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Your Renewable Resource Electric Company
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1999 January 2

SJR91 Subcommittee Studying Electric Industry Restructuring
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Subj: Three Topics: HB-485, Nuclear Decommissioning, and Taxation

Dear Vice Chairman Woodrum and Members of the SJR91 Subcommittee Studying Electric Industry Restructuring:

1. I'd like to call your attention to three topics that were raised during the December meetings of the SJR91 Subcommittee Drafting Group that have not yet been resolved. These are:

a. The status of HB-485, a bill concerning qualifying small power producers that was carried over from the 1998 session so that its merits could be discussed by the SJR91 subcommittee;

b. Procedures for the recovery of stranded costs associated with generating plant decommissioning that treat the owners of nuclear generating plants differently than the owners of non-nuclear generating plants, thereby creating competitive inequalities; and

c. Taxation policies that have the effect of discouraging competition.

1. To facilitate discussion of HB485, I have attached a decision tree using a format that the Drafting Group is already familiar with. For the discussion of stranded costs associated with the decommissioning of nuclear plants and for taxation policy, I have used a more conventional text layout. I hope you will review the attachments and use them to guide discussion of these topics at the next Drafting Group meeting. Thank you.

Sincerely,

[original signed by]

Michel A. King
President

3 Atchs: HB485, Nuclear Decommissioning, Taxation

HB485 Decision Tree

Should the General Assembly require incumbent utilities and co-ops to provide access to their transmission and distribution systems to small hydro power producers who are currently eligible to sell their electricity at retail under §56-232, but who currently have no practical means of reaching the vast majority of their potential customers?

⇒

YES

[Note: A "yes" answer assumes it is in the Commonwealth's best interest to support small hydro power producers who are currently eligible to sell electricity at retail by giving them effective access to potential markets.]

⇓

NO

Should the primary energy sources available for use by small power producers currently eligible to sell their electricity at retail under §56-232 be expanded to include not just water power, but other renewable resources (including solar and wind), biomass, waste (including landfill gas), geothermal resources, or any combination thereof?

⇒

[Note: A "yes" answer assumes it is in the Commonwealth's best interest to allow small hydro producers to supplement their hydroelectric production with electricity produced by other primary energy sources, an especially important option during periods of low river flow.]

IF YES, then what other primary energy sources should be included?

- All of those listed?
- Some subset of those listed?
- Some primary energy sources not listed?

⇓

NO

Should the capacity-limit (20 MW) on small power producers currently eligible to sell their electricity at retail under §56-232 be increased?

⇒

IF YES, then to what limit?

- 80 MW (FERC definition of a small power producer under PURPA)?
- Some other limit?

⇓

NO

Should the number of customers that can be served by small power producers currently eligible to sell their electricity at retail under §56-232 (five) be increased to some other number?

⇒

IF YES, to what other number?

- No specific limit on the number of customers is needed: The capacity limit on eligible small power producers already limits the impact of this proposal on incumbent utilities and co-ops, so no other limit is needed.
- Some specific number greater than 5?

⇓

NO

Should the types of customer that can be served by small power producers currently eligible to sell their electricity at retail under §56-232 be expanded to include residential customers?

⇒

YES

[Note: A "yes" answer assumes that there is no practical purpose served by preventing small power producers from selling electricity at retail to residential customers.]

⇓

NO

If the answer to any of the previous questions concerning HB485 is "Yes", should the changes be made effective immediately in order to benefit small hydro producers when the 1999 spring rains come, and, in the case of small solar electric producers, to encourage the construction of VASE-funded solar power plants in-state before VASE funds are exhausted by out-of-state construction projects?

⇒

YES

[Note: A "yes" answer assumes that it is in the Commonwealth's best interest to implement HB485 as soon as practical, rather than waiting several years for electric industry restructuring.]

⇓

IF NO, then when should these changes become effective?

- July 1, 1999?
- Some other date?

