power Co. and Dominion Energy, Inc. - For exemption from the filing and prior approval requirements of Chapter 4 of Title 56 of the Code of Virginia or, in the alternative, approval of transfers of inventory
PUE-2003-00175	Appalachian Power Company d/b/a American Electric Power - Annual Informational Filing for Calendar Year 2002
PUE-2003-00176	Chaparral (Virginia) Inc. - For early termination of special contract and related findings
PUE-2003-00177	Columbia Gas of Virginia Inc - Annual Informational Filing
PUE-2003-00178	Kentucky Utilities Company t/a Old Dominion Power Company - Annual Informational Filing
PUE-2003-00179	Dale Service Corporation - For an Annual Informational filing for Calendar Year 2002
PUE-2003-00180	Virginia Electric & Power Company - For authority to establish credit facility
PUE-2003-00181	Dominion Virginia Power - Annual Informational Filing
PUE-2003-00187	Kentucky Utilities Company d/b/a Old Dominion Power Company - For approval of a Tax Allocation Agreement with its parent company pursuant to Chapter 4 of Title 56 of the Code of Virginia
PUE-2003-00188	Virginia Electric and Power Company and Rappahannock Electric Cooperative - For authority to sell public service corporation property (Orleans Delivery Point)
PUE-2003-00189	Virginia Electric and Power Company and Rappahannock Electric Cooperative - For authority to sell public service corporation property (Cuckoo Delivery Point)
PUE-2003-00190	The Potomac Edison Co. d/b/a Allegheny Power - For waiver of a provision of the Rules Governing Retail Access to Competitive Energy Services
PUE-2003-00191	Virginia Electric and Power Company - For authority to establish a credit facility
PUE-2003-00192	Atlas Foundations of Washington - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00193	Capital Lawn & Sprinkler Co., Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00195	D. A. Foster Company - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00197	Leo Construction Company - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00198	Site Works, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00199	The Anderson Company, L.L.C. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00200	Virginia Electric & Power Co. - Alleged violation of VA Code § 56-265.17 B
PUE-2003-00201	Washington Gas Light Company - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00202	Art-Ray Corporation - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00203	Counts & Dobyns, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00204	Double K Underground, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00205	Eclipse Communications, Inc. - Alleged violation of VA Code §§ 56-265.24 A, et al.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

