

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 28th day of January, 2000.

Case No. 98-0452-E-GI

General Investigation to determine whether West Virginia should adopt a plan for open access to the electric power supply market and for the development of a deregulation plan.

COMMISSION ORDER

ADOPTING A PLAN

TO RESTRUCTURE THE ELECTRIC GENERATION

SUPPLY MARKET IN WEST VIRGINIA

This general investigation has been for the purpose of determining whether West Virginia should adopt a Plan whereby users of electricity in the State would have open access across existing and new utility delivery systems to a competitive market for power supply. Pending before the Commission is a stipulation jointly filed by a number of parties to this proceeding, which recommends such a Plan. This Order affirms our prior finding, set forth in our December 20, 1999, Order in this proceeding, that customer choice in a competitive power supply market is in the public interest. It also approves a revised Plan, filed by a greater consensus of the parties than the Plan filed in December. This Order additionally determines to submit the revised Plan to the West Virginia Legislature during the current session.

Background

During its 1998 session, the West Virginia Legislature enacted *West Virginia Code* § 24-2- 18, which required the Commission to hold public meetings for the purpose of determining whether West Virginia should adopt a Plan whereby users of electricity in the State would have open access across existing and new utility delivery systems to a competitive market for power supply. The Legislature directed that an affirmative determination of this question would be a "finding of public interest." In addition, the law required that to provide meaningful involvement and participation to all interested parties in determining whether to make a finding of public interest and, if necessary,

in developing a deregulation Plan for submission to the West Virginia Legislature, the Commission must seek and secure the involvement of a wide spectrum of interests in the State, including the parties listed in the following paragraph.

The parties named in *West Virginia Code* § 24-2-18, whose involvement in this process the

Commission was required to seek include:

". . . groups representing senior citizens and other persons on fixed incomes, including the American association of retired persons; groups representing low income persons and the working poor, including the West Virginia community action directors association; labor unions, including the West Virginia AFL-CIO, the communications workers of America, the united mine workers of America, the West Virginia state building and construction trades council, the international brotherhood of electrical workers, the independent steel workers, and the united steel workers of America; groups representing residential consumers; groups representing industrial consumers; groups representing commercial consumers; groups representing the electric utility industry and electricity generation concerns; groups representing natural resources industries and associated industries, including the West Virginia coal association and the West Virginia oil and natural gas association; groups representing heating, ventilating and air conditioning contractors, including the West Virginia heating, ventilating, air conditioning and electrical contractors association; groups representing environmental concerns; the electric industry research group of West Virginia university; the West Virginia municipal league; and any other person or group which has an interest in these issues."

Before discussing the proceedings in this case, and the Commission's determination as to whether West Virginia should adopt a Plan for open access to a competitive market for power supply, it may be helpful to consider the present structure of the electric utility industry.

The present structure of electric utilities is sometimes referred to as a fully integrated structure. This means that all services associated with getting electricity to customers are bundled together, or integrated. These services include generation or acquisition of sufficient electricity to serve customers (the power supply function), the transmission of electricity across an interconnected grid of high voltage lines from the various sources of power supply to the local area where customers are located (the transmission function), and the transformation of high voltage transmission power to low voltages and delivery of electricity across radial distribution lines to specific customer locations (the distribution function). The Plan that the Commission is considering involves the deregulation of only one of these integrated functions: The power supply function. Therefore, if the Commission is to consider a Plan for deregulation of existing utility generation assets which at the same time provides for access by retail customers to competitive power supply

markets, a significant part of this Plan must be the appropriate unbundling, or restructuring of these heretofore fully integrated electric utility functions.

Throughout this proceeding, parties have often used the terms "deregulation," "restructuring" and "unbundling." The Commission clarifies at the outset that the term deregulation in the context of this proceeding is referring solely to the deregulation of the power supply function performed by electric utilities. Clearly, deregulation of power supply is the cornerstone of any decision to adopt a Plan as described in *West Virginia Code* § 24-2-18. However, such an outcome cannot be achieved without a thoughtful and purposeful restructuring of the present fully integrated structure of electric utilities. This restructuring will require the separation of generation and other power supply functions from the transmission and distribution functions which will remain fully regulated under any party's concept of a workable Plan. Finally, unbundling is the process by which the rates for electricity presently paid by customers can be broken into component parts so that the charges for each function of the service provided by an electric utility can be easily identified. Accordingly, any reference in this Order to "deregulation," "restructuring" or "unbundling" should be understood to be component parts of a Plan in which each of these components is integral.

The Commission commenced this proceeding by Order dated April 20, 1998 and sought input from

the public by inviting all interested parties to participate in a series of workshop meetings that were held throughout 1998. These workshops provided an opportunity for intensive review of individual positions and addressed a large number and wide range of issues relating to the electric utility industry.

In addition to workshops, the Commission convened five (5) separate public meetings throughout the State. At those meetings, several workshop participants explained their views of restructuring and deregulation, and the public attendees were afforded the opportunity to make comments and ask questions.

After the last public meeting, the Commission directed its staff to investigate the possibility of a consensus Plan. On November 16, 1998, Commission Staff filed a status report advising the Commission that the workshop participants had failed to reach a consensus on a Plan for electric restructuring in the State.

On Tuesday, November 24, 1998 the Commission presided over a concluding workshop meeting in Charleston. At this meeting Commission Staff summarized its November 16 report and discussed the reasons why workshop members were unable to reach a consensus. Other participants commented on how the Commission should proceed in this case and continue to explore electric industry restructuring.

Some of the workshop participants expressed a desire to continue to discuss electric restructuring and to hold workshop meetings into the future. These participants suggested that the

Commission continue to monitor the activities in other states as well as activities at the federal level. Some of participants urged the Commission to schedule evidentiary hearings on electric restructuring issues, and to draft its own Plan for restructuring following the conclusion of those hearings.

By Order issued December 23, 1998, the Commission scheduled evidentiary hearings on the electric restructuring issues set forth below. The Commission stated that after the hearings concluded, it would determine whether electric restructuring is in the public interest, and if so, the Commission would prepare a Plan for restructuring the electric utility industry in the State, as set forth in *West Virginia Code* §24-2-18. The Commission indicated that if a Plan were prepared after conclusion of the hearings, the Commission would hold one or more additional hearings to provide opportunity for further input as to whether the Plan fairly balances the interests of the electric utilities, their customers, and the State's economy, and meets the criteria set forth in *West Virginia Code* § 24-2-18(a)(6)(A)-(M).

The issues for hearing identified in the December 23, 1998, Order included:

1. Certification, licensing, bonding, etc. of competitive electric suppliers; reliability of power supply; universal service; and consumer protection.

Assuming that new suppliers will be allowed to offer power supply delivered through the facilities of federal and state regulated transmission and distribution utilities (transport utilities), what rules, regulations, regulatory oversight policy or statutory authority should be in place to protect the customers' interests?

2. Code of conduct.

Assuming that affiliates of transport utilities, or the transport utilities themselves, will be offering power supply to customers on the utilities' monopoly transport system, what code of conduct for dealings with competitive suppliers and dealings with customers should be enforced by the Commission.

3. Interclass and/or intraclass subsidies.

Are present rates recovering costs relative to the cost of serving each class or subclass of customers? If there are significant continuing disparities between cost of service and revenue levels among classes or customers, how would such disparities affect competition? If there are significant continuing disparities between cost of service and revenue levels among classes of customers, how should such disparities be addressed in an overall Plan for transition to a competitive power supply market?

4. Valuation of existing generation assets and life of facilities purchased power contracts in a competitive market.

Assuming that owners of existing utility generation facilities and holders of life of facilities purchased power contracts will be free to recover costs and earn a return at competitive market based prices, will there be a reduction or increase in the net profitability of these facilities and contracts over their remaining life; and how will such change in profitability affect the value of existing generation assets? How should these potential changes in value be quantified? How should these potential changes in value be addressed in an overall Plan for transition to a competitive power supply market?

The December 23, 1998, Order also set forth dates for the filing of both pre-filed and responsive testimony on the foregoing issues, and set a date for the filing of post-hearing briefs.

The Commission required the December 23, 1998, Order to be served on all parties named in *West Virginia Code* § 24-2-18, and other parties on the service list at that time. A copy of the December 23, 1998, Order and the service list in effect at that time were attached to the Commission's December 20, 1999, Order as Attachment A. The Commission also required that the Order be published in newspapers state-wide. The Order permitted the filing of petitions to intervene by interested parties who were not yet parties to the proceeding. Furthermore, in compliance with *West Virginia Code* 24-2-18(a)(5), the Order required the Commission's Executive Secretary to mail by First Class Mail a Notice of Hearing to each party on the service list, at least five days, and no more than eight days, prior to each of the scheduled hearing dates. The Executive Secretary mailed two such notices to all of the parties, the first of which was mailed on August 10, 1999, and second on August 17, 1999. Copies of the August 10, 1999, Notice and service list were attached to the Commission's December 20, 1999, Order as Attachment B. Copies of the August 17, 1999, Notice and service list were attached to the Commission's December 20, 1999, Order as Attachment C.

During the period after issuance of the December 23, 1998, Order and before the hearings commenced on August 17, 1999, the Commission issued several procedural orders acting on petitions to intervene, motions regarding the scheduled order of testimony and cross-examination, motions for *pro hac vice* admission of counsel for various parties, and requests for revisions to the service list. The dates of these orders were as follows: (1) March 11, 1999; (2) June 4, 1999; (3) July 7, 1999; (4) July 22, 1999; (5) July 27, 1999; (6) August 10, 1999; and (7) August 16, 1999.

