

Virginia Power comments on draft language - January 5, 1999

The following comments reflect the company's major areas of concern.

• Structure and Transition Draft Supplement – 12/31/98

§ 56-579.1 Rate Caps

Comments:

- **Subsection A: Suggested additional language – purpose of capped rate.** Language should be added setting forth reasons for imposition of the capped rate during a price protection period. The language should state that the capped rate protects consumers from price volatility and market power abuses. In addition, the capped rate would encourage the entry of new suppliers into the market, fostering healthy competition. The capped rate also provides a mechanism for the limited recovery of stranded costs. Margins earned under the capped rate would be the only means utilities would have of recovering such costs from customers who decide to remain with their incumbents.
- **Subsection A: Suggested additional language – definition of capped rate.** Language should be added defining the capped rate as a rate that cannot be exceeded during a clearly defined price protection period. This period could be extended only through legislative action, if the Assembly judges such an extension to be needed.
- **Subsection A: Definition of capped rate.** The subsection should state that the capped rate for each utility will be set at a level equal to the company's bundled transmission, generation and distribution rate in effect as of the date of enactment of this bill. The only exception to this should be to allow utilities, at their discretion, to request a rate case before the beginning of retail competition. In contrast, the draft language in section 56-579.1 would give the SCC the power, before the beginning of a price protection period, to open new rate cases at its discretion to set the capped rate for each utility.
- **Subsection C: Extension of capped rate until determination of effective competition.** This section would give the Commission

unilateral authority to extend a price protection period indefinitely. This could eliminate the move toward competition and have severe negative financial impacts on incumbent utilities. The decision on the duration of such a protection period is a policymaking issue that should be dealt with by the legislature. While it would be proper for the language to allow the Commission to recommend extensions to the legislative oversight group, the actual decision to extend should be properly placed in the hands of the Assembly. Also, the capped rate must not be extended indefinitely. Language should be included to bring the period of capped rates, including any extensions, to an end by a date certain.

- 2 The term “effective competition” used in the draft language is vague and subjective. It would be virtually impossible to define it objectively with any meaningful precision. A formal finding of “effective competition” could impose a substantial barrier to the timely development of a competitive market.

- **Stranded Costs Draft - 12/31/98**

§ 56-591 Stranded Costs

Comments

- **Subsection A: Determination of stranded costs.** The language should clearly enumerate recoverable costs. This is a major policy decision, and as such must be vested in the legislature. As currently drafted, the subsection merely directs the Commission to consider a list of costs and assets when determining net stranded costs. Legislation should specify that those costs previously allowed to be recoverable under regulation are fully recoverable during and after restructuring. The subsection also should make clear that the SCC will calculate net stranded costs based on these legislative policy determinations.
- **Subsection A: Recovery mechanisms.** The language should provide utilities with two mutually exclusive stranded cost recovery mechanisms: revenues collected through the capped rate and non-bypassable wires

charges. Capped rate revenues would be the only means through which utilities could recover potentially stranded costs from customers who remain with them during a price protection period. Non-bypassable wires charges would be imposed only on customers who leave their incumbents during the recovery period specified by the Assembly.

- **Subsection B: Recovery period.** The subsection must have clearly defined periods for both the determination and recovery of stranded costs. The current language is unacceptable.

The company appreciates the efforts of the drafting panel to include fair, inclusive stranded cost recovery provisions in the draft language. However, the company still believes it is in the best interests of its customers to confine recovery of stranded costs through the non-bypassable wires charge to those associated with non-utility generation contracts and nuclear decommissioning. These costs would be collected over the life of the obligations. This method would facilitate choice by minimizing the impact on customers that switch to alternative providers.

- **Structure and Transition Draft - 12/26/98**

§ 56-579 Schedule for Transition to Retail Competition; Commission Authority

Comments

- **Subsection C: Powers of SCC.** The language allowing the SCC to examine the rates of electric utilities prior to and during the period of transition to retail competition amounts to continued rate regulation of utilities by the Commission. The provision is inconsistent with the draft's provision of capped rates. As currently written, this subsection gives the SCC authority to open a rate case prior to and any time during the transition. This uncertainty would stifle development of a competitive supply market and have an adverse impact on utility shareholders.

§ 56-580 Nondiscriminatory Access to Transmission and Distribution Systems

Comments

- **Subsection E: Rate regulation stemming from finding of undue market power.** The subsection would give the Commission the right to reimpose, at its discretion, the current cost-based regulatory system on any electric utility or non-regulated generator found to have “market power.” The language is another case of the draft effectively continuing rate regulation of utilities by the Commission. The ongoing prospect of re-regulation over an indefinite period would effectively negate the purpose of the rest of the bill by imposing tremendous uncertainty on customers and utilities.

Another problem is the proposed definition of market power, which would be taken from the SCC draft bill submitted in December. The definition is vague, using subjective terms such as “significant...price increase” to describe market abuses.

As an alternative, the extension of the capped rate through legislative action is an appropriate response to such a finding by the Office of the Attorney General or the SCC. The Attorney General and the Commission should communicate findings of unacceptable market power to the legislative oversight group for consideration by the Assembly.

§ 56-581. Independent System Operators

Comments

- **Subsections A and B: Conditions for participation in an ISO.** The draft language gives the SCC effective power to veto the participation of a utility in an ISO. The attempt to set conditions for ISO governance would probably conflict with established FERC jurisdiction. The language prohibiting the transfer of ownership of transmission facilities is duplicative of provisions already in state law.

§ 56-586 Suppliers of Last Resort, Default Suppliers and Backstop Providers

Comments

- **Subsections A and B: Determination of supplier of last resort and default services, and designation of providers of such services.**

The language creates a new class of customers that would be subject indefinitely to the cost-of-service ratemaking currently in state law. The purpose of the section also is inconsistent with the draft's provisions dealing with the capped rate. The capped rate language would provide a standard offer to customers if they elect to stay with their incumbents (the default case) or cannot find alternative suppliers (the supplier of last resort case).

§ 56-593 Divestiture, Functional Separation and Other Corporate Relationships

Comments

- **Subsection B: Functional separation.** The language should make clear that deregulation of generation is effective Jan. 1, 2002, consistent with the timetables in the draft section 56-593, as well as in House Bill 1172.

Subsection E: Covered transactions. The language extends the SCC's power to veto mergers, acquisitions and other business decisions. This effectively duplicates powers already vested in the federal Securities and Exchange Commission and FERC and could well be an excessive barrier to business decisions. The language also goes well beyond existing statutory control of affiliate transactions.