PUE-2003-00206	Home Profiles, LLC - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00208	Suburban Grading & Utilities, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00209	Thomas E. Scott, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00210	Columbia Gas of Virginia, Inc. - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00211	Colonial Plumbing & Heating Co., Inc. - Alleged violation of VA Code § 56-265.17 B
PUE-2003-00212	Central Locating Service, Ltd. - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00213	Virginia Natural Gas, Inc. - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00214	Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00215	Utiliquest, LLC - Alleged violation of VA Code §§ 56-265.19 A, et al.
PUE-2003-00217	Southside Electric Cooperative - For review of tariffs and terms and conditions of service
PUE-2003-00218	Urchie B. Ellis - Regarding a request for the State Corporation Commission to create and/or designate a special Staff to represent the interests of the general public
PUE-2003-00219	Columbia Gas of Virginia, Inc. - For approval of gas supply and other related supply agreements pursuant to Chapter 4 of Title 56 of the Code of Virginia
PUE-2003-00220	Shenandoah Valley Electric Cooperative - For authority to issue long-term debt
PUE-2003-00221	Columbia Gas of Virginia, Inc. - For authority to assume indebtedness
PUE-2003-00222	Virginia Electric and Power Company - For authority to establish an inter-company credit agreement
PUE-2003-00223	Columbia Gas of Virginia, Inc. - For approval of intercompany financing
PUE-2003-00224	Ex Parte: Rules - In the Matter Adopting a Revised Rule Governing Utility Customer Deposits
PUE-2003-00230	Toll Road Investors Partnership II, L.P. - For authority to raise Toll Rates
PUE-2003-00231	Virginia-American Water Company - For an Annual Informational Filing
PUE-2003-00232	A & M Concrete Corp. - Alleged violation of VA Code § 56.265.17 A
PUE-2003-00233	Ciscomp, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00234	Classic Utilities Corporation - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00235	D. A. Foster Company - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00236	GFW Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00237	Leo Construction Company - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00238	Metroplex Retaining Walls of Virginia, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00239	Northern Pipeline Construction Co. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00240	Promark Utility Locators, Inc. - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00241	Seneca Excavation & Landscaping, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00242	Value Plumbing, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00243	Virginia Electric & Power Company - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00244	B T S Construction Company, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00245	C. D. Hall Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00246	Counts & Dobyns, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00247	Dale Dunn t/a D & D Sprinkler Systems - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00248	W. C. English, Incorporated - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00250	Four C Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00252	Kip's Erosion Control - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00253	Mastec North America, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00254	Mid Eastern Builders, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00255	Nordic Construction, LLC - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00257	The Potomac Edison Co. d/b/a Allegheny Power - For a determination that the Commission's 7/11/00, Order Approving Phase I Transfers of Allegheny Power's functional separation plan covers the 12/22/00, Release and Guarantee Agreement between Allegheny Power, Allegheny Energy Supply Company, LLC and the Holders of Certain Pollution Control Notes, or in the alternative, for approval of the said Agreement Nunc Pro Tunc
PUE-2003-00258	R & W Contractors - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00259	Raco, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00260	Ridge Limited Company - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00261	Rountree Construction Co. Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00262	Smith Electric Company - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00263	W. E. Brown, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00264	Ward M. Holmes, Land Surveyor, P. C. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00265	Waco, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00266	Washington Gas Light Company - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00267	Central Locating Service, Ltd. (CLS) - Alleged violation of VA Code §§ 56-265.19 A, et al.
PUE-2003-00268	Columbia Gas of Virginia, Inc. - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00269	S & S Backhoe Service - Alleged violation of VA Code §§ 56-265.17 A, et al.
PUE-2003-00270	Utiliquest, LLC - Alleged violation of VA Code §§ 56-265.19 A, et al.
PUE-2003-00271	E. G. Middleton, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00272	Lake Monticello Service Corporation - Annual Informational Filing.
PUE-2003-00273	Crozier Construction Company, L.L.C. - Alleged violation of VA Code § 56-265.24 B
PUE-2003-00274	Skyline Water Co., Inc. - For authority to acquire and to dispose of utility assets and for certificates authorizing it to provide water service
PUE-2003-00275	Chincoteague Bay Trails End Association, Inc. and Lou and Judith Sayland - For approval of the purchase of the stock of Trails End Utility Company, Inc., pursuant to Chapter 5 of Title 56 of the Code of Virginia
PUE-2003-00277	Small Water Works Consolidated, Inc., Piedmont Water Works, Inc., and Rebel Water Works, Inc. - For approval of merger and transfer of assets
PUE-2003-00279	A&N Electric Cooperative - For review of tariffs and terms and conditions of service for retail access
PUE-2003-00280	Groundhog Mountain Water & Sewer Co., Inc. - For a rate increase pursuant to the Small Water and Sewer Public Utility Act
PUE-2003-00281	A&N Electric Cooperative - For authority to issue long-term debt.