The hearings convened as scheduled on August 17, 1999. The following parties appeared at the hearings and offered testimony on some, if not all of the issues identified in the December 23, 1998, Order: (1) American Electric Power (AEP); (2) Commission Staff (Staff); (3) Weirton Steel

Corporation (Weirton); (4) West Virginia Energy Users Group (WVEUG); (5) West Virginia Retailers Association; (6) Heilig-Meyers Furniture; (7) Enron Energy Services, Inc.; (8) Monongahela Power Company and Potomac Edison Power Company, dba Allegheny Power (Allegheny); (9) Cities of New Martinsville and Philippi, the Harrison Rural Electrification Association, Shenandoah Valley Electric Cooperative, and Craig-Botetourt Electric Cooperative (Public Systems); (10) the Commission's Consumer Advocate Division (CAD); (11) Utilicorp United, Inc. (UtiliCorp) (12) Dominion Resources,

Inc.; (13) Century Aluminum of West Virginia (Century Aluminum); (14) National Electrical Contractors Association (NECA); (15) Morgantown Energy Associates (16) West Virginia Coal Association; (17) West Virginia Community Action Directors Association (WVCADA); (18) AARP; (19) West Virginia Citizens Action Group (WVCAG) and West Virginia Environmental Council (WVEC); (20) West Virginia Building and Construction Trades Council (Trades Council); and (21) AFL-CIO represented through the Trades Council, and in person by Kenneth Perdue.

By Order issued September 9, 1999, the Commission extended the briefing schedule to permit the parties to file initial briefs on September 28, 1999. The Commission further ordered the parties to meet in an effort to develop a consensus Plan for electric restructuring in West Virginia. The Commission urged the parties to file a consensus Plan.

After conclusion of the hearings, briefs were filed by: (1) WVEUG; (2) NECA; (3) Enron; (4) West Virginia Retailers Association; (5) AARP; (6) West Virginia Coal Association; (8) Allegheny; (9) AEP; (10) Staff; (11) Century Aluminum; (12) WVCAG and WVEC; (13) CAD; (14) Public Systems; (15) Weirton. Several parties who participated in the hearings filed letters stating that they would not file legal briefs, but wished to continue to be informed of Commission proceedings in this matter. These parties included Dominion Resources, UtiliCorp, and Morgantown Energy Associates.

On December 13, 1999, the following parties jointly filed a West Virginia Plan for Customer Choice of Electric Power Suppliers, Open Access to Electricity Transport Systems and Deregulation of Power Supply (the Initial Stipulated Plan), in this proceeding: Allegheny, Weirton, WVEUG, West Virginia Retailers Association, Enron, Public Systems, WVCADA, Morgantown Energy Associates, CAD and Staff. On December 15, 1999, the AARP filed a letter supporting the Initial Stipulated Plan and indicating that it had signed on to the Initial Stipulated Plan.

Also on December 13, AEP filed a letter explaining its reasons for rejecting the Initial Stipulated Plan and urging the Commission not to adopt it.

By Order issued December 20, 1999, the Commission adopted the Initial Stipulated Plan with certain revisions, established a procedural schedule for the filing of comments and reply comments, and scheduled a hearing on the Initial Stipulated Plan for January 6, 2000. The Commission determined that some of the wording of the Initial Stipulated Plan should be modified for purposes

of clarification and to address some of the issues that were raised in these proceedings in a manner that would result in a Plan that satisfied the criteria set forth by the Legislature.

By further Order issued December 30, 1999, the Commission determined that the January 6, 2000, hearing would convene as scheduled, and would be continued on January 11, 2000, to permit the appearance of several witnesses who would be unable to attend on January 6, 2000.

The hearing was held as scheduled on January 6, 2000, and January 11, 2000.

On January 10, 2000, Pechiney Rolled Products, LLC (Pechiney) filed a petition to intervene in this proceeding. The Commission granted Pechiney's motion at the hearing on January 11, 2000.

On January 26, 2000, the following parties filed a PSC Proposed West Virginia Plan for Customer Choice of Electric Power Suppliers, Open Access to Electricity Transport Systems and Deregulation of Power Supply (the Plan): Allegheny, AEP, Weirton, WVEUG, West Virginia Retailers Association, Enron Energy Services, Inc., the Public Systems, WVCADA, Morgantown Energy Associates, West

Virginia AFL-CIO, The CAD, and Staff. Notably, AEP and the AFL-CIO, who did not support the Initial Stipulated Plan, have signed and support the Plan.

On January 27, 2000, Century Aluminum, Pechiney and AEP filed a letter, jointly recommending a resolution of the issues between them related to the Plan.

DISCUSSION

Should West Virginia adopt a Plan whereby users of electricity in the state would have open access across existing and new utility delivery systems to a competitive market for power supply :

Testimony and briefs filed in this case support a finding that the Commission should make a finding of public interest that West Virginia should adopt a Plan whereby users of electricity in the State would have open access across existing and new utility delivery systems to a competitive market for power supply. Many parties testified in this proceeding either in favor of a particular Plan of restructuring, or in favor of basic concepts that should be incorporated into a restructuring Plan.

In response to a question from Chairman Lane, AEP witness Landon testified at length why it would be in the public interest for West Virginia to provide its electric customers access to competitive generation market when he testified:

"Competitive electric markets not only will result in customers having, in the long run, lower prices, but it will also result in their having more choices. The products will be packaged differently, the services will be priced in different ways, customers

will find more attractive features in Plans that are offered to them to meet their needs. . . . It isn't necessarily all about price, it's about convenience, it's about desirable features, it's about the ability to buy bill stability if you value bill stability. It's about all sorts of different things, and harnessing the competitive process to allow people to try to differentiate themselves from each other and offer products and services tailored to meet the needs of specific segments of the customer market, . . ." (See

Transcript from August 25, 1999, hearing, pp. 224-225) Mr. Landon further offered his opinion:

"Moreover, I think that states that resist the process and maintain highly regulated vestiges of the regulatory system will be looked upon with disfavor by industries looking for places to locate. Whether you're talking about locating a generating unit or locating a steel Plant, you'll be less likely to go where you don't have customer choice where the state is not actively engaged in promoting a competitive market, . . ."

and,

". . . it's my strong belief that in the long run, everybody will be made significantly better off as a consequence of competition, so if we can find ways to ameliorate the situation of the smaller customers to make it practical and financially reasonable for them to participate in this process, that they will, in the long run, have significant advantages. . . I think West Virginia ought to go ahead, . . .the benefits are not going to be as great as they would be in Pennsylvania or New York . . . [b]ut that doesn't mean that somebody whose current rate is six cents won't benefit a lot and it certainly doesn't mean that the State won't benefit a lot from having been proactive in moving towards a competitive and productive industry." (Id. pp. 225-227)

In its brief, Allegheny stated:

". . . Even more important to the Commission's determination in these proceedings is the indisputable economic fact that viable market competition serves the public interest better than regulation. No party to these proceedings argues that regulators can do a better job than market competition of keeping consumer prices down, increasing consumer product offerings, and encouraging innovation. Bottom line, the existence of consumer choice and viable competition throughout all segments of the electric power market in West Virginia would clearly serve the interests of West Virginia consumers and West Virginia's economy. Thus, the principal challenge for the Commission is not in deciding whether to restructure but in providing the

blueprint for the transition from a non-market to a market-based power generation industry." (Post-hearing Brief of Allegheny, filed September 28, 1999, pp. 54-55)

Mr. Johnston, testifying on behalf of Weirton, related that Weirton supports customer choice and access to competitive power supply markets. He stated that Weirton hopes that the Commission will submit a Plan to the West Virginia Legislature at its next regular session commencing in January, 2000. (8/27 Tr. p. 59) He further testified that customer access to a competitive generation market would potentially have a positive impact on the State's natural resources and on its economy. (*Id.* p. 61) He elaborated by stating that, since West Virginia is a resource-rich state, its resources would likely be further developed for sale to the more competitive markets nationwide and regionally. (*Id.* p. 62) Deregulation could also result in the siting of new generation in West Virginia, to take advantage of its natural resources, which development may be deterred if the Commission continues to have certificating power with respect to construction of generation. (*Id.* p. 62-63). Mr. Johnstone stated his belief that a competitive market will bring opportunities for lower electric costs to the entire economy, in that it will spur efficiency and innovation in the electric industry and produce benefits for the rest of the economy in the form of lower costs and increased convenience. (8/27 Tr. p. 61)

Other parties that testified on the subject generally support customer choice of power supply. Many witnesses qualified their support of electric restructuring by suggesting that safeguards or certain protective measures be put into place.