Prepared by: Michel A. King, Old Mill Power Company, 1999 January 2

Stranded Cost Recovery for Nuclear Decommissioning

1. Virginia Power is the current owner of Virginia's two nuclear facilities, the North Anna Power Station and the Surrey Power Station. During the December 29, 1998 discussion of stranded cost recovery for decommissioning nuclear power plants, it was proposed that nuclear decommissioning costs be included in stranded cost recovery, and that the period of such recovery continue until the end of the productive lives of the nuclear facilities, or until re-licensing, whichever occurs first. No specific limit on the costs to be recovered was proposed. The Old Mill Power Company is concerned that automatic recovery from all of Virginia Power's current customers of any and all costs associated with decommissioning Virginia Power's nuclear power plants, including costs that may arise in the future due to regulatory changes, imprudent or negligent operation of the facilities, price fluctuations, changes in applicable technology, natural disasters, etc., would confer upon the owners of nuclear facilities a competitive advantage not available to those who face similar uncertainties concerning the futures of their non-nuclear generating assets.

2. Through Tim Lough of the State Corporation Commission, Old Mill has learned that the Nuclear Regulatory Commission (NRC) offers several options to utilities owning nuclear power plants to ensure that the owners have sufficient funds on hand at the end of the economic lives of their nuclear plants to decommission them properly. According to Mr. Lough, Virginia Power has elected to use "External Decommissioning Trust Funds" for this purpose, and is required to maintain those funds at levels determined to be prudent on the basis of decommissioning cost studies that are updated every four years. For the North Anna Power Station, the relevant study is "Decommissioning Cost Study for North Anna Power Station Units 1 and 2". For the Surrey Power Station, the relevant study is "Decommissioning Cost Study for Surrey Power Station Units 1 and 2". Both of these studies were revised as of July 1998, thus the next revisions are due in July 2002. Old Mill proposes that the costs identified in the year 2002 revisions of these two documents, as approved by the SCC and the NRC, be the upper limit on decommissioning costs recovered from all of Virginia Power's current customers, regardless of the length of the recovery period.

Prepared by: Michel A. King, Old Mill Power Company, 1999 January 2

Taxation Policies that Discourage Competition

1. This is to clarify the issue raised by the Old Mill Power Company at the December 17, 1998 SJR91 Drafting Group meeting concerning the fact that, unless they are changed, some local government consumer utility taxes will discourage retail competition among energy providers and will provide a competitive advantage to incumbent energy providers. The attached document, "An Ordinance Imposing a Tax on the Consumers of Certain Utility Services, Fixing the Amount of Tax, Providing for Its Collection and Prescribing Penalties for the Violation of this Ordinance", adopted by Orange County on 1990 June 12, is an example of the kind of ordinance that Old Mill and a group of small hydro producers that has been attending SJR91 Drafting Group meetings are concerned about.

2. Now that we have seen the draft wording for §58.1-2900 A, dated 12/21/98 and distributed by staff at the December 29 meeting, we can see that the proposed "tax on the consumers of electricity in the Commonwealth based on kilowatt hours used per month" has the same inherent anti-competitive bias as the existing local government consumer utility tax. In both cases, the problem stems from the use of regressively-graduated tax schedules that provide for different rates of taxation depending, in theory, upon either the dollar value of a customer's energy bill or upon the number of kiloWatthours consumed, but that, in practice, are collected by a "seller" in the case of Orange County's consumer utility tax, or by a "service provider" in the case of the proposed "consumption tax", neither of whom, in a competitive environment, will be in a position to know the total value of a customer's energy bill or the total amount of energy consumed by a customer.

3. Here are two cases illustrating the point as it applies to a local government's consumer utility tax:

a. Case 1, Two Energy Providers (Provider A and Provider B) Using the Same Distribution Company Meter to Deliver Energy to their Customer:

1) In a competitive Virginia retail market, it is conceivable that, in any given month, a customer may choose to purchase electricity from more than one supplier--energy that is delivered via a single distribution company through a single meter. This is similar to the situation in Denver, CO, where Public Power, the local utility, currently offers a program whereby customers interested in buying electricity generated by a renewable primary energy source (wind power) can purchase such power in blocks of 100 kWh. Although the conventionally-generated electricity sold by Public Power is delivered to a given customer through the same meter as the wind-generated electricity, the billing rates for the two types of electricity differ. In a competitive market, such as the one proposed for Virginia, the conventionally-generated electricity might be sold to the customer by Provider A, while the wind-generated electricity might be sold to the customer by Provider B.