PUE-2003-00283	Craig-Botetourt Electric Cooperative - For authority to issue long-term debt
PUE-2003-00285	Virginia Electric and Power Company - To revise its fuel factor pursuant to VA Code § 56-249.6
PUE-2003-00286	Appalachian Power Company d/b/a American Electric Power - To revise its fuel factor pursuant to VA Code § 56-249.6
PUE-2003-00287	Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00288	B & K Concrete - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00289	Branch and Associates - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00290	Crowell Brothers Construction Co., Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00291	Fixture Specialists Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00292	G. H. Wolff, Jr. Excavating, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00293	Haymarket Plumbing & Mechanical Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00294	Heritage Site Development, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00295	Maxwell & Associates - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00296	Mazz Electric, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00297	Perry Engineering Company Incorporated - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00298	Southern Cable Construction - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00299	Washington Gas Light Company - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00300	William A. Hazel, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00301	William B. Hopke Co., Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00302	Alliance Paving - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00303	Atlas Plumbing & Mechanical, Inc. - Alleged violation of VA Code § 56-265.24 B
PUE-2003-00304	Bickle Construction - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00305	Case Handyman Services - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00306	Curtis W. Key Plumbing Contractors Inc - Alleged violation of VA Code § 56-265.17 B
PUE-2003-00307	HEC Construction Company, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00308	Jay-Ton Construction Company, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00309	Pembroke Construction Co., Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00310	Rountree Construction Co., Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00311	Simoes Concrete, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00312	Southern Construction Company, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00313	Toll Brothers, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00314	Vassars Service - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00315	Virginia Electric & Power Company - Alleged violation of VA Code § 56-265.24 B
PUE-2003-00316	Virginia Natural Gas Inc. - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00317	Suburban Grading & Utilities, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00318	Central Locating Service, Ltd. (CLS) - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00319	Columbia Gas of Virginia, Inc. - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00320	Mastec North America, Inc. - Alleged violation of VA Code §§ 56-265.17 A, et al.
PUE-2003-00321	Utiliquet, LLC - Alleged violation of VA Code §§ 56-265.19 A, et al.
PUE-2003-00322	Virginia Gas Pipeline Company and NUI Energy Brokers, Inc. - For approval of application to renew affiliate agreement for successive terms under Chapter 4 of Title 56 of the Code of Virginia
PUE-2003-00323	Virginia Gas Storage Company and NUI Energy Brokers, Inc. - For approval of application to renew affiliate agreement for successive terms under Chapter 4 of Title 56 of the Code of Virginia
PUE-2003-00324	Saltville Gas Storage Company, L.L.C., Duke Energy Saltville Storage, L.L.C. and NUI Saltville Storage, Inc. - For authority to incur indebtedness from affiliates under Chapters 3 and 4 of Title 56 of the Code of Virginia
PUE-2003-00325	Northern Neck Electric Cooperative - For authority to issue long-term debt
PUE-2003-00326	Prince George Electric Cooperative - For authority to issue long-term debt
PUE-2003-00327	Central Virginia Electric Cooperative - For approval of its plan to implement retail access
PUE-2003-00328	BARC Electric Cooperative - For review of tariffs and terms and conditions of service for retail access
PUE-2003-00329	Community Electric Cooperative - For authority to issue long-term debt
PUE-2003-00330	Virginia Pilots Association - To revise rates of pilotage and other charges
PUE-2003-00331	Northern Neck Electric Cooperative - For review of tariffs and terms and conditions of service
PUE-2003-00332	Virginia Gas Distribution Company and Saltville Gas Storage Company, L.L.C. - For approval of agreements for firm and interruptible gas storage service between affiliated entities pursuant to Chapter 4 of Title 56 of the Code of Virginia
PUE-2003-00333	Rappahannock Electric Cooperative - For authority to issue long-term debt
PUE-2003-00335	Massanutten Public Service Corporation - For an extension of time to file its 2002 AIF
PUE-2003-00336	Columbia Gas of Virginia, Inc. - For approval of a communications facilities co-location agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia
PUE-2003-00337	Community Electric Cooperative - For authority to issue long-term debt
PUE-2003-00338	Craig-Botetourt Electric Cooperative - For review of tariffs and terms and conditions of service for retail access
PUE-2003-00339	Washington Gas Light Company - For authority to receive cash capital contributions from an affiliate
PUE-2003-00340	Washington Gas Light Company - For authority to borrow up to \$300 million in short-term indebtedness
PUE-2003-00341	Prince George Electric Cooperative - For review of tariffs and terms and conditions of service
PUE-2003-00342	Mecklenburg Electric Cooperative - For review of tariffs and terms and conditions of service
PUE-2003-00343	The Potomac Edison Co d/b/a Allegheny Power - For approval to enter into tax allocation agreement under Chapter 4, Title 56 of the Code of Virginia
PUE-2003-00345	Adelphia Cable Communications - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00346	Affordable Necessities, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00349	Dynamic Contracting - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00350	J. L. Kent & Sons, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00351	Chris Miller t/a Line of Sight Communications - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00352	Mitch Construction Company - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00355	S. R. Draper Paving Company - Alleged violation of VA Code § 56-265.17 A