For example: Mr. Treharne on behalf of the WVCADA testified that his agency also supports customer access if protection is afforded to low-income persons (8/20 Tr. p. 59)

Mr. Harris on behalf of the CAD expressed the view that customer access ". . . is likely to have benefits for West Virginia in the long run . . .", but that in the short run ". . . restructuring may be detrimental to ratepayers if the benefits from the current structure are not preserved." (Harris pre- filed testimony, CAD Exh. No. 1, p. 3)

Mr. Chernick, testifying on behalf of the CAD likewise opined that there are potential benefits of restructuring provided that ratepayers are protected. (8/26 Tr. pp. 372-373)

Even parties that did not directly support a particular deregulation Plan did not argue that restructuring would not be in the public interest. In its Brief, the AARP stated: "AARP does not offer testimony or take a position on whether or not West Virginia should adopt retail electric competition or the issues of divestiture. The testimony offered by its expert and the scope of its intervention are directed to the development of the proper regulatory structure to ensure consumer protection if West Virginia should adopt retail electric competition. It is in the public interest for the market to be structured so that true competition can emerge. It is also in the public interest that

the legislature adopt a program of electric restructuring involving statutory and regulatory protections and benefits during the transitional years of change." (AARP post-hearing brief, p. 6)

The only parties to the August 1999, hearings which filed testimony in opposition to allowing customer access to a competitive generation market were the West Virginia Citizens Action Group and the West Virginia Environmental Council. (WVCAG and WVEC Exh. No. 1, p. 1) However, their witness, Linda Mallet, testified in response to questions from the Commission that the WVCAG and WVEC support customer access to a competitive generation market if the deregulation Plan incorporates the things they are interested in. (8/20 Tr. pp. 28-30)

The Commission was made aware by WVEUG and Weirton witnesses that West Virginia could be negatively affected if it were to remain an island, isolated from the customer choice options that are being given to customers all around us. As pointed out by WVEUG during the Task Force process, a public interest finding is further compelled by continuing restructuring activity in surrounding states, including Pennsylvania, Maryland, Ohio, and Virginia.

It also is critical to recognize that the cost of electricity is crucial to West Virginia's businesses (it can represent up to 70% of the total cost of production for some manufacturers). Businesses consider energy costs and their ability to maintain and expand facilities and job opportunities in West Virginia as key site selection criteria. Today, industrial consumers in other states, like Pennsylvania, Maryland, Ohio and Virginia either have, or soon will have, competitive alternatives in choosing electric energy suppliers.

As noted by Mr. Waldo, testifying on behalf of AEP:

"When [businesses seeking a new location] have before them a nation that has restructuring . . . versus a state that does not have restructuring, they are going to make an economic decision. And I think that economic decision they make is that they will have opportunities in a restructured state that they will not have in a state that is not restructured. And that decision making is going on today." (Waldo testimony, 8/18 Tr. pp. 86-87)

Dr. Landon, testifying on behalf of AEP similarly stated:

"[S]tates that resist [restructuring] and maintain highly regulated vestiges of the regulatory system will be looked upon with disfavor by industries looking for places to locate. Whether you're talking about locating a generating unit or locating a steel Plant, you'll be less likely to go where you don't have customer choice where the state is not actively engaged in promoting a competitive market, so I think for industrial attraction and retention and for promoting the industry, the electric industry in the State, there are enormous benefits." (Landon testimony, 8/25, pp. 225-226).

Before deciding to change the *status quo* of pervasive regulation of power supply that has been the model that we have operated under for many years, it is appropriate to review the history of regulation of electric generation and changes that have occurred in the industry.

At one time, a full regulation of power supply was considered to be necessary. In the early days of the electric power industry, and continuing until fairly recently, generation was a relatively local function. The limited capability to transfer power for economic reasons over wide areas gave rise to the view that generation of electricity represented a natural monopoly that should be given protected public utility status and then, in return for such status, should be regulated. Even when economies of scale

supported the construction of ever larger base load power Plants, the technology, infrastructure and legal framework for transmission of bulk power supply over wide areas was severely limited for purely economic reasons. Over time, however, a tightly integrated and electrically strong transmission network was developed. Although this network was primarily developed for reliability purposes, it quickly came to be used for ever increasing economic bulk power transfers.

As this system developed, the economics of local (or near local) power supply became less and less of a reason to hold to the traditional model of monopoly status and full regulation of power supply. Finally, with the development of federal policies that encouraged independent power production and mandated open access of the widest possible interstate transmission networks the natural monopoly status of power supply is becoming less and less viable.

The Commission is convinced that restructuring is vital to enable West Virginia and its citizens to compete for a viable economic future in the 21st century, and that the time has come for this State to position itself for the significant economic benefits that can be achieved from competition in the power supply market. Furthermore, the Commission finds that the record is clear that no party has offered evidence or sound arguments that restructuring itself is contrary to the public interest. It is equally clear that establishing safeguards and protecting current ratepayer benefits go more to the specifics of a restructuring Plan and not to a public interest test. There is no credible evidence or cogent argument in the record that leads us to a conclusion that restructuring of the electric utility industry and providing customers with choice of power suppliers is contrary to the public interest. A proper Plan will protect the interests of all parties and meet all legislative criteria. The Commission finds that this can be done, and in such a way as to protect the public.

Therefore, in consideration of all of the above, the Commission finds that West Virginia should adopt a Plan whereby users of electricity in the State would have open access across existing and new utility delivery systems to a competitive market for power supply.

Development of a Plan for open access to a competitive market for power supply:

Having determined that West Virginia customers should be given the opportunity to choose their power supply in a competitive market, the Commission must develop a Plan for customer choice to be presented to the Legislature.

During the course of this proceeding, the parties have submitted evidence relating to the specifics of such a Plan. Although the views of each of the parties submitting such evidence are sometimes far apart, there are certain basic elements that are contained within the recommendations.

First, the Plan must address the disposition of current generation assets. This disposition is a necessary function of balancing the interests of ratepayers and utilities and providing fair and equitable treatment of past investments made in a regulated environment that will, in the future, be operated in a competitive environment. The recommendations on this issue include complete divestiture of existing generation through an open market sale of generating assets and an administrative determination of the value of existing generation assets operating in a new competitive environment.

The advocates of divestiture argue that a sale would determine the value of generation assets in a competitive market. If such value exceeded book value of the assets, then the proceeds of the sale would more than compensate utility stockholders for their investment in the assets, and the excess could be made available to protect ratepayers from paying more for power on the open market than the cost based rates from existing regulated generation. However, if the proceeds from such a sale were less than the

book value of the assets, there would be a stranded cost that the Commission would have to address in the development of a Plan.

The advocates of an administrative determination of market value suggest that this approach is less invasive than a mandated divestiture and, if done correctly, can produce similar results. Such a determination would require the development of expected future cash flows from existing generation Plants in a competitive market environment. If the present value of such future cash flows was less than the book value of utility generation, there would be a stranded cost to the utilities that would have to be addressed in the development of the Plan. However, if the present value of such future cash flows exceeded the book value of utility generation, there would be a negative stranded cost.

As an alternative to either divestiture or an administrative determination of stranded costs, many parties proposed a combination rate freeze or rate cap approach to protecting the interests of customers in their access to power supply from existing utility generation and balancing the interest of the customers and the utilities. The rate cap approach was recommended by many parties; however, the form of the rate cap, its availability and its duration was quite diverse.

Going beyond the issue of valuation of existing generation assets and preserving benefits of existing generation for customers, the parties presented evidence that a Plan adopted by the Commission should include many other provisions to satisfy the criteria set forth by the Legislature. These provisions included, but are not necessarily limited to: protections against market power, nondiscriminatory access to transmission and distribution systems, measures to protect customers who did not elect to choose an alternative power supplier, emergency service, low income customer considerations, utility employee considerations, and provisions for the development of rules governing entry into the market by suppliers, environmental disclosures, consumer protection and consumer education.

The Plan, filed on January 26, 2000, represents a negotiated compromise of the many contested issues in this proceeding. The Commission has reviewed this Plan, and finds that it addresses all of the issues that would be addressed by the Commission if we were developing a Plan absent any joint filing of the Plan. The Plan adopts the rate cap approach to the issue of preservation of benefits of the existing generation for West Virginia customers who do not wish to choose alternative power suppliers. In addition, the Plan sets forth a proposal for the many provisions that must be included in a fully developed Plan. Most of these proposals appear to be reasonable compromises that link together to form a cogent, well structured Plan to move toward a competitive power supply market.

The January 27, 2000, letter filed by Century Aluminum, Pechiney, and AEP, jointly recommended amendment of the Plan to reflect a resolution of the issues between them related to the Plan. These parties suggested that language be added to Section 9 of the Plan as follows:

The Commission shall assert full authority over the provision of electric service (including rights and obligations under the Plan) and, if necessary, to modify the provision of electric service or this Plan in such manner as the Commission may find to be just, reasonable, and in the public interest, upon the motion of a large industrial electricity consumer that, as of the date of Legislative approval of this Plan, is located within the service territory of an incumbent electric utility but is directly served or indirectly served (through an arrangement with another large industrial consumer) by an out of state utility. The foregoing shall not abrogate any other rights or obligations to which such a consumer otherwise may be entitled or subject to under this Plan or under a special contract for service.

Both Century Aluminum and Pechiney had raised the issues addressed in this letter at the hearing. Clearly, the situation of Century Aluminum is unique since it has active ongoing operations in West Virginia but receives service from Ohio Power Company. Pechiney's situation is similar since it receives

service indirectly from Ohio Power Company through an agreement with Century Aluminum. In consideration of the issues raised by Century Aluminum and Pechiney, and the circumstances of their industrial operations which are located in West Virginia but which are

currently receiving power from Ohio Power Company, the Commission has determined that the status of the Jackson County facility of those companies should be clarified in this Plan. Therefore, the Commission has added Section 9 (g) to the Plan for that purpose. As further clarification, the Commission finds that the Jackson County facilities of Century Aluminum and Pechiney are the only industrial operations in West Virginia that are operating in the circumstances described in Section 9 (g). The Commission further finds that these facilities are currently within the service territory of Appalachian Power Company.

The Plan, amended to include the language recommended by Century Aluminum, Pechiney, and AEP, is attached hereto as Attachment A.

The Plan meets the criteria established by the Legislature:

Before submitting a Plan for Legislative approval, the Commission must find that the proposed Plan meets the criteria established by the Legislature.