2) Let us define Provider A as the incumbent utility, and consider the following numerical example: Suppose a small commercial customer in Virginia using 5000 kWh per month is considering whether to purchase all its energy from Provider A, or to purchase 2500 kWh from Provider A and 2500 kWh from Provider B. Let us assume that, by coincidence, Providers A and B charge the same retail price for their electricity, and that that common price is $.08/kWh. As the attached ordinance is currently worded, an Orange County commercial customer buying 5000 kWh from Provider A would be charged $400 ($.08/kWh * 5000 kWh) for the energy consumed, and $15 (20% * $400 = $80.00, subject to a $15 cap) for the county's consumer utility tax.

3) If this same customer were to elect to purchase 2500 kWh from Provider A and 2500 kWh from Provider B under the current ordinance, the customer would be charged $200 ($.08/kWh * 2500 kWh) for the energy purchased from Provider A, $15 tax (20% * $200 = $40, subject to a $15 cap) on the energy purchased from Provider A, $200 ($.08/kWh * 2500 kWh) for the energy purchased from Provider B, and $15 tax (20% * $200 = $40, subject to a $15 cap) on the energy purchased from Provider B. Thus, in this example, the customer pays the same amount for the energy consumed ($400) whether using one energy provider or two, but the cap on the county's consumer utility tax causes the customer to pay twice the amount of tax ($30) when using two energy providers than the amount of tax ($15) it would pay when using only one energy provider.

a. Case 2, Two Energy Providers, One Using the Distribution Company to Deliver It's Energy to the Customer, the Other Generating Electricity On-site (Perhaps Solar Electricity, Wind Electricity, or Small Hydroelectricity) and Delivering Its Energy to the Customer Through a Separate Meter:

This example is essentially the same as Case 1, except that Provider B is assumed to be using its own meter rather than a meter provided by the distribution company. In this case, the commercial customer described above would pay $15 in consumer utility tax if all its energy were purchased from Provider A, $15 in consumer utility tax if all its energy were purchased from Provider B, but $30 in consumer utility tax if half its energy were purchased from Provider A and half from Provider B.

1. If the same examples are evaluated in terms of the proposed kiloWatthour consumption tax:

a. Case 1, Two Energy Providers (Provider A and Provider B) Using the Same Distribution Company Meter to Deliver Energy to their Customer:

1) As before, let us define Provider A as the incumbent utility, and consider the following numerical example: Suppose a small commercial customer in Virginia using 5000 kWh per month is considering whether to purchase all its energy from Provider A, or to purchase 2500 kWh from Provider A and 2500

kWh from Provider B. As the proposed §58.1-2900 A is currently worded, a commercial customer buying 5000 kWh from Provider A would be charged $6.65 (($.00161/kWh * 2500 kWh = $4.025) + ($.00105 * 2500 kWh = $2.625)) for the kiloWatthour consumption tax.

2) If this same customer were to elect to purchase 2500 kWh from Provider A and 2500 kWh from Provider B under the proposed §58.1-2900 A, the customer would be charged $4.025 tax ($.00161/kWh * 2500 kWh = $4.025) on the energy purchased from Provider A and $4.025 tax ($.00161/kWh * 2500 kWh = $4.025) on the energy purchased from Provider B, for a total of $8.05 in energy consumption tax. Thus, in this example, the regressively-graduated kiloWatthour consumption tax causes the customer to pay 21% more in consumption taxes ($8.05) when using two energy providers than the consumption tax ($6.65) they would pay if using only one energy provider.

1. Thus, as currently worded, both the local government consumer utility tax used in this example and the proposed kiloWatthour consumption tax provide an economic incentive that encourages customers to purchase their next increment of electricity from their incumbent energy provider, rather than from a competitor. We see no compelling reason why these barriers to competition should remain in local government ordinances or should be built into the proposed Electric Industry Restructuring Act. The obvious solution seems to be to mandate flat tax rates on electric bills, whether the basis for the tax is the dollar amount of the bill, or the number of kiloWatthours consumed. It is a simple matter of arithmetic to do this in a manner that is revenue neutral within customer classes.

2. We have heard it said that the kiloWatthour consumption tax was drafted using a regressively-graduated tax schedule in order to keep the resulting tax bill revenue neutral with respect to *individual customers* rather than with respect to *customer classes*. Note, however, as shown in the examples given above, that such taxes are revenue neutral only for those customers who do *not* take advantage of one of the major benefits of a competitive electric industry--the opportunity to purchase energy from more than one provider. The taxes described will actually penalize customers who use more than one energy provider.

3. We urge the SJR91 Subcommittee to replace regressively-graduated consumer utility and kiloWatthour consumption taxes with flat taxes.