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

PUE-2003-00356	Seven Oaks Landscapes-Hardscapes, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00357	Southwest Construction, Incorporated - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00358	Absolute Plumbing, L.L.C. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00359	Breeden Mechanical, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00360	Burton & Robinson, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00361	Commonwealth Builders, Incorporated - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00362	D. A. Foster Company - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00363	Economy Contractors, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00364	Fox Construction Group, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00365	G & B Mohr, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00366	Gene Lucas - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00367	Getebe Concrete - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00368	Gonzalez & Sons - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00369	Gudiel Company Cable - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00370	Hall Mechanical & Associates, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00371	Ideal Cable Co., Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00372	Johnson's Excavating, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00373	JSC Concrete Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00374	Kip's Erosion Control - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00375	L. H. Sawyer Paving Company, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00376	Pinnacle Design/Build Group, Incorporated - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00377	Prince William Pipeline Corporation - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00378	Ricky G. Lucas t/a R. G. Lucas Hauling and Lawn Care - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00379	S & S Backhoe Service - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00380	Shady Lane Tree Movers - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00383	Summit USA Land Development Corporation - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00385	Atlas Plumbing & Mechanical, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00388	S. W. Rodgers Company, Inc. - Alleged violation of VA Code §§ 56-265.17 D, et al.
PUE-2003-00389	Mastec North America, Inc. - Alleged violation of VA Code §§ 56-265.24 A, et al.
PUE-2003-00390	Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00392	Promark Utility Locators, Inc. - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00393	Washington Gas Light Company - Alleged violation of VA Code §§ 56-265.19 A, et al.
PUE-2003-00394	Utiliquist, LLC - Alleged violation of VA Code §§ 56-265.19 A, et al.
PUE-2003-00395	Virginia Electric & Power Co. - For a certificate to operate generating facilities pursuant to VA Code § 56-580 D and such other approvals as may be necessary for the purchase of qualifying facilities generating assets and for expedited consideration
PUE-2003-00396	Louis Smith Construction Co., Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00399	Virginia Electric & Power Co. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00400	Plantation Pipe Line Company - For relief from excessive charges by Rappahannock Electric Cooperative
PUE-2003-00401	Mecklenburg Electric Cooperative - For authority to issue long-term debt
PUE-2003-00402	Prince George Electric Cooperative - For authority to issue long-term debt
PUE-2003-00403	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-2003-00404	M&J Developers, L.L.C. and Mariners Landing Water & Sewer Company, Inc. - For authority to acquire and dispose of utility assets pursuant to the Utility Transfers Act and for a certificate pursuant to VA Code §§ 56-265.2 and 56-265.3
PUE-2003-00405	Big Caney Water Corporation and Dickenson County Public Service Authority - For authority to transfer assets
PUE-2003-00406	AMVEST Oil & Gas Inc. - To furnish natural gas service pursuant to VA Code § 56-265.4:5
PUE-2003-00407	Appalachian Power Company - For authority to issue long-term debt
PUE-2003-00408	Atlas Plumbing & Mechanical, Inc. - Alleged violation of VA Code § 56-265.18
PUE-2003-00409	Utiliquist, LLC - Alleged violation of VA Code §§ 56-265.19 A, et al.
PUE-2003-00410	Virginia Natural Gas, Inc. - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00411	Suburban Grading & Utilities, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00412	East Coast Construction - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00414	C. W. Davis Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00415	Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00416	A & W Contractors, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00418	Ciscomp, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00419	Howard Shockey & Sons Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00420	Kane Lawn & Landscapes - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00421	Sundance, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00423	BARC Electric Cooperative - For authority to issue long-term debt
PUE-2003-00424	Southside Electric Cooperative - For authority to issue long-term debt
PUE-2003-00425	Roanoke Gas Company - For an expedited increase in rates
PUE-2003-00426	Southwestern Virginia Gas Company - For approval of an increase in rates and to initiate a weather normalization adjustment
PUE-2003-00427	Saltville Gas Storage Company L.L.C. and NUI Energy Brokers, Inc. - For approval of an agreement for firm gas storage service between affiliated entities pursuant to Chapter 4 of Title 56 of the Code of Virginia
PUE-2003-00428	Valley Ridge Water Company, Inc. - For a rate increase
PUE-2003-00430	Call Me Construction, LLC - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00432	H. C. Eavers & Sons, Inc. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00434	Lawn Landscapes and Beyond, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00435	Marvin V. Templeton & Sons, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00436	Northern Virginia Electric Cooperative - Alleged violation of VA Code § 56-265.19 A
PUE-2003-00437	Peed Plumbing, Inc. - Alleged violation of VA Code § 56-265.24 A