The first criteria established by the Legislature is that the deregulation Plan fairly balances the interests of the electric utilities, their customers, and the state's economy. The Legislature also required that any Plan recommended by the Commission:

- (A) Is in the best interest of West Virginia electric energy consumers;
- (B) Results in potential benefits available for all customers, considering that while some customers may be immediately benefitted by reductions in electricity costs, depending on their individual needs and choices, no customer should be worse off;
- (C) Preserves universal electric service at reasonable rates;
- (D) Maintains reasonable standards of safety, availability and reliability of electric service for all customers at all times, including at times of peak load usage of electric service;
- (E) Does not result in a substantial negative impact on employment in the state or the state's economy;
- (F) Does not impact compliance with environmental rules;
- (G) Considers and maintains the public benefits of energy efficiency, renewable resource technology and research and development;
- (H) Encourages the continued and expanded use of West Virginia coal, oil, natural gas and other energy resources;
- (I) Assures that customers have meaningful choices among electricity providers and that customers are protected from anti competitive behavior, poor service, and unfair billing, collection and disconnection procedures;

- (J) Is conditioned upon workable competition with a level playing field for all buyers and sellers, and provides for a code of conduct for electric service providers to be established by commission rule;
- (K) Assures that existing commitments of utilities arising from past decisions made pursuant to historical regulatory and legal principles are addressed in a fair and reasonable manner, considering the financial integrity of the utilities;
- (L) Addresses and maintains adequate protections for low-income consumers and gives meaningful consideration to the development of funding mechanisms to protect senior citizens and other persons on fixed incomes, low income persons and the working poor; and
- (M) Ensures that regulated industries do not subsidize non-regulated industries and businesses.

In addition, the Legislature required that restructuring of the electric utility industry should reasonably preserve tax revenues for state and local governments and should neither result in a shift of the tax burden to any customer or customer group nor result in a tax system which places any competitor in the market place at a disadvantage.

The Plan satisfies each of the Legislative criteria for adopting a deregulation Plan.

The Plan fairly balances the interests of electric utilities, their customers and the state's economy.

The Commission has provided all parties, those identified by the Legislature, and others every opportunity to participate in this proceeding and to provide the Commission with a full record upon which to render a balanced decision. The wide spectrum of interests that has participated in this case includes the electric industry, both generating utilities and non-generating utilities and both publicly and privately owned, consumer representatives, including the Consumer Advocate, low income representatives, labor unions, trade unions, environmental interests, commercial customers, industrial customers, natural resource groups, senior citizens, energy marketers and the Staff of the Commission. The Commission has conducted numerous hearings into this matter, after providing opportunity for participation in informal task force and work shop sessions.

The Plan is balanced and considers the interests of the electric utilities since it does not impose any mandatory conditions on the electric utilities that could be detrimental to their financial interests. The Plan is consistent with prior Commission decisions relating to regulatory and legal issues, and these issues are addressed and resolved with due consideration for the financial integrity of the utilities.

The Plan is balanced by giving customers options also. Customers may either choose to shop for power supply or they may choose to stay with their existing utility. The Plan provides stable rates for at least thirteen years for those customers who choose to stay with their existing utility.

The state's economy is fully considered and balanced with the interests of electric utilities and ratepayers in this Plan. The industrial and commercial customers, who expressed a strong belief that it would be beneficial to the State's economy if they had an opportunity to choose their power supply, will be given the opportunity to do so. The Plan will also provide the opportunity for new power marketers to come into the state. With neighboring states beginning to open up their markets, this Plan will place West Virginia on an equal footing with other states for attracting such marketers to West Virginia for their operations and energy sources. Overall, the Commission finds that the proposed Plan fairly balances the interests of electric utilities, their customers and the state's economy.

A. The Plan is in the best interest of West Virginia electric energy consumers.

Consumers will have an extended period of time of rate stability under this Plan. They are given opportunities to shop for alternative power supplies if such shopping will benefit them. Yet, even with this option to shop for a better alternative, there is an extended window of opportunity for customers to return to the stable default rate that must be provided by the utility under this Plan. The Plan contains an extended transitional period for residential and small commercial customers to adapt to a competitive environment. The Plan also contains provisions for consumer education and consumer protection that will operate in the best interest of West Virginia consumers.

B. The Plan results in potential benefits available for all customers, considering that while some customers may be immediately benefitted by reductions in electricity costs, depending on their individual needs and choices, no customer should be worse off.

Customers will have the opportunity to shop. Even if this opportunity does not yield any immediate reductions in electricity costs, customers retain the benefits of the existing utility generation in the form of the frozen and capped default rate. For four years, customers will not receive any increase in rates if their utility elects to have the Plan apply. The provision for a rate stability fund that will protect customers in years eleven through thirteen of the Plan and the provision that no customer will be relegated to shop in an unworkable or non-competitive market clearly contribute to meeting this criteria.

C. The Plan preserves universal electric service at reasonable rates.

The Commission retains full jurisdiction over the distribution systems in the state and will continue to have any jurisdiction over transmission facilities that is consistent with federal precedents. To the extent that universal service is intended to mean geographic universal service, the Commission retains full jurisdiction to review utility line extension policies and to require line extensions to customers under reasonable terms and conditions. To the extent that universal service is intended to mean affordability of service, many of the provisions discussed above with regard to other criteria will contribute to meeting this criteria.

D. The Plan maintains reasonable standards of safety, availability and reliability of electric service for all customers at all times, including at times of peak load usage of electric service.

The Commission shall retain full jurisdiction over the distribution systems of the electric utilities in the state and over transmission facilities, consistent with federal precedents. In addition, the Plan calls for the Commission to establish Rules to apply to the interconnection of power supply facilities with the facilities of the utilities in the state. The Commission will retain full jurisdiction over new suppliers that wish to operate in the State, and will establish Rules to apply to such suppliers. The Plan provides that suppliers must satisfy all requirements established by the Commission including demonstration of technical capability and access to power supply and reserves. The Plan also provides for the establishment of emergency service provisions.

E. The Plan does not result in a substantial negative impact on employment in the state or the state's economy.

The weight of evidence presented to the Commission clearly demonstrates that customer choice will enhance the ability of West Virginia to retain existing business and industry as well as to attract new business and industry into the state. In addition, West Virginia business and industrial customers, through customer choice and the capability for aggregation of load under the Plan, will be placed in a better competitive position and will not be at a competitive disadvantage to similar

customers in other states. The testimony in this case suggested that deregulation and restructuring will have a positive impact on West Virginia's position as a supplier of power in the developing competitive power supply market. By adopting this Plan, any concern for reciprocity from other states attempting to freeze West Virginia power production out of their markets is alleviated.

The Plan specifically addresses electric utility employees and employees in related fields. Although there are no provisions in the Plan that mandate, or are expected to have a negative impact on utility employees or employees in related industries, the Commission establishes a continuing process to review the relationships between incumbent generation electric utilities and their employees and the relationship between related industries and their employees.

The Plan requires the development of specific employee protection Plans for the protection of jobs, employee benefits, job retraining, continuity of employee contractual rights and continuity of benefits to retirees. The Commission retains jurisdiction to conduct hearings and issue orders, as it deems necessary, with regard to such employee protection Plans. The Plan also sets forth minimum standards and requirements for these employee protection Plans.

The Plan establishes a System Benefits Charge, 1/3 of which is designated to be deposited in a Trust Fund account administered by a Joint Labor-Management Council (Council). This Council, established by the terms of the Plan, is empowered to work with other funds and programs which provide worker retraining, education, counseling and outplacement and to utilize the proceeds of the System Benefits Fund for the benefit of employees in industries directly related to the electric utility industry.

F. The Plan does not impact compliance with environmental rules.

The Plan does not direct any change in compliance with environmental rules of any State or Federal jurisdiction. There are no waivers of any existing environmental rules either directly or indirectly contemplated in the proposed Plan. The Plan will not allow for the marketing of power based on specific energy sources without documentation of the supply portfolio of the marketer. The Plan will require marketers to maintain information on emission data related to power supply portfolios and to publish such data at least once a year, or more frequently if directed to do so by the Commission.

G. The Plan considers and maintains the public benefits of energy efficiency, renewable resource technology and research and development.

The Commission finds that the benefits of energy efficiency, renewable resource technology and research and development can be maintained and even enhanced by a Plan that offers customers freedom to choose power supply from sources of their choice. The Plan allows such choice. In addition, it provides for truth-in-advertising rules and labeling of power supply so that customers can be assured that their preferences for power supply sources are being honored. Adoption of the Plan, by opening new power supply markets, will encourage innovative technology and production efficiencies for competitive price advantage. This will encourage expanded research and development into such innovative and efficiency technology.

H. The Plan encourages the continued and expanded use of West Virginia coal, oil, natural gas and other energy resources.

The evidence suggests that West Virginia's position as a choice for supplying our own energy needs and those of surrounding areas will be enhanced by this Plan, thereby leading to expanded use of West Virginia energy resources. The Plan encourages the development of all West

Virginia energy resources.

I. The Plan assures that customers have meaningful choices among electricity providers and that customers are protected from anti competitive behavior, poor service, and unfair billing, collection and disconnection procedures.

The Plan assures meaningful choices since it is conditioned on the existence of a workable competitive market. There are strong customer protection provisions in the Plan beginning with Commission jurisdiction over energy marketers. The Plan calls for Commission Rules to establish licensing requirements. The Commission will retain all jurisdiction that it currently has over public utilities with regard to service, billing, collection and disconnection procedures of not only electric distribution utilities, but also all power supply marketers. The Plan provides for the Commission to establish strong Codes of Conduct to prevent anti-competitive behavior.