Prepared by: Michel A. King, Old Mill Power Company, 1999 January 2

Adopted by Orange County, Virginia, June 12, 1990. Retyped for electronic transmission.

AN ORDINANCE IMPOSING A TAX ON THE CONSUMERS OF CERTAIN UTILITY SERVICES, FIXING THE AMOUNT OF TAX, PROVIDING FOR ITS COLLECTION AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THIS ORDINANCE

WHEREAS, Section 58.1-3812 of the Code of Virginia of 1950, as amended, and the sections following authorize and empower the County of Orange, Virginia to impose a tax on the consumers of certain utility services;

NOW THEREFORE, BE IT RESOLVED that a tax for general purposes be, and it hereby is, imposed and levied by the County of Orange upon each and every purchaser of utility service as herein provided.

SECTION 1 - DEFINITIONS

The following words an phrases when used in this ordinance shall, for the purpose of this ordinance, have the following respective meanings, except where the context clearly indicates a different meaning:

(a) Commercial or industrial user - the owner or tenant of property used for commercial or industrial purposes, including the owner of master-metered apartment buildings, who pays for utility service for such property.

(b) Person - individuals, firms, partnerships, associations, corporations and combinations of individuals of whatever form and character.

(c) Purchaser - every person who purchases a utility service.

(d) Residential User - the owner or tenant of private residential property or tenant of an apartment who pays for utility service in or for such property.

(e) Seller - every person, whether a public service corporation or not, who sells or furnishes utility service of electricity and telephone.

(f) Utility Service - includes local telephone service (excluding long distance messages) and electric services furnished within the boundaries of Orange County).

SECTION 2 - TAX RATES AND METHOD OF IMPOSITION

Taxes are imposed and levied in the following amounts and in accordance with the following terms:

(a) On purchasers of electric service for residential purposes, the tax shall be in the amount of twenty per cent (20%) of the charge on meter readings taken (exclusive of any Federal or State tax thereon) made by the seller against the purchaser with respect to such residential electric service; provided, however, that in case any monthly bill submitted by the seller for electric service shall exceed Fifteen Dollars ($15.00), there shall be no tax computed on so much of such bill as shall exceed Fifteen Dollars ($15.00). In the case of any apartment house or other multiple family dwelling using electric service through a master meter or master meters, the sum of Fifteen Dollars ($15.00) shall be multiplied by the number of dwelling units served. There shall be no tax computed on bills submitted for electric service for water heating or space heating where a second and separate meter is used solely for water heating or space heating service.

(b) On purchasers of electric service for commercial or industrial purposes, the tax shall be in the amount of twenty per cent (20%) of the charge on meter readings taken (exclusive of any Federal or State tax thereon) made by the seller against the purchaser with respect to such business or industrial electric service; provided, however, that in case any monthly bill submitted by the seller for electric service shall exceed Seventy-Five Dollars ($75.00), there shall be no tax computed on so much of such bill as shall exceed Seventy-Five Dollars ($75.00).

(c) On purchasers of telephone service for residential purposes, the tax shall be in the amount of twenty per cent (20%) of the charge (exclusive of any Federal or State tax or mileage charges thereon) made by the seller against the purchaser with respect to such residential telephone service; provided, however, that in case any monthly bill submitted by the seller for telephone service shall exceed Fifteen Dollars ($15.00), there shall be no tax computed on so much of such bill as shall exceed Fifteen Dollars ($15.00).

(d) On purchasers of telephone service for commercial or industrial purposes, the tax shall be in the amount of twenty per cent (20%) of the charge (exclusive of any Federal or State tax or mileage charges) made by the seller against the purchaser with respect to such local telephone service and equipment; provided, however, that in case any monthly bill submitted by the seller for telephone service shall exceed Seventy-Five Dollars ($75.00), there shall be no tax computed on so much of such bill as shall exceed Seventy-Five Dollars ($75.00).

SECTION 3 - UTILITY BILLS

Bills shall be considered monthly bills if rendered twelve times annually with each bill covering a period of approximately

one (1) month or a portion thereof. If bills for utility services are submitted less frequently than monthly, covering periods longer than one month, the maximum amount of such bills which shall be subject to the tax imposed and levied by this ordinance shall be increased by multiplying the appropriate maximum fixed by Section 2 hereof for the utility service involved by the number of months of service covered by such bills.