PUE-2003-00438 R E & Associates - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00441 Stroico Construction, LLC - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00442 Suburban Grading & Utilities, Inc. - Alleged violation of VA Code § 56-265.24 A

PUE-2003-00445 Virginia Electric & Power Company - Alleged violation of VA Code § 56-265.17 C

PUE-2003-00446 Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A

PUE-2003-00447 Branch Highways, Inc. - Alleged violation of VA Code § 56-265.24 A

PUE-2003-00448 Chantilly Excavating & Paving Corporation - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00449 Cherry Hill Excavating, Inc. - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00451 D & F Construction, Inc. - Alleged violation of VA Code § 56-265.24 A

PUE-2003-00452 D. A. Foster Company - Alleged violation of VA Code § 56-265.24 A

PUE-2003-00453 H & S Construction Company - Alleged violation of VA Code § 56-265.24 A

PUE-2003-00454 Hydro-Tech Irrigation Company - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00455 LOBO Construction Company - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00456 Ralph Bowles Construction Company - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00457 S & S Backhoe Service - Alleged violation of VA Code § 56-265.24 A

PUE-2003-00458 S and N Communications, Inc. - Alleged violation of VA Code § 56-265.24 A

PUE-2003-00459 Silva Construction - Alleged violation of VA Code § 56-265.24 A

PUE-2003-00460 Thomas Brothers, Inc. - Alleged violation of VA Code § 56-265.24 A

PUE-2003-00461 Village Landscapes & Irrigation, Inc. - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00462 Virginia Natural Gas, Inc. - Alleged violation of VA Code § 56-265.19 A

PUE-2003-00465 Washington Gas Light Company - Alleged violation of VA Code § 56-265.19 A

PUE-2003-00475 Southside Electric Cooperative - For authority to incur long-term debt

PUE-2003-00477 Bobby Burcher Electric, Inc. - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00478 Chesterfield Services, Inc. - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00479 Cornerstone Construction - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00481 Eastern Clearing, Inc. - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00482 Virginia Electric & Power Company and Dominion Telecom Inc. - For approval of extension of existing affiliate agreement

PUE-2003-00485 J L Washington & Son Septic Systems, Inc. - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00487 Mid Eastern Builders, Inc. - Alleged violation of VA Code § 56-265.24 B

PUE-2003-00488 R. R. Snipes Construction Co., Inc. - Alleged violation of VA Code § 56-265.24 A

PUE-2003-00489 Rock Concrete - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00490 Ex Parte: Rules - In the matter of revisions to the Commission's Rules for the Enforcement of the Underground Utility Damage Prevention Act

PUE-2003-00491 Rountree Construction Co., Inc. - Alleged violation of VA Code § 56-265.24 A