J. The Plan is conditioned upon workable competition with a level playing field for all buyers and sellers, and provides for a code of conduct for electric service providers to be established by commission rule.

The Plan is conditioned upon workable competition. The Commission retains jurisdiction to evaluate competition and to modify or rescind the Plan if it determines that workable competition does not exist for West Virginia customers. The Plan requires the Commission to establish, by rule, codes of conduct and licensing requirements for electric service providers.

K. The Plan assures that existing commitments of utilities arising from past decisions made pursuant to historical regulatory and legal principles are addressed in a fair and reasonable manner, considering the financial integrity of the utilities.

The issue of fair treatment of existing utility commitments, and the determinations of stranded costs that might exist in a competitive market have been addressed throughout this Order and in the Plan. The Plan does not impose any mandatory conditions on the electric utilities to divest themselves of their generation facilities, to provide below cost power to customers or to involuntarily lose the protection of being a fully rate regulated public utility. Utilities are not forced to sustain stranded costs under the proposed Plan. Customers do not lose the benefit of existing commitments of utilities since they will have a choice to remain with the utilities for an extended period of time at rates that are either frozen at current levels or capped under the terms of the Plan.

L. The Plan addresses and maintains adequate protections for low-income consumers and gives meaningful consideration to the development of funding mechanisms to protect senior citizens and other persons on fixed incomes, low income persons and the working poor.

The Plan protects low income consumers since they will have the benefits of the frozen and capped rates if they choose to remain with their existing utility. The Plan creates a "systems benefits" fund, 2/3 of which is designated for the protection and use of low income consumers. This fund will be used for bill paying assistance and to help fund weatherization programs for low income consumers.

M. The Plan ensures that regulated industries do not subsidize non-regulated industries and businesses.

The Plan provides for the Commission to establish a Code of Conduct that will prohibit cross-subsidization and self dealing. Utility dealings with affiliates will continue to fall within the

jurisdiction of the Commission.

The Plan will reasonably preserve tax revenues for state and local governments and will neither result in a shift of the tax burden to any customer or customer group nor result in a tax system which places any competitor in the market place at a disadvantage.

The Commission has received extensive information from tax experts, including representatives of the State Department of Tax and Revenue, during the Task Force preparations for this proceeding. Throughout this process, the Commission has been aware of the need to preserve tax revenues. The Commission is particularly aware of the concerns of municipalities because of the significant tax revenues which they receive from the Municipal Business and Occupation Tax on the sale of electricity and the Municipal Public Utility Tax on the use of electricity. The Commission's focus has included the need to assure that the revenues generated for municipalities from these taxes on the sale and use of electrical energy are not diminished as a result of any Plan for restructuring and deregulation. This can and will be accomplished through the tax report recommendations.

While there will be some changes in existing tax statutes recommended, these will be necessary only to recognize the changed structure of the electric utility industry and will provide for the preservation of both State and local tax revenues without shifting of tax burden or creating any competitive disadvantages for any competitor. The Plan calls for a final report on taxes which will be submitted to the Legislature. If any statutory changes are required to meet this criteria, the Legislature will be advised in this report.

Based on all of the foregoing, the Commission enters this Order.

FINDINGS OF FACT

1. The Commission has met all the Legislative requirements for the adoption of a Plan for restructuring the electric power supply market in the State, as set forth in *West Virginia Code*

§ 24-2-18, including, but not limited to: (1) the holding of public meetings; (2) the determination of a "finding of public interest"; (3) allowing and encouraging the meaningful involvement and participation by all interested parties in making a determination of a finding of public interest; and (4) the holding of evidentiary hearings on the issues in this proceeding.

2. The Plan involves the deregulation of only power supply.

3. The term deregulation in the context of this proceeding is referring solely to the deregulation of the power supply function performed by electric utilities.

4. Restructuring will require the separation of generation and other power supply functions from the transmission and distribution functions which will remain fully regulated under any party's concept of a workable Plan.

5. Unbundling is the process by which the rates for electricity presently paid by customers can be broken into component parts so that the charges for each function of the service provided by an electric utility can be easily identified.

6. By Order issued December 23, 1998, the Commission scheduled evidentiary hearings on certain electric restructuring issues. The Commission stated that after the hearings concluded, it

would determine whether electric restructuring is in the public interest, and if so, the Commission would prepare a Plan for restructuring the electric utility industry in the State, as set forth in *West Virginia Code* §24-2-18.

7. The Commission indicated that if a Plan were prepared after conclusion of the August hearings, the Commission would hold one or more additional hearings to provide opportunity for further input as to whether the Plan fairly balances the interests of the electric utilities, their customers, and the State's economy, and meets the criteria set forth in *West Virginia Code* § 24-2- 18(a)(6)(A)-(M).

8. The December 23, 1998, Order was served on all parties named in *West Virginia Code* § 24-2-18, and other parties on the service list at that time.

9. The Order was published in newspapers state-wide.

10. The Order permitted the filing of petitions to intervene by interested parties who were not yet parties to the proceeding.

11. In compliance with *West Virginia Code* 24-2-18(a)(5), the Order required the Commission's Executive Secretary to mail by First Class Mail a Notice of Hearing to each party on the service list, at least five days, and no more than eight days, prior to each of the scheduled hearing dates.

12. The Executive Secretary mailed two such notices to all of the parties, the first of which was mailed on August 10, 1999, and second on August 17, 1999.

13. Many parties testified in this proceeding either in favor of a particular Plan of restructuring, or in favor of basic concepts that should be incorporated into a restructuring Plan. (See 8/25 Tr. pp. 224-227; 8/27 Tr. pp. 59, 61, 62-63; See also Allegheny brief pp. 54-55)

14. Other parties that testified on the subject generally support customer choice of power supply. Many witnesses qualified their support of electric restructuring by suggesting that safeguards or certain protective measures be put into place. (See 8/20 Tr. p. 59; CAD Exh. No. 1, p.3; 8/26 Tr. pp. 372-373)

15. Some parties that did not directly support a particular deregulation Plan did not argue that restructuring would not be in the public interest. (See AARP brief, p. 6)

16. The only parties to the August 1999, hearings which filed testimony in opposition to allowing customer access to a competitive generation market were the West Virginia Citizens Action Group and the West Virginia Environmental Council. (WVCAG and WVEC Exh. No. 1, p. 1)

17. Linda Mallet, witness for WVCAG and WVEC testified in response to questions from the Commission that the WVCAG and WVEC support customer access to a competitive generation market if the deregulation Plan incorporates the things they are interested in. (8/20 Tr. pp. 28-30)

18. The Commission was made aware by WVEUG and Weirton witnesses that West Virginia could be negatively affected if it were to remain an island, isolated from the customer choice options that are being given to customers all around us.

19. Businesses consider energy costs and their ability to maintain and expand facilities and job opportunities in West Virginia as key site selection criteria. Today, industrial consumers in other states, like Pennsylvania, Maryland, Ohio and Virginia either have, or soon will have, competitive alternatives in choosing electric energy suppliers. (8/18 Tr. pp. 86-87; 8/25 Tr. pp. 225- 226)

20. By Order issued September 9, 1999, the Commission directed the parties to meet in an effort to develop a consensus Plan for electric restructuring in West Virginia.

21. After conclusion of the hearings, briefs were filed by: (1) WVEUG; (2) NECA; (3) Enron; (4) West Virginia Retailers Association; (5) AARP; (6) West Virginia Coal Association;

(8) Allegheny; (9) AEP; (10) Staff; (11) Century Aluminum; (12) WVCAG and WVEC; (13) CAD; (14) Public Systems; (15) Weirton. Several parties who participated in the hearings filed letters stating that they would not file legal briefs, but wished to continue to be informed of Commission proceedings in this matter. These parties included Dominion Resources, UtiliCorp, and Morgantown Energy Associates.

22. On December 13, 1999, the following parties jointly filed a West Virginia Plan for Customer Choice of Electric Power Suppliers, Open Access to Electricity Transport Systems and Deregulation of Power Supply (Stipulated Plan), in this proceeding: Allegheny, Weirton, WVEUG, West Virginia Retailers Association, Enron, Public Systems, WVCADA, Morgantown Energy Associates, CAD and Staff. On December 15, 1999, the AARP filed a letter supporting the Stipulated Plan and indicating that it had signed on to the Stipulated Plan. The foregoing parties are referred to herein as the Plan Participants. The Plan Participants do not include all of the parties to this proceeding.

23. Also on December 13, 1999, AEP filed a letter explaining its reasons for rejecting the Stipulated Plan and urging the Commission not to adopt it.

24. The recommendations of the parties on the issue of the disposition of current generation assets include complete divestiture of existing generation through an open market sale of generating assets and an administrative determination of the value of existing generation assets operating in a new competitive environment.

25. The advocates of divestiture argue that a sale would determine the value of generation assets in a competitive market. If such value exceeded book value of the assets, then the proceeds of the sale would more than compensate utility stockholders for their investment in the assets, and the excess could be made available to protect ratepayers from paying more for power on the open market than the cost based rates from existing regulated generation. However, if the proceeds from such a sale were less than the book value of the assets, there would be a stranded cost that the Commission would have to address in the development of a Plan.

26. The advocates of an administrative determination of market value suggest that this approach is less invasive than a mandated divestiture and, if done correctly, can produce similar results.

27. Such a determination would require the development of expected future cash flows from existing generation Plants in a competitive market environment. If the present value of such future cash flows was less than the book value of utility generation, there would be a stranded cost to the utilities that would have to be addressed in the development of the Plan. However, if the present value of such future cash flows exceeded the book value of utility generation, there would be a negative stranded cost.

