

**SJR 91 JOINT SUBCOMMITTEE ON RESTRUCTURING THE
ELECTRIC UTILITY INDUSTRY**

**DRAFTING SUBCOMMITTEE
January 6, 1998**

Introduction

The Staff of the SJR 91 Joint Subcommittee Drafting Subcommittee has requested comments on five sections of the draft restructuring legislation:

- Structure & Transition Draft, dated 12/26/98,
- Structure & Transition Draft Supplement, dated 12/31/98,
- Consumer, Environment & Education Draft, dated 12/31/98,
- Stranded Costs Draft, dated 12/31/98, and
- State & Local Tax Draft, dated 12/21/98.

The Virginia, Maryland & Delaware Association of Electric Cooperatives (“VMD Association” representing, in Virginia, A&N Electric Cooperative, BARC 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.) and Old Dominion Electric Cooperative (“Old Dominion”) (collectively, the “Cooperatives”) join in submitting comments on these drafts. The first four are addressed in these comments. The State & Local Tax Draft is addressed in separate comments submitted contemporaneously herewith.

1. Structure & Transition Draft, dated 12/26/98

<u>Page</u>	<u>Lines</u>	<u>Comments</u>
1	23-24	Incumbent electric utilities appear to be obligated by this section to join or establish an ISO even if they do not own or operate transmission facilities. ISOs should be mandatory for transmission owning entities and voluntary for transmission dependent utilities. In addition, ISOs should be obligated to admit transmission dependent utilities that seek to join them.
2	9-11	Delete subsection b. It is redundant with and contradicts the succeeding subsection c.

- 5 6-8 Incumbent electric utilities appear to be obligated by this section to join or establish an ISO even if they do not own or operate transmission facilities. ISOs should be mandatory for transmission owning entities and voluntary for transmission dependent utilities. In addition, ISOs should be obligated to admit transmission dependent utilities that seek to join them.
- 6 8-10 This section should be revised to clarify its apparent intended effect as follows:
1. No incumbent electric utility shall be authorized by the Commission to establish or join any ISO unless the majority of the directors of such ISO's governing board are nominated and elected by and represent ISO members that shall have no ownership interest in any transmission asset owned, managed or controlled by such ISO.
- 7 18-19 First, the cooperatives oppose, and the Commission should not be authorized to impose mandatory codes of conduct.
- Second, this section, as drafted is unclear. Does it govern conduct between two affiliated suppliers or between an affiliated and a nonaffiliated supplier? Does it govern conduct between two nonaffiliated suppliers? With whom are or are not these suppliers affiliated? Each other? Incumbent utilities?
- This section should be reworked or, preferably, deleted.
- 8 13-17 This section appears to allow municipally owned electric utilities to make competitive sales at retail outside their service territories without subjecting their own territories to competition. This violates the reciprocity principle well established for such utilities in the restructuring process.
- Thus the second clause should be amended as follows:
- (ii) that utility sells, offers to sell or seeks to sell electric energy to any retail customer in Virginia outside of the utility's electric distribution territory as is existed on January 1, 1999 or to a supplier or distributor of electric energy.
- 8 19-23 At line 22, after "Commission" insert ", effective upon the commencement of the transition period," to clarify when the Commission will stop regulating generation. As drafted, it appears to stop upon enactment.

- 9 4-8 At the end of line 8, insert “Upon request, each incumbent electric utility and power supply cooperative operating in the Commonwealth on January 1, 1999, and authorized to conduct business in the Commonwealth as of date of the request shall be issued an initial license under this section without the need of any further showing.”
- 11 1-7 This section appears to conflict in some respects with the late cap approach set forth in § 56-579.1.
- 11 14 After subsection D insert a new subsection as follows:
- E. Notwithstanding the foregoing provisions of this § 56-586, a distribution electric cooperative (or one or more affiliates thereof) shall have the obligation and right to be the supplier of last resort and default services in its certificated service territory.
- 12 1-10 The term “functionally separate units” should be defined as “units within a utility, utility holding company or nonutility energy company, that are functionally or structurally separated from each other, but that remain, directly or indirectly, under the control, ownership, or both of a single parent company.”
- 12 11-14 This section appears to specifically disclaim state action exemption for possibly anti-competitive actions undertaken in compliance with the act. This could conceivably place a utility in the untenable position of having to choose between violating a state statutory mandate and violating federal or state antitrust laws. For example, all utilities are required to join or establish ISOs. The state action exemption, but for this section, would protect utilities from prosecution for colluding to control a key market mechanism. With this disclaimer, however, innocent utilities, complying with the statute, could conceivably be subject to prosecution for anti-competitive activities.
- This section is dangerous and should be deleted.
- 12 21-22 The cooperatives do not object to a continuation of the Commission’s authority to review and approve mergers among utilities and other utility transfers, but it is not clear what a “covered entity” or “covered transaction” is. If the underlying concerns are not sufficiently addressed in the existing Utility Transfers Act (which they probably are) then minor revisions to that Act should be sufficient.

2. Structure & Transition Draft Supplement, dated 12/31/98

<u>Page</u>	<u>Lines</u>	<u>Comments</u>
1	22-23	<p>This subsection B should be amended as follows:</p> <p>The Commission may adjust such capped rates in connection with (i) utilities' recovery of fuel costs pursuant to §56-249.6, <u>(ii) cooperatives' wholesale power cost adjustment</u>, and (iii) and emergency conditions as provided in § 56-245.</p>

3. Consumer, Environment & Education Draft, dated 12/31/98

<u>Page</u>	<u>Lines</u>	<u>Comments</u>
1	7-13	<p>At the end of line 13, insert <u>“Upon request, each incumbent electric utility and power supply cooperative operating in the Commonwealth on January 1, 1999, and authorized to conduct business in the Commonwealth as of date of the request shall be issued an initial license under this section without the need of any further showing.”</u></p> <p>Also, define “aggregator” as <u>“any person that purchases or arranges for the purchase of electric energy as an agent or intermediary for sale to, or on behalf of, two or more customers.”</u></p>
3	2	<p>Before “this Commonwealth” insert “its boundaries, or, if the municipality has elected under § 56-583.F.(ii) to have this chapter apply to its utility, within.”</p> <p>Unless municipal electric utilities opt into the Act and all its provisions, they should not be able to sell or aggregate electric energy outside their territorial boundaries.</p>

4. Stranded Costs Draft, dated 12/31/98

<u>Page</u>	<u>Lines</u>	<u>Comments</u>
1	5	Define "stranded costs" as " <u>an incumbent electric utility's electric generation-related costs, reasonably and prudently incurred in meeting its public service obligations, whether incurred directly by the incumbent electric utility or indirectly through a power supply cooperative of which the incumbent electric utility is or was a member, that would be recoverable under traditional cost-of-service regulation but which may not be recoverable in a competitive electric generation market, including, but not limited to: net generation plant investment costs; generation plant retirement costs, including nuclear plant decommissioning costs; spent nuclear fuel disposal costs; purchase power contract costs, and any similar or related costs, directly or indirectly attributable to the incumbent electric utility.</u> "
2	4	Strike "change suppliers" and insert " <u>affirmatively elect a supplier</u> ".