PUE-2003-00492 S and N Communications, Inc. - Alleged violation of VA Code § 56-265.18

PUE-2003-00493 Southern Construction Company, Inc. - Alleged violation of VA Code § 56-265.24 B

PUE-2003-00494 Southside Concrete Services, Inc. - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00495 Tallen Concrete - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00496 Virginia Electric & Power Company - Alleged violation of VA Code § 56-265.24 A

PUE-2003-00497 Watson Electrical Construction Co. - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00498 WB&E Construction, Inc. - Alleged violation of VA Code § 56-265.24 A

PUE-2003-00500 C. P. H. Utilities, Inc. - Alleged violation of VA Code § 56-265.24 A

PUE-2003-00502 Casper Colosimo & Son, Inc. - Alleged violation of VA Code § 56-265.24 A

PUE-2003-00506 Harrison Street Corp. - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00509 Russell F. Walker v. Southside Electric Cooperative - Petition in the Nature of a Complaint

PUE-2003-00511 Lopes Construction Co., Inc. - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00513 R. L. Kelley Plumbing, Inc. - Alleged violation of VA Code § 56-265.24 A

PUE-2003-00516 Seneca Excavation & Landscaping, Inc. - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00519 Spartan Enterprises, Inc. - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00527 Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A

PUE-2003-00528 Branscome, Inc. - Alleged violation of VA Code §§ 56-265.17 A, et al.

PUE-2003-00531 Hales Landscaping - Alleged violation of VA Code § 56-265.17 A

PUE-2003-00532 Utiliquest, LLC - Alleged violation of VA Code §§ 56-265.19 A, et al.

PUE-2003-00534 Sanville Utilities Corporation and Henry County Public Service Authority - For approval to transfer utility assets

PUE-2003-00535 Virginia Natural Gas, Inc. and Pivotal Propane of Virginia, Inc. - For approval of a Propane Sales Agreement under Chapter 4 of Title 56 of the Code of Virginia

PUE-2003-00536 Metromedia Energy, Inc. - Regarding Washington Gas Light Company's Plan to Return Customers to Sales Service Effective December 1, 2003

PUE-2003-00537 Virginia Natural Gas, Inc. - For an Annual Informational Filing for the test year ended September 30, 2003

PUE-2003-00538 INGENCO Wholesale Power, LLC - For approval to construct, own and operate an electric generation facility in Chesterfield county pursuant to VA Code §§ 56-46.1 and 56-580 D

PUE-2003-00540 Virginia Electric & Power Company - For authority to issue inter-company securities

PUE-2003-00541 Atmos Energy Corporation - For authority to incur short-term indebtedness pursuant to VA Code §§ 56-60 and 56-65.1 and for approval of an affiliate arrangement pursuant to VA Code §§ 56-76, et seq.

PUE-2003-00543 Prince George Electric Cooperative - For authority to incur long-term debt

PUE-2003-00544 Delmarva Power & Light Company - For approval of a transaction with its affiliate Conectiv Energy Supply, Inc. under Title 56, Chapter 4 of the Code of Virginia

PUE-2003-00546 Virginia Electric & Power Company and Dominion Telecom Inc. - For an exemption from the filing and prior approval requirements or, in the alternative, approval of consideration associated with the return of leased fiber pursuant to Chapter 4, Title 56 of the Code of Virginia, and for expedited consideration