28. As an alternative to either divestiture or an administrative determination of stranded costs, many parties proposed a combination rate freeze or rate cap approach to protecting the interests of customers in their access to power supply from existing utility generation and balancing the interest of the customers and the utilities.

29. The rate cap approach was recommended by many parties; however, the form of the rate cap, its availability and its duration was quite diverse.

30. Going beyond the issue of valuation of existing generation assets and preserving benefits of existing generation for customers, the parties presented evidence that a Plan adopted by the Commission should include many other provisions to satisfy the criteria set forth by the Legislature. These provisions included, but are not necessarily limited to: protections against market power, nondiscriminatory access to transmission and distribution systems, measures to protect customers who did not elect to choose an alternative power supplier, emergency service, low income customer considerations, utility employee considerations, and provisions for the development of rules governing entry into the market by suppliers, environmental disclosures, consumer protection and consumer education.

31. The Plan adopts the rate cap approach to the issue of preservation of benefits of the existing generation for West Virginia customers who do not wish to choose alternative power suppliers.

32. The situation of Century Aluminum is unique since it has active ongoing operations in West Virginia but receives service from Ohio Power Company.

33. Pechiney's situation is similar since it receives service indirectly from Ohio Power Company through an agreement with Century Aluminum.

34. The Commission, with the parties' cooperation, must complete certain tasks and rulemakings identified in this Order.

35. The Commission has also identified a number of tasks and rulemakings that may be completed after the starting date, but must be completed prior to the end of the transition period. There also may be additional tasks or rulemakings that are necessary to the restructuring process, that may be identified later.

CONCLUSIONS OF LAW

1. A significant part of a Plan for deregulation of existing utility generation assets, which at the same time provides for access by retail customers to competitive power supply markets, must be the appropriate unbundling, or restructuring of the three fully integrated electric utility functions of power supply, transmission, and distribution.

2. Deregulation of power supply is the cornerstone of any decision to adopt a Plan as described in *West Virginia Code* § 24-2-18.

3. Testimony and briefs filed in this case support a finding that the Commission should make a finding of public interest that West Virginia should adopt a Plan whereby users of electricity in

the State would have open access across existing and new utility delivery systems to a competitive market for power supply.

4. A finding of public interest is further compelled by continuing restructuring activity in surrounding states, including Pennsylvania, Maryland, Ohio, and Virginia.

5. The Commission is convinced that restructuring is vital to enable West Virginia and its citizens to compete for a viable economic future in the 21st century, and that the time has come for this State to position itself for the significant economic benefits that can be achieved from competition in the power supply market.

6. The record is clear that no party has offered evidence or sound arguments that restructuring itself is contrary to the public interest.

7. Establishing safeguards and protecting current ratepayer benefits go more to the specifics of a restructuring Plan and not to a public interest test.

8. There is no credible evidence or cogent argument in the record that leads us to a conclusion that restructuring of the electric utility industry and providing customers with choice of power suppliers is contrary to the public interest.

9. A proper Plan will protect the interests of all parties and meet all legislative criteria. The Commission finds that this can be done, and in such a way as to protect the public.

10. The Commission finds that West Virginia should adopt a Plan whereby users of electricity in the State would have open access across existing and new utility delivery systems to a competitive market for power supply.

11. Having determined that West Virginia customers should be given the opportunity to choose their power supply in a competitive market, the Commission must develop a Plan for customer choice to be presented to the Legislature.

12. The Plan filed on January 26, 2000, represents a negotiated compromise of the many contested issues in this proceeding.

13. The Plan addresses all of the issues that would be addressed by the Commission if we were developing a Plan absent any joint filing of the Plan.

14. Most of the proposals in the Plan appear to be reasonable compromises that link together to form a cogent, well structured Plan to move toward a competitive power supply market.

15. In consideration of the issues raised by Century Aluminum and Pechiney, and the circumstances of their industrial operations which are located in West Virginia but which are currently receiving power from Ohio Power Company, the Commission has determined that the status of the Jackson County facility of those companies should be clarified in this Plan and has added Section 9 (g) to the Plan for that purpose.

16. As further clarification, the Commission finds that the Jackson County facilities of Century Aluminum and Pechiney are the only industrial operations in West Virginia that are operating in the circumstances described in Section 9 (g).

17. The Commission further finds that the Jackson County facilities of Century Aluminum and Pechiney are currently within the service territory of Appalachian Power Company.

18. The Plan satisfies all of the Legislative criteria as discussed herein.

ORDER

IT IS THEREFORE ORDERED that the Commission finds that users of electricity in the State should have open access across existing and new utility delivery systems to a competitive market for power supply.

IT IS FURTHER ORDERED that the Plan attached hereto as Attachment A, is hereby adopted as the Commission's Plan for restructuring the electric power supply market in West Virginia, and shall be submitted to the West Virginia Legislature, pursuant to and consistent with *West Virginia Code* §24-2-18.

IT IS FURTHER ORDERED that the service list attached hereto is the current Commission approved service list in this proceeding.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this Order on the parties listed on the Commission approved service list in this proceeding.

Commissioner Casto has issued a separate opinion, which is attached.

SEPARATE OPINION OF COMMISSIONER CASTO

The Commission Staff, the Consumer Advocate and the other parties have worked very hard throughout this process to devise an electric restructuring plan that can satisfy the requirements of the legislative mandates. The Plan is the result of much collaboration and compromise. In their efforts to reach consensus, the parties have included provisions in the Plan which the Commission would ordinarily reject if presented as a proposition in a normal Commission case. The Commission, in adopting this plan, is agreeing to several concepts that fall outside normal utility regulation and rate making theory. For instance, the Plan allows the utilities to divest their generation if they so choose. The Commission will no longer have jurisdiction over West Virginia generation facilities. On the other hand, the utilities have agreed to a lengthy rate freeze for residential and small commercial customers, with limited increases after four years. Concessions such as these from one party or another were all bargained for in the process of developing the Plan, and fall outside normal utility regulation and also may require some statutory changes. The parties have presented a package to the Commission and this agency must decide if, after examining all the features of the Plan, it is willing to adopt the Plan and submit it to the Legislature.

I concur in adopting the Plan, with some reservations. I am convinced that one feature of the Plan violates Chapter 24 of the West Virginia Code, and, if left unaddressed, could lead to attempts from different groups, including future regulators, to use utility rates as a base upon which to add taxes or surcharges to fund various causes unrelated to the cost of providing the service. My concern extends to all utility rates, not just the electric rates that will be affected and increased by the funding mechanism

outlined in the plan.

I believe that Sections 19, 20, and 21 of the Plan, which impose upon all electricity consumers (except customers currently receiving "special reduced rates" under *West Virginia Code* §24-2A-1 *et seq.*) a systems benefits charge (SBC), cannot and should not be implemented without some amendment to Chapter 24 of the West Virginia Code. The SBC is a charge per kilowatt hour on all retail sales in the state with a minimum and maximum monthly payment.. The SBC is for the purposes of (1) funding the protection and use of low income consumers through bill paying assistance and weatherization programs, and (2) providing assistance with training, education, counseling, and outplacement for employees in industries directly related to the electric utility industry who are terminated without fault of their own as a direct result of implementation of the Plan.

While these are worthy undertakings, I believe it is inappropriate to require utility customers to fund them in this way. Such a rate add-on clearly violates West Virginia law because the programs to be financed with the SBC are not costs of providing electric utility service. *West Virginia Code* §24-1-1(a) (4) provides, in relevant part:

(a) It is the purpose and policy of the Legislature in enacting this chapter to confer upon the public service commission of this state the authority and duty to enforce and regulate the practices, services and rates of public utilities in order to:

...

(4) Ensure that rates and charges for utility services are just, reasonable, applied without unjust discrimination or preference, applied in a manner consistent with the purposes and policies set forth in . . . [§24-2A-1] of this chapter, and *based primarily on the costs of providing these services*; (emphasis added)

West Virginia Code §24-2-2 titled, "General power of the commission to regulate public utilities" provides in relevant part,

(a) The commission is hereby given power to investigate all rates, methods and practices of public utilities subject to the provisions of this chapter;... The commission may change any intrastate rate, charge or toll which is unjust or unreasonable or any interstate charge with respect to matters of a purely local nature which have not been regulated by or pursuant to an act of Congress and may prescribe a rate, charge or toll that is just and reasonable, and change or prohibit any practice, device or method of service in order to prevent undue discrimination or favoritism between persons and between localities and between commodities for a like and contemporaneous service. *But in no case shall the rate, toll or charge be more than the service is reasonably worth, considering the cost of the service.* . . . Emphasis added)

Imposition of the SBC on consumers is contrary to *West Virginia Code* §24-1-1 because it establishes rates for electric utility service which include an increment unrelated to the costs of electric generation, transmission or distribution, in violation of the foregoing statute. It follows that the SBC is contrary to *West Virginia Code* §24-2-2 because it results in a rate that is more than the service is reasonably worth, considering the cost of the service. This Commission should not permit utility rates to include add-ons that are not cost based.

