

**MUNICIPAL ELECTRIC POWER ASSOCIATION OF VIRGINIA SUGGESTED
AMENDMENTS TO STATE AND LOCAL TAX DRAFT
(99-2604755; 12/21/98)**

January 5, 1999

MEPAV has reviewed the state and local tax draft and believes the following changes are necessary to accomplish what we believe is the Committee's intent:

Section 58.1-400.2: Change subparagraph C.2 to provide:

2. "Wholesale electric supplier" means any corporation, cooperative, partnership or other business entity providing wholesale electric service, but shall not include any municipality or an association or agency of which it is a member that is not subject to income tax pursuant to the Internal Revenue Code of 1986, as amended.

[Explanation: The proposed change is needed to ensure that only those wholesale electric suppliers that are subject to federal taxation will be subject to the taxation and related requirements of Section 58.1-400.2 et seq.]

Section 58.1-2600: Change the definitions of "Commission" and "Wholesale electric supplier" to provide:

"Commission" means the State Corporation Commission which is hereby designated pursuant to Article X, Section 2 of the Constitution of Virginia as the central state agency responsible for the assessment of the real and personal property of all public service corporations, except those public service corporations for which the Department of Taxation is so designated, upon which the Commonwealth levies a license tax measured by the gross receipts of such corporations. The State Corporation Commission shall also assess the property of each telephone or telegraph company, every corporation in the Commonwealth in the business of furnishing heat, light and power by means of electricity, and each wholesale electric supplier (as defined in Section 58.1-400.2), as provided by this chapter.

"Wholesale electric supplier" means any ~~person~~ corporation, cooperative, partnership or other business entity (as defined in Section 58.1-400.2) owning or operating facilities for the generation of electricity for sales other than to the ultimate retail customer; except any person

owning or operating hydroelectric facilities with a designated generation capacity of less than 25 megawatts.

[Explanation: The proposed changes are needed to ensure that only those wholesale electric suppliers that are subject to federal taxation will be subject to the taxation and related requirements of Sections 58.1-2600 et seq.]

Section 58.1-2900: Change the third paragraph of subsection A to provide:

The tax on consumers under this section shall not be imposed on consumers served by an electric utility owned or operated by a municipality if such electric utility elects to have an amount equivalent to the tax included as part of the rate it (or an association or agency of which it is a member) pays for transmission and/or wholesale electric service. Such tax shall be calculated under the tax rate schedule in this section applied to the kWh of transmission and/or wholesale electric service purchased by such electric utility (or association or agency) measured at the point of delivery to such electric utility (or association or agency). The maximum tax rates for such an electric utility shall be adjusted to eliminate the amount of tax that replaces the State Corporation Commission's special assessment tax on utilities. The kilowatt hours used to calculate the rate paid for transmission and/or wholesale electric service shall exclude kilowatt hours for a municipality's own use and kilowatt hours used by counties, divisions or agencies of federal or state governments.

[Explanation: This change is needed to ensure that, in addition to the option for any individual municipal utility, Virginia Municipal Electric Association No. 1, which is the wholesale supplier of its seven municipal members, would be permitted to elect the tax treatment provided in this section for its purchases from Virginia Power and to permit

Blue Ridge Power Agency the same option if it were to become a wholesale supplier to any of its members. This change would also clarify how the tax would be assessed at the wholesale level.]

B. A service provider shall remit monthly to the Department the amount of tax paid during the preceding month by the service provider's consumers (except for amounts included in the rates to utilities owned and operated by municipalities which are charged by the company providing transmission directly to such utilities or to an association or agency of which they are a member), except for the portion which replaces the local license tax revenues that would have been collected under § 58.1-3731. ~~Such portion~~ Eighteen and one-half percent of the tax paid by the service provider's consumers shall be remitted to the locality in which the consumer is located. electricity was sold, and shall be based on such locality's license fee rate which it imposes in accordance with § 58.1-3731. Amounts of the tax billed that are included in the rates to utilities owned and operated by municipalities which are charged by the company providing transmission directly to such utilities (or to an association or agency of which they are a member) shall be remitted by such company to the Department and to the municipalities monthly following the month during which it bills utilities owned and operated by municipalities.

~~The amount of tax remitted to each locality shall be based on a ratio, the numerator of which shall equal the tax rate imposed by the locality prior to the enactment of this legislation and the denominator of which shall be the total tax rate, aggregating the two percent state rate, the local rate used in the numerator and the 0.01 percent Commission rate. This ratio shall be multiplied by the total amount of tax revenues collected from the consumers within the locality.~~

[Explanation: These changes are needed to provide a mechanism for the Department to collect the tax paid by municipalities in rates charged by their transmission provider and/or wholesale electric service provider. They are also needed to eliminate an anomaly that would result from the draft that would impose a uniform tax rate on all consumers, but would provide for remittance to local

governments of only an amount based on the superseded utility license tax rate charged by each particular local government. For example, Fairfax County now imposes a utility license tax rate of 0.24% rather than the 0.5%

maximum permitted under Section 58.1-3731, which is imposed by the vast majority of local governments. Under the draft, Fairfax County would be entitled to a remittance of only 9.8% of the new consumer tax, whereas local governments that now charge the 0.5% utility license tax could receive a remittance of 18.5% of the new consumer tax.]