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

PUE-2003-00547	Virginia Electric & Power Company and Dominion Telecom, Inc. - For an exemption from the filing and prior approval requirements or, in the alternative, approval of transfer of interest in fiber under Chapter 4, Title 56 of the Code of Virginia, and for expedited consideration
PUE-2003-00548	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-2003-00559	Gammon Well Co., Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00566	L. G. Flint, Inc. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00568	ECONergy Energy Company, Inc. - For a license to conduct business as a natural gas competitive service provider
PUE-2003-00569	One of a Kind Landscapes and Home Remodeling, Inc. - Alleged violation of VA Code § 56-265.17
PUE-2003-00575	C. W. Wright Construction Co., Incorporated - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00577	E. L. Kellogg Corp. - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00580	Northern Pipeline Construction Co. - Alleged violation of VA Code § 56-265.24 A
PUE-2003-00581	Princess Anne Paving Corporation - Alleged violation of VA Code § 56-265.17 A
PUE-2003-00594	Atmos Energy Corporation - For authority to issue common stock
PUE-2003-00595	Bluefield Valley Water Works Company - For an increase in rates, fees, and charges pursuant to the Small Water or Sewer Public Utility Act
PUE-2003-00597	Kentucky Utilities Company - For approval of the purchase of coal from a non-regulated affiliate, Western Kentucky Energy Corp.
PUE-2003-00598	Virginia Gas Pipeline Company - For an Annual Informational Filing
PUE-2003-00599	Virginia Gas Distribution Company - For an Annual Informational Filing
PUE-2003-00600	Virginia Gas Storage Company - For an Annual Informational Filing
PUE-2003-00601	Atmos Energy Corporation - For an Annual Informational Filing
PUE-2003-00602	Craig-Botetourt Electric Cooperative - For authority to issue long-term debt