The Commission has previously relied on *West Virginia Code* §24-1-1 and 24-2-2 to prohibit the use of utility rates to finance social welfare. In *Hope Natural Gas Company*, PSC Case No. 82-158-G-42T, the Commission found that it lacked authority to approve a residential rate discount to customers

receiving SSI benefits, because such a rate would not

be primarily based on costs, but instead constitute an attempt to redistribute income in light of current social goals. (Hearing Panel's Decision entered January 11, 1983, affirmed, 70 ARPSCWV 1366, January 31, 1983, modified in part, 70 ARPSCWV 1334, May 26, 1983, *review denied by W.V. Supreme Court*, 71 ARPSCWV 578, March 27, 1994.) "Nowhere in the *West Virginia Code* is reference made which would grant the Commission the power to set non-cost based rates to help achieve [social] goals." *id.* p.32. It is instructive to note that the Legislature enacted the present 20% SSI discount statute in the 1983 session of the Legislature. The SBC proposed in the Final Stipulated Plan is comparable to the discount proposed in the *Hope* case, and an attempt to redistribute income in light of goals to protect low-income customers, and mitigate employment displacement.

I believe that the Commission should reject unrelated add-ons to utility rates as a matter of policy for several reasons. The Commission does not have expertise concerning the issues covered by the SBC and it is beyond the scope of our duties. Furthermore, because virtually everyone pays for public utility service, it is far too easy for special interest groups, whether governmental or private, to advocate the use of rate add-ons to finance any number of worthy causes. Public utility service is a necessity of life, and, as such, utility rates should not be subject to add-ons to finance special interest causes.

As an alternative to customer funding, the protection of low income consumers could be funded in the same manner as the 20% discount currently provided under *West Virginia Code* §24-2A-1, et seq., which is authorized by law and funded through a tax deduction to utilities based upon the total discounts to eligible customers.

As for the funds to protect displaced employees, I note that if such protection is necessary it will be attributable to changes in electric generation operations. Only the utilities will have control over the timing and nature of such changes, through their decisions, such as, the transfer of generation to subsidiaries, the sale of plants to third parties, etc. Accordingly, the utilities should shoulder the costs to mitigate any negative effects of employment displacement.

While I approve of the goals the parties to this proceeding seek to meet through the SBC, I believe that use of the SBC, as a utility rate add-on to be paid by electric utility customers, is contrary to both law and sound public policy.

I concur with the remainder of the majority's January 28, 2000 Order.

ATTACHMENT A

**PSC Proposed West Virginia Plan for Customer Choice of Electric Power Suppliers,
Open Access to Electricity Transport Systems and Deregulation of Power Supply**

Table of Contents

Section 1 - General

1

Section 2 - Definitions:

Section 3 - Initiation of Choice and Transitional Provisions:

Section 4 - Deregulation of Generation

Section 5 - Continuing Commission Jurisdiction

Section 6 - Nondiscriminatory Access to Transmission and Distribution System

Section 7 - Regional Transmission Organizations:

Section 8 - Transition Period and Post-transition Default Service:

Section 9 - Rates:

Section 10 - Changes in Capped Rates During the Transition Period:

Section 11 - Right of Return

Section 12 - Rate Stabilization Deferral:

Section 13 - Rate Modification Prior to the Starting Date:

Section 14 - Wires Charge:

Section 15 - Emergency Service Provider:

	15
Section 16 - Licensing of Retail Electric Energy Suppliers:	15
Section 17 - Codes of Conduct and Affiliate Relationships:	17
Section 18 - Consumer Education, Consumer Protection and Truth in Advertising	19
Section 19 -System Benefits Charge	21
Section 20 -Protection for Low Income Customers	21
Section 21 - Protection for Employees	22
Section 22 - Retention of Authority During Implementation	24
Section 23 - Potential State or Local Tax Consequences	25

**PSC Proposed West Virginia Plan for Customer Choice of Electric Power Suppliers,
Open Access to Electricity Transport Systems and Deregulation of Power Supply**

Section 1 - General:

(a) The restructuring of the electric utility industry in West Virginia shall include the deregulation of generation assets and a transition to full retail competition and customer choice for the purchase and sale of electric energy.

(b) The capped default service rates specified for the transitional phase of this Plan shall not apply to any incumbent non-generation electric utility unless that utility elects to participate in the Plan. In the absence of such election, all components of such utility's tariff shall remain fully regulated pursuant to applicable laws and Rules of the Commission; provided, however, that all aspects of open access and

customer choice of an alternative power supplier shall be available to customers of such incumbent non-generation electric utility whether such election is made or not.

(c) This Plan is designed to meet the legislative findings set forth in WV Code § 24-2-18. Upon application to the Commission or upon its own motion, the Commission may modify or rescind this Plan if it determines, after notice and opportunity for hearing, that a substantial change in state or federal law or a court decision necessitates the rescission or modification of the Plan to continue to meet such legislative findings or that for any other reason the deregulation Plan is not meeting the legislative findings. The burden to demonstrate the need to rescind or modify the Plan shall be on the party seeking such rescission or modification.

Section 2 - Definitions:

As used in this Plan:

"Affiliate" means any person that controls, is controlled by, or is under common or partial control with an electric utility.

"Aggregator" means a person licensed by the Commission 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 retail customers. A person that purchases or arranges for the purchase of electric energy for multiple locations owned and operated under the same corporate or partnership structure shall not be an aggregator.

"Alternative supplier" or "Alternative energy supplier" means any supplier of electrical energy other than an incumbent electric utility.

"Commission" means the Public Service Commission of West Virginia.

"Customer choice" means the opportunity for a retail customer in the State to purchase electric energy and related services from any licensed supplier.

"Default service" means service made available under this Plan to retail customers who do not affirmatively select a supplier or are unable to obtain service from an alternative supplier.

"Distribute," "distributing" or "distribution of" electric energy means the transfer of electric energy through a distribution system to a retail customer.

"Distribution system" means those facilities and equipment, other than transmission facilities and equipment, that are required to provide for the delivery of electric energy to retail customers.

"Distributor" means a person owning, controlling, or operating a retail distribution system to provide electric energy directly to retail customers.

"Emergency Service" means service made available under this Plan to retail customers who have contracted with an alternative supplier who fails to perform.

"Generate," "generating," or "generation of" electric energy means the production of electric energy.
"Generator" means a person owning, controlling, or operating a facility that produces electric energy for sale.

"Incumbent electric utility" means each public utility in the State that delivered electric energy to retail customers prior to January 1, 2001.

"Incumbent generation electric utility" means Appalachian Power Company, Wheeling Power Company (Appalachian Power Company and Wheeling Power Company being hereinafter sometimes collectively referred to as American Electric Power or AEP), Monongahela Power Company, The Potomac Edison Company and West Virginia Power (Monongahela Power Company, The Potomac Edison Company and West Virginia Power being hereinafter sometimes collectively referred to as Allegheny Power or APS).

"Incumbent non-generation electric utility" means all incumbent electric utilities except for the incumbent generation electric utilities listed herein.

"Large Commercial and Industrial Customer" means any non-residential customer with normal maximum demands of ten (10) kW or greater; provided, however, to prevent customers within a single tariff schedule from being split between this category and the Small Commercial category this maximum demand level may be modified by the Commission for individual incumbent electric utilities based on the terms contained within such utility's tariff schedules.

"Market power" means the ability to impose on customers a significant and non-transitory price increase on a product or service in a market above the price level which would prevail in a competitive market.

"Patient customer" means any West Virginia customer who is receiving default service from an incumbent electric utility.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the State or any municipality.

"Public System" means a municipally owned or cooperative incumbent electric utility.

"Rate pancaking" or "pancaking" means the addition of separate transmission fees by two or more transmission systems involved in the transmission of electric energy from the source of generation to the distribution system serving the ultimate retail customer.

"Regional Transmission Organization" means a person that may receive or has received any ownership or control of, or any responsibility to operate, all or part of the transmission systems in the State.

"Retail customer" means any person that purchases retail electric energy for its own consumption at one or more metering points or non-metered points of delivery located at a single location, or upon contiguous properties.

"Retail electric energy" means electric energy sold for ultimate consumption to a retail customer.

"Small Commercial" means any non-residential customer with normal maximum demands of less than 10 kW. Provided, however, to prevent customers within a single tariff schedule from being split between this category and the Large Commercial and Industrial category this maximum demand level may be modified by the Commission for individual incumbent electric utilities based on the terms contained within such utility's tariff schedules.

"Starting date" means the first day upon which customer choice is available for retail customers of each

incumbent electric utility, pursuant to the provisions of this Plan.

"Supplier" means any generator, aggregator, broker, marketer, or other person who offers to sell or sells electric energy to retail customers and is licensed by the Commission to do so, but it does not mean a generator that produces electric energy exclusively for its own consumption or the consumption of an affiliate, nor any private power producer generating electric energy for sale to any supplier or incumbent electric utility.

"Supply" or "supplying" electric energy means the sale of or the offer to sell electric energy to a retail customer.

"Transmission of," "transmit," or "transmitting" electric energy means the transfer of electric energy through an interconnected transmission grid from a generator to either a distributor or a retail customer.

"Transmission system" means those facilities and equipment that are required to provide for the transmission of electric energy. For purposes of this Plan, transmission facilities and equipment shall not include facilities and equipment that are primarily operated in a distribution function, as determined by the Commission in accordance with any binding federal precedents.

"Transport" means the delivery of electrical energy through either a transmission system, a distribution system or a combination of both transmission and distribution systems.

"Transporter" means any entity providing transport service as defined herein.

Section 3 - Initiation of Choice and Transitional Provisions:

(a) The starting date for this Plan shall be January 1, 2001 or a later date established by the Commission as provided below.

(b) The Commission may modify the January 1, 2001 starting date for this Plan subject to the following:

(1) Any modification of the starting date shall be based on the need for development of appropriate Rules for administration of this Plan; and

(2) Any such delay shall be limited to the period of time required to resolve the issues necessitating the delay.

