

**Comments of
Consolidated Natural Gas Company
Regarding the Draft Legislation of the
SJR 91 Drafting Group
January 5, 1999**

During the deliberations of the Joint Subcommittee, one of the stakeholder representatives said that legislating competition and having a truly competitive market are two very different things. CNG agrees, and would like to complement the Drafting Group and Staff on the first drafts of legislation, because these drafts go a long way toward encouraging the development of competition. These drafts recognize that the General Assembly must make the policy decisions -and set the framework and timetable for competition - but enable the State Corporation Commission to use its expertise to make the legislation actually work. It is a delicate balance, and one that the draft legislation does a good job of achieving.

CNG has a long history and substantial investment in Virginia through its subsidiaries Virginia Natural Gas, CNG Transmission Corporation and CNG International. We would very much like to increase our investment in the Commonwealth by entering deregulated gas and electric markets to serve residential and small business consumers exclusively, as we have done in Pennsylvania and are preparing to do in other states where we also have extensive investments. As we have noted a number of times during the Joint Subcommittee's deliberations, CNG Retail Services Corporation, our retail marketing subsidiary, is the largest unregulated retail marketer of natural gas and electricity in the United States. At the risk of being repetitive, we make this point again because we like to think that it indicates the soundness of our business strategy and our early success in evolving markets.

Perhaps immodestly, we think that we are exactly the kind of company that the General Assembly should try to encourage to invest in Virginia. Our prior history here and our recent success elsewhere demonstrate that we are ready, willing and able to provide competitive, reliable, quality service to Virginia's residential and small business electric consumers.

In particular, CNG supports four provisions of the draft legislation that will help to create opportunities for competition:

- § 56-579(B), relating to Commission authority to accelerate or delay the transition to competition (Structure and Transition Draft, beginning at Page 2, line 20)
- § 56-580(D), relating to the interface between SCC and FERC jurisdiction (Structure and Transition Draft, beginning at Page 4, line 4)
- § 56-580(E), relating to Commission authority to regulate generation rates within constrained transmission areas until market power is alleviated (Structure and Transition Draft, beginning at Page 4, line 22)
- § 56-593, relating to divestiture, functional separation and other corporate relationships (Structure and Transition Draft, beginning at page 11, line 15)

While a number of our recommendations have been incorporated already, we would like to concentrate on a few key provisions in the drafts that we believe should be changed to enhance greatly the opportunity for true competition.

Our comments follow 3 general themes:

- Making market entry practical and cost-effective for new entrants;
- Creating the right conditions for new entrants to flourish once the transition begins;
- and
- Addressing market power by encouraging the development of new generation

MAKING MARKET ENTRY PRACTICAL AND COST-EFFECTIVE FOR NEW ENTRANTS

Licensing requirements present the first opportunity to protect consumers, but also the first opportunity to erect barriers to entry by new marketers, including aggregators. The General Assembly should ensure that while consumers are protected, the licensing standards for new entrants are practical and not unduly burdensome.

One aspect of the draft legislation relating to licensure of aggregators is not practical in our experience. Section 56-587(B) would require aggregators also acting as a supplier to "demonstrate . . . access to generation and generation reserves" as a condition of obtaining, retaining and renewing a license.

The difficulty with this provision is that, at least in our experience, an aggregator/supplier will want to obtain a license and a sense of demand before going to the wholesale electric market to obtain firm generation contracts. Moreover, at least in the initial transition to competition, there is generally a substantial lead-time between the enrollment period and the date when providers actually begin to provide service. The licensing scheme outlined in the legislation does not reflect the market as it exists in other states. As a result, we propose the following amendments:

Consumer, Environment & Education Draft

Page 1, line 24

After "demonstrate" strike "(i)"

Page 2, line 1, after "appropriate" strike the remainder of the sentence and insert

"Any license issued by the Commission pursuant to this section may be conditioned upon the licensee, if acting as a supplier, furnishing to the Commission prior to the provision of electricity to consumers proof of adequate access to generation and generations reserves."

CREATING THE RIGHT CONDITIONS FOR NEW ENTRANTS TO FLOURISH ONCE THE TRANSITION BEGINS

CNG's primary lines of business are the production, transmission, and distribution of natural gas. Natural gas is generally a cleaner fuel than coal, resulting in lower emissions of nitrogen oxides (NO_x) and sulfur dioxides (SO₂). It is in CNG's interest to promote increased use of natural gas for the generation of electricity. As a result, one might think that CNG would support fuel mix and emissions disclosures in marketing and billing information. However, our experience has been that it is generally not practical for a marketer to provide such information. There are two reasons why this is so.