SECTION 4 - APPLICATION TO TELEPHONE SERVICE

The tax imposed and levied by this ordinance on purchasers with respect to telephone service shall apply to all charges made for local telephone exchange service except as follows:

(a) Coin box telephone. The total amount of the guaranteed charge on each bill rendered for semi-public coin box telephone service shall be included in the basis for the tax with respect to the purchaser of such service, but no other tax shall be imposed on telephone service paid for by inserting coins in coin-operated telephones.

(b) Flat rate service. With respect to flat rate service, the tax shall apply to only the amount payable for local area service and shall not apply to any specific charge for calls to points outside the county or to any general charge or rate differential payable for the privilege of calling points outside the county or for mileage service charges.

(c) Message rate service. Where purchasers of telephone service are charged on a message rate basis, the tax shall apply only to the basic charge for such service and shall not apply to any charge for additional message units.

SECTION 5 - DUTIES OF SELLER GENERALLY

(a) It shall be the duty of every seller acting as the tax collection medium or agency for the County of Orange to collect from the purchaser for use of the County, the tax imposed and levied by this ordinance at the time of collecting the purchase price charge therefor, and the taxes collected during each calendar month or billing period shall be reported and paid by each seller to the Treasurer of the County by the last day of the second calendar month thereafter, together with the name and address of any purchaser who has refused to pay the tax.

(b) In all cases where the seller collects the price for utility service in stated periods, the tax imposed and levied for and by this ordinance shall be computed on the amount of purchase during the month or period according to each bill rendered, provided the amount of tax to be collected shall be the nearest whole cent to the amount computed.

SECTION 6 - RECORDS TO BE KEPT BY SELLER

Each seller shall keep complete records showing all purchasers of utility service in the County of Orange which records shall show the price charged against each purchaser with respect to each purchase, the date thereof and the date of payment thereof, and the amount of tax imposed pursuant to this ordinance. Such records shall be kept open for inspection by the duly authorized agents of the County during regular business hours on business days, and the duly authorized agents of the County shall have the right, power and authority to make such transcript thereof during such time as they may desire.

SECTION 7 - EXEMPTIONS FROM ORDINANCE

(a) The United States of America; diplomatic personnel exempted by the laws of the United States; the state and political subdivisions, boards, commissions, the authorities and agencies thereof; volunteer fire companies and volunteer rescue squads, are hereby exempt from the payment of the tax imposed and levied by this ordinance with respect to the purchase of utility services used by such governmental agencies.

(b) Purchasers of utility services sold within the boundaries of the Town of Gordonsville and the Town of Orange as now established or as may be hereafter established are exempt from the payment of the tax imposed and levied by this ordinance.

SECTION 8 - COLLECTION OF TAX

The Treasurer of Orange County shall be charged with the power and duty of collecting the taxes imposed and levied under this ordinance.

SECTION 9 - FORMS FOR REPORTS

The Treasurer of Orange County may prescribe forms for filing of any report or the payment of any funds set forth in this ordinance.

SECTION 10 - EXTENSION OF TIME FOR FILING RETURN

The Treasurer of Orange County may extend, for good cause shown, the time of filing any return required to be filed by the provisions of this ordinance; provided, however, no such extensions shall exceed a period of ninety (90) days.

SECTION 11 - PENALTY; CONTINUING VIOLATIONS; CONVICTION NOT TO EXCUSE PAYMENT OF TAX

Any purchaser failing, refusing or neglecting to pay the tax imposed or levied by this ordinance, any seller violating the

provisions of this ordinance, and any officer, agent or employee of any seller violating the provisions of this ordinance shall be guilty of a misdemeanor and shall upon conviction be subject to a fine of not more than One Hundred Dollars ($100.00). Each failure, refusal, neglect or violation and each day's continuance

thereof, shall constitute a separate offense. Such conviction shall not relieve any person from the payment, collection and remittance of such tax as provided by this ordinance.

SECTION 12 - EFFECTIVE DATE

The tax levied or imposed under this ordinance shall become effective sixty (60) days subsequent to written notice by certified mail from the County of Orange to the registered agent of the utility or corporation required to collect the tax.

Adopted at a regular meeting of the Orange County Board of Supervisors June 12, 1990.

Ayes: Green, Ms. Baker, Gordon, Schwartz and Roberts
Nays: None

original signed by_____
A. Terrell Baskerville
County Administrator