The Honorable Clifton A. Woodrum, Vice Chairman
The Honorable Richard J. Holland
The Honorable Thomas K. Norment
The Honorable John C. Watkins
The Honorable Kenneth R. Plum
The Honorable Jerrauld C. Jones

December 30, 1998

Re: Comments on December 26, 1998 (11:12 a.m.) draft language reflecting Structure & Transition Decision Tree outcomes from Drafting Group's December 17 meeting.

Gentlemen:

One of the items appearing on the agenda for yesterday's drafting group meeting -- but not addressed because of time constraints -- was a discussion of the subject legislative draft reflecting the outcomes of your December 17 meeting.

Given that time did not allow this discussion, I hereby offer the following few, but what I believe to be important, comments about the draft:

I. §56-579 A.1. (page 1):

The draft states that **"On or before January 1, 2001, each incumbent electric utility shall join or establish an independent system operator, or ISO . . . "**

Comments:

- AEP suggests that legislation refer to the establishment of a "regional transmission entity" (RTE), rather than an ISO. Such a change in terminology would recognize the fact that today several alternative forms of large, regional transmission entities, including ISOs, are being considered by AEP, VPCo and other utilities, and any one of the alternatives could ultimately prove to be acceptable to utilities, the SCC, and the FERC. While an ISO would involve a utility retaining ownership while relinquishing responsibility for the management and control of its transmission system, other forms of regional transmission entity could involve both ownership and control by the entity, or part ownership and full control, and for-profit or not-for-profit structures which would not fit the conventional definition of "ISO" but would fit within a somewhat broader definition for an

"RTE."

- We also suggest that the draft language should recognize that the RTE will be a large, multi-state entity and that the **"shall join or establish"** wording should be modified to resemble the language of HB1172. Wording to the effect that **"incumbent electric utilities, the Commission, and those parties involved in electric generating and transmission facilities and the sale of electricity in the Commonwealth, shall work together to strive to establish, on or before January 1, 2001, one or more regional transmission entities"** is recommended.

II. §56-579 A.2. and B. (page 2)

The draft states that access to competitive markets by retail customers shall commence on or after January 1, 2002 and that any phase-in as scheduled by the Commission must be completed by January 1, 2004. It further states that the **"Commission may delay or accelerate the implementation of any of the provisions of this section,"** suggesting the possibility of indefinite delay and the uncertainty which would accompany such delay.

Comments:

- AEP supports a transition period beginning on January 1, 2001 and ending on January 1, 2004, during which utility rates would be capped; utilities and consumers would prepare for competition during the period and within the price constraint represented by the cap, with no stranded cost recovery following the onset of choice for all customers on January 1, 2004. We maintain that all customers should have the ability to avail themselves of a competitive market at the same time, and that the transition period can begin on January 1, 2001 -- as opposed to January 1, 2002 -- when the regional transmission entity is functional.

- Rather than being open-ended as to potential delays, §56-579 B. could be modified, as was mentioned yesterday, to state that the Commission may delay the implementation of retail competition until

January 1, 2005, reporting on a timely basis to the General Assembly the reasons for such delay.

III. §56-581 A. and B. (pages 5 and 6)

The draft requires that the Commission **"develop rules and regulations under which any incumbent electric utility . . . may transfer . . . control, ownership, or responsibility"** of its transmission system to an ISO (RTE), and that it adopt certain specific requirements concerning the make-up of the ISO's (RTE's) governing board.

Comments:

- The potential for alternative forms of regional transmission entity, possibly with different governance requirements, coupled with the fact that RTEs will be multi-state in nature, suggests that specific legislative requirements may be both premature and may unnecessarily inhibit the formation (which today is <u>voluntary</u>) of these fundamentally important structures.

  As an alternative, I suggest that legislative language be simplified (though in no way weakened) to state that the Commission shall determine, with appropriate public input, those elements of an RTE's structure which are essential to the public interest and must be applied by the Commission in making its decision on whether to approve a transfer of ownership or control.

IV. §56-583 D. (page 7)

Section 56-583 of the draft concerns the Transmission and Distribution of Electric Energy, yet subsection D. states that the Commission may permit **"construction and operation of electrical generating facilities"** upon a finding that such facilities **". . . (i) will have no material adverse effect upon any regulated rates paid by retail customers . . .,"** and that they meet a public interest standard.

Comments:

- According to the Decision Tree (on page 16), this subsection was initially intended to address the siting of merchant plants, though was probably modified to pertain to new plants generally. We suggest that the language be modified to more clearly state the drafting group's intent . . . which we understood to be that the

Commission should retain siting authority for generating and associated facilities. The need for the generating facility and any influence of the facility upon rates would be determined by the market.

V. §56-586 D. (page 11)

The draft seems to have substituted **"supplier of last resort"** for what was intended in subsection D. to be **"default"** supplier.

Comments:

- The **"default supplier"** and **"supplier of last resort"** entities are easily confused but are distinct in their functions. A **"supplier of last resort"** is, in effect, an **"emergency service provider,"** the suggested requirements for which were stated in AEP's draft legislation, furnished earlier to the drafting group, as follows:

  Emergency Service Provider

  On and after January 1, 2001, if any supplier fails to fulfill its obligation to deliver electricity scheduled into the control area, the entity fulfilling the control area function, or, if applicable, the regional transmission entity, shall be responsible for charging the defaulting supplier for the full cost of replacement energy, including the cost of energy, the cost incurred by others as a result of the default, and the assessment of penalties as may be approved either by the Commission, to the extent not precluded by federal law, or by the Federal Energy Regulatory Commission. The Commission, as part of the rules established under section 56-585, shall determine the circumstances under which failures to deliver electricity will result in the revocation of the supplier's license.

Thank you for this opportunity to comment on your initial draft concerning structure and transition.

Sincerely,

R. Daniel Carson, Jr.

dml

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