SEC:**DIVISION OF SECURITIES AND RETAIL FRANCHISING**

SEC-2002-00051	Highlands Physicians, Inc. - For qualification order
SEC-2002-00055	Kevin L. Harrell - For offer of compromise and settlement
SEC-2003-00001	SCV Financial Services, Inc. and Stephen C. Voss - For denial of investment advisor application pursuant to VA Code § 13.1-505.1
SEC-2003-00002	Village Life, Inc. - Alleged violation of VA Code §§ 13.1-501, et al.
SEC-2003-00003	Sunbeam Products, Inc., Petitioner and 148977 Canada, Inc., Respondent - For cancellation of Virginia Trademark and Service Mark Registrations pursuant to VA Code § 59.1-92.10
SEC-2003-00004	Eastern Virginia Conference of the International Pentecostal Holiness Church - For order of exemption pursuant to VA Code § 13.1-514.1 B
SEC-2003-00005	Jefferson Pilot Securities Cororation - Alleged violation of VA Code §§ 13.1-518, et al.
SEC-2003-00006	Candy Express Franchising, Inc. - Alleged violation of VA Code § 13.1-560
SEC-2003-00007	John M. Finigan, Jr. - For offer of compromise and settlement
SEC-2003-00009	Halliday Village Mobile Home Park, Inc. - Alleged violation of VA Code § 13.1-507
SEC-2003-00010	Ex Parte: Rules - Amendments to Securities Act Rules
SEC-2003-00011	Charles G. Meyers - For order imposing special supervisory procedures
SEC-2003-00012	Steven E. Hutek - Alleged violation of VA Code §§ 13.4-504 A, et al.
SEC-2003-00013	The Guilford Company - For an official interpretation pursuant to Virginia Securities Act § 13.1-525
SEC-2003-00014	Bear, Stearns & Co., LLC- Alleged violation of 21 VAC 5-20-280 E 12, 21 VAC 5-20-260, et al.
SEC-2003-00015	Credit Suisse First Boston, LLC - Alleged violation of 21 VAC 5-20-280 A 18 and 21 VAC 5-20-260
SEC-2003-00016	Goldman, Sachs & Co. - Alleged violation of VA Code §§ 13.1-521 and 13.1-502 (2)
SEC-2003-00017	J. P. Morgan Securities, Inc. - Alleged violation of VA Code §§ 13.1-512 and 13.1-502(2)
SEC-2003-00018	Lehman Brothers, Inc. - Alleged violation of VA Code §§ 13.1-512 and 13.1-502(2)
SEC-2003-00019	Morgan Stanley & Co., Incorporated - Alleged violation of Securities Rule 21 VAC 5-20-280 E 12 and 21 VAC 5-20-60
SEC-2003-00020	Citigroup Global Markets, Inc. (formerly known as Salomon Smith Barney, Inc.) - Alleged violation of 21 VAC 5-20-280 A 18, 21 VAC 5-20-280 E 12 and 21 VAC 5-20-260
SEC-2003-00021	UBS Warburg, LLC & UBS Painewebber Inc. - Alleged violation of 21 VAC 5-20-280 E 12 and 21 VAC 5-20-260
SEC-2003-00022	U.S. Bancorp Piper Jaffray, Inc. - Alleged violation of VA Code §§ 13.1-512 and 13.1-502 (2)
SEC-2003-00024	National Covenant Properties - For order of exemption pursuant to VA Code § 13.1-514.1 B
SEC-2003-00025	Mission Investment Fund of the Evangelical Lutheran Church in America - For order of exemption pursuant to VA Code § 13.1-514.1 B
SEC-2003-00026	Paul G. Romweber - Alleged violation of VA Code § 13.1-503(3) and 21 VAC 5-20-280, et al.
SEC-2003-00027	Ex Parte: Rules - In the matter of Adopting a Revision to the Rules Governing Trademarks and Service Marks
SEC-2003-00031	Charles J. Moni - For Order Imposing Special Supervisory Procedures
SEC-2003-00032	Kenneth Bruce Nuckols - Alleged violation of VA Code §§ 13.1-502, et al.
SEC-2003-00033	KBN International - Alleged violation of VA Code §§ 13.1-502, et al.
SEC-2003-00034	Phillip Hegg - Alleged violation of VA Code §§ 13.1-502, et al.
SEC-2003-00036	Mount Vernon Park Associates, Inc. - For an Order of Exemption pursuant to VA Code § 13.1-514.1
SEC-2003-00037	Cristeta C. Dacumos - Alleged violation of VA Code §§ 13.4-504 A, et al.
SEC-2003-00043	James O. Ivy - Alleged violation of VA Code §§ 13.1-504 and 13.1-507
SEC-2003-00044	U.S. Gas & Electric, Inc. - Alleged violation of VA Code §§ 13.1-502 (2), et al.
SEC-2003-00046	Kenneth Earl Brown - Alleged violation of VA Code §§ 13.1-502 (2), et al.
SEC-2003-00047	A Wing and A Prayer, LLC - Alleged violation of VA Code §§ 13.1-502 (2), et al.
SEC-2003-00048	Nelson Schembari, Jr. - Alleged violation of VA Code §§ 13.1-504 A and 13.1-507
SEC-2003-00049	Bio-Solutions Franchise Corporation - Alleged violation of VA Code § 13.1-560
SEC-2003-00050	Bio-Solutions International, Inc. - Alleged violation of VA Code § 13.1-560
SEC-2003-00053	Alireza Atefi Garakani - Alleged violation of VA Code §§ 13.1-502 (2), et al.
SEC-2003-00059	Lutheran Church Extension Fund - Missouri Synod - For order of exemption pursuant to VA Code § 13.1-514.1 B
SEC-2003-00060	Joseph F. Mangold, Jr. - For order imposing special supervisory procedures

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

SEC-2003-00063 John Christopher Gauss - For special supervision order
SEC-2003-00064 Virzona, Inc. - For Subpoena
SEC-2003-00068 New Life Metropolitan Community Church of Hampton Roads - For an order of exemption pursuant to VA Code § 13.1-514.1 B
SEC-2003-00069 Faith Baptist Church of Madison Heights, VA - For order of exemption pursuant to VA Code § 13.1-514.1 B
SEC-2003-00073 James Stamp - Alleged violation of VA Code §§ 13.1-501, et seq.
SEC-2003-00074 Joel Stamp - Alleged violation of VA Code §§ 13.1-501, et seq.
SEC-2003-00075 World On Line, Inc. - Alleged violation of VA Code § 13.1-502(2)
SEC-2003-00079 Robert Strange Engel - For special supervision order