First, most marketers do not have dedicated generation – they succeed by buying excess generation from wholesale suppliers. Wholesale suppliers obtain electricity from a variety of plants, typically fueled from a variety of sources, most of which are dispatched on a daily basis to match demand. As a result, a marketer may purchase 100 MW of electricity for a period of time, but on a given day that electricity may be produced from a variety of generation plants - gas-fired, coal-fired, or nuclear. It is inefficient and impractical to track the fuel mix and emissions data of this generation on a regular basis given the liquidity of the wholesale electricity market. It is this liquidity that will be a key driver in lowering electricity costs for consumers.

Second, even if a marketer has dedicated generation – either by owning its own plant or by purchasing all the output of generation owned by another company – it will still have to buy some

power from a power exchange or go to the market to provide back-up power. This is so, because hour by hour, minute by minute, supply and demand are never exact. Marketers have to buy or sell electricity on a power exchange or on the spot market to cover deficiencies or shed excess capacity in order to balance supply and demand. It is nearly impossible, and certainly impractical, to require emissions and fuel mix data on this basis.

Moreover, such requirements impose transaction costs on new entrants that are not shared by incumbent companies that own and dispatch the majority of their own generation.

It is less impractical, and more in the public interest, to hold those who market "green power" to truth in advertising standards. CNG believes it is appropriate to require the Commission to establish "green power" marketing standards and require those who advance such claims to back them up. CNG proposes the following amendments:

Consumer, Environment & Education Draft

Page 4, line 12, after "2." strike the remainder of the sentence and renumber subparagraphs 3, 4, and 5.

Page 4, line 24, after "2." strike the remainder of the sentence and renumber subparagraphs 3, 4, and 5.

Page 5, line 1, after "E." insert

"In addition to the other requirements of this section, the Commission shall define "green power" and shall develop regulations governing marketing standards for suppliers who market green power or make claims regarding the fuel mix and emissions data of generation."

and renumber the remaining paragraphs

CNG has also learned from its recent experience the stifling effect that standardized billing information can have on competition. Competition offers several benefits in addition to better prices; most notably, enhanced customer choice. Standardized billing requirements can inadvertently limit positive, consumer-friendly billing innovations, including the bundling of different services, the offering of different pricing and payment options, or the offering of different products and services. CNG strongly supports legislation that requires all market participants to offer a consumer friendly bill format, to distinguish clearly between regulated and unregulated services, and to require them to itemize wires charges. Beyond those requirements, however, the General Assembly runs the serious risk of suppressing competition and customer choice. CNG proposes the following amendments:

Consumer, Environment & Education Draft

Page 4, strike all of line 23

ADDRESSING MARKET POWER BY ENCOURAGING THE DEVELOPMENT OF NEW GENERATION

As CNG has stated previously before the Joint Subcommittee and the Drafting Group, dispersed and small generation provide one of the best opportunities to alleviate market power. New, state of the art small generation facilities can be sited virtually anywhere and can help to promote a liquid generation market and competition without requiring substantial investment in new transmission.

CNG believes the Commonwealth can best foster the development of new dispersed and small generation by requiring true open access standards – with an opportunity for appeal to the Commission – and by directing the Commission to consider an expedited permitting process for small generation of less than 50 MW. CNG proposes the following amendments:

Structure and Transition Draft

Page 3, line 25, insert new subsections C & D

"C. The Commission shall establish interconnection standards to ensure transmission and distribution safety and reliability. In adopting standards pursuant to this subsection the Commission shall seek to prevent barriers to new technology and shall not make compliance unduly burdensome and expensive. The Commission shall determine questions about the ability of specific equipment to meet interconnection standards."

"D. The Commission shall consider developing expedited permitting processes for small generation facilities of 50 MW or less."

and renumber the remaining paragraphs

TYPOGRAPHICAL ERRORS

CNG notes the following typographical errors in the draft legislation:

Structure and Transition Draft

Page 3 , line 23, "service" should be "services" (there are many components of distribution services, some of which should be unbundled if not immediately deregulated)

Page 12, line 1, "regulates" should be "regulate"