(c) The starting date shall not begin for any incumbent electric utility or its customers until the Commission issues an order specifying that all necessary Rules and other requirements are in place and that customer choice may begin for customers of such utility.

(d) On and after the starting date, all retail customers of incumbent electric utilities shall be permitted to exercise customer choice for the procurement of electric energy and related services from any supplier of electric energy that has been licensed by the Commission to sell retail electric energy within the State. All retail customers, and groups of retail customers, however formed, will be entitled to aggregate loads at multiple and separate locations in exercising customer choice.

(e) On and after the starting date, all large commercial and industrial customers of incumbent

electric utilities shall be permitted to exercise customer choice in the procurement of metering and billing services from any supplier of electric energy that has been licensed by the Commission to offer such services. No later than four (4) years after the starting date, similar choice in the procurement of metering and billing services shall be available to all customers of incumbent electric utilities.

(f) For all incumbent generation electric utilities, the generation of electric energy shall cease to be subject to regulation by the Commission on and after the starting date.

(g) Incumbent electric utilities shall continue to provide regulated transport services. Except for default service as herein described, incumbent electric utilities, other than Public Systems, shall not be authorized to provide electric energy as competitive power suppliers; provided, however that any affiliate of an incumbent electric utility, which affiliate qualifies as a supplier under the Plan, shall have the right to provide electric energy as a competitive power supplier. Public Systems may provide electric energy as competitive power suppliers in their own right, subject to qualifying as a supplier under the Plan.

Section 4 - Deregulation of Generation:

(a) Effective with the starting date for any incumbent generation electric utility, the Commission shall cease to have any jurisdiction or authority over the generating assets of such incumbent generation electric utility, and such incumbent electric generating utility shall thereafter have full right and authority, without seeking any further Commission approval, to sell, transfer or assign all or any portion of its generating assets, including to an affiliate of the incumbent electric utility at book value. If the sale, transfer or assignment is to an affiliate and imposes a future obligation upon the utility, the sale transfer or assignment shall be subject to the authority of the Commission, which has authority to grant its prior consent and approval, pursuant to the current provisions of W.Va. Code § 24-2-12. APS (Potomac Edison) shall have the right to transfer its West Virginia generation assets to an affiliate, at book value, on or after July 1, 2000, incident to the deregulation of generation in Maryland.

(b) Upon the start date, each incumbent generation electric utility shall functionally separate generation from retail transmission and distribution. As soon as possible thereafter, but no later than January 1, 2005, each incumbent generation electric utility shall fully separate its generation from retail transmission and distribution into a separate corporate entity.

(c) Immediately upon implementation of the Plan as to any incumbent generation electric utility, neither the addition of new electric energy generating capacity in the State nor the assets associated with any such new capacity shall be subject to Commission jurisdiction or authority.

Section 5 - Continuing Commission Jurisdiction:

(a) Implementation of the Plan effective January 1, 2001, or at such later date as the Plan is implemented, shall not in any way diminish the Commission's jurisdiction and authority over the distribution and,

in accordance with any binding federal precedents, the transmission of electric energy in the State, and all rates and terms for the provision of such services shall continue to be regulated by the Commission in accordance with the provisions of West Virginia law and Rules of the Commission.

(b) The Commission shall promulgate such Rules as may be necessary to implement the provisions of this Plan.

(c) The Commission shall establish on an unbundled basis and regulate the rates for the distribution of electric energy and for the transmission of electric energy in accordance with any binding federal precedents.

(d) The Commission shall continue to have jurisdiction over all other aspects of the distribution of electric energy to retail customers in the State and the transmission of electric energy in the State in accordance with any binding federal precedents.

(e) The Commission shall continue to regulate the reliability, quality and maintenance by transporters of their retail distribution and, in accordance with any binding federal precedents, their transmission systems.

(f) The Commission shall adopt and, if necessary from time to time, revise codes of conduct governing the conduct of incumbent electric utilities and affiliates thereof when any such affiliates provide, or control any entity that provides, power supply, distribution or transmission services, to the extent necessary to prevent market power or impairment of competition.

(g) Nothing in this Plan shall impair the distribution service territorial rights of incumbent electric utilities and incumbent electric utilities shall continue to provide distribution services within their service territories. The Commission will permit incumbent electric utilities to file maps setting forth the areas which they serve. Any disputes regarding distribution service territory may be submitted to the Commission.

(h) Subject to the provisions and conditions of this Plan and except as specifically provided herein, after the date of customer choice the Commission shall cease to regulate rates and services for the power supply component of retail electric energy sold to retail customers.

(i) Nothing in this Plan shall be deemed to abrogate or modify:

(1) The Commission's authority over transmission line or transmission facility construction, enlargement, acquisition or disposition within this State, as set forth in Chapter 24;

(2) The laws of this State concerning the exercise of the right of eminent domain by a public utility; however, upon the deregulation of generation by the Commission, any entity owning incumbent generation facilities or proposing to provide new generation facilities within the state shall have no status as a public utility attributed to such generation facilities and shall have no greater right of eminent domain than any non-utility generation provider; or

(3) The Commission's authority over the practices of suppliers subject to this Plan.

Section 6 - Nondiscriminatory Access to Transmission and Distribution System:

(a) Each incumbent electric utility shall have the obligation to connect any retail customer located within its service territory to its facilities that are used for delivery of retail electric energy, and to operate such facilities in a manner that will reasonably allow for such customer to receive power supply from the supplier of the customer's choice, subject to Commission Rules and approved tariff provisions relating to connection of service.

(b) Every distributor shall provide distribution service within its service territory on a basis which is just, reasonable, and not unduly discriminatory to retail customers or suppliers of electric energy, including suppliers of distributed generation. The distribution services provided to each retail customer or supplier of electric energy shall be comparable in quality and price and subject to the same terms and conditions to those services provided by the distribution utility to any similarly situated retail customer, itself or any affiliate. The Commission shall continue to fully regulate distribution services, including the establishment of rates and terms and conditions for distribution service. The Commission shall retain jurisdiction over electric transmission functions and services, in accordance with any binding federal precedents for regulation of transmission functions and services.

(c) The incumbent electric utilities and/or their affiliates will provide transmission service for the delivery of all power, including transmission of default service power and transmission of power for both affiliated and nonaffiliated energy service providers, only under their pro-forma transmission tariff. The incumbent electric utilities and/or their affiliates will comply with the OASIS and Standards of Conduct requirements promulgated by the Federal Energy Regulatory Commission for the delivery of all power.

(d) The incumbent electric utilities will provide distribution service for the delivery of power, including default service and service provided by any affiliated or nonaffiliated supplier, only under the applicable distribution tariff.

(e) The Commission shall establish interconnection standards to ensure distribution system safety and reliability. Such standards 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.

Section 7 - Regional Transmission Organizations :

(a) Each incumbent electric utility, owning, operating, controlling, or having an entitlement to transmission facilities and equipment shall use its best efforts to join or establish, as soon as possible after the approval of this Plan, but no later than January 1, 2003, a FERC approved regional transmission organization (RTO), or functional equivalent, to which such utility shall transfer the management and control of its transmission assets and/or comply with such other FERC requirements as are established to assure non-discriminatory access to and independent, non-discriminatory operation of the regional transmission system. This requirement shall be deemed satisfied if an application for joining or establishing such RTO or functional equivalent, filed no later than January 1, 2002, remains pending before FERC on January 1, 2003. If any two such incumbent electric utilities become part of different RTOs, they shall use their best efforts to minimize any rate pancaking for transmission of power between such RTOs to retail customers located within the State and to eliminate such rate pancaking by no later than January 1, 2005. In the event that the best efforts of an incumbent electric utility to eliminate rate pancaking by no later than January 1, 2005 shall be unsuccessful, it shall be the continuing obligation of such incumbent electric utility to continue to use its best efforts to minimize and eliminate any rate pancaking to retail customers in this State.

Section 8 - Transition Period and Post-transition Default Service:

(a) Beginning on the starting date, each incumbent electric utility shall be the default service provider to all customers within its service area for all electric service, including transport and power supply.

(b) Beginning in the sixth year after the starting date default power supply service from a supplier other than the incumbent electric utility may be selected by the Commission pursuant to the bidding process provided for in this Plan; provided, however, that such selection shall not result in any increase in rates of the default power supply. The winning bidder shall be required to provide default service for the remainder of the transition period. If there is no winning bidder for default service the bidding procedure may be repeated in subsequent years.

(c) The Commission shall develop Rules for implementation of the bidding process under the Plan, which Rules shall take into account:

(1) the default power supply rates available from the incumbent electric utility;

(2) the characteristics and qualifications of prospective providers, including price proposals, experience, safety, reliability, corporate structure, access to electric energy resources necessary to serve customers requiring such services; and

(3) such other factors deemed necessary to protect the public interest.

(d) After the competitive bidding process specified by the Commission, the Commission shall, if it determines that such bidders meet the characteristics and qualifications required by the Commission's bidding Rules, designate one or more willing providers to provide such default power supply service.

(e) In the absence of a finding that any bidder meets the characteristics and qualifications required under the Commission's Rules, the Commission shall require an incumbent electric utility to continue to provide the default power supply service within its territory. As detailed below with respect to default service rates, beginning the eighth year of the Plan for large commercial and industrial customers and beginning the eleventh year of the Plan for all other customers, any such required default service shall be equal to the market price of comparable power for each rate schedule, unless otherwise directed by the Commission pursuant to the terms and conditions of this Plan.

(f) Notwithstanding the above, a Public System which has not elected the capped default rates under this Plan shall have the continuing right and obligation to be the supplier of default power supply services in its service territory; provided, however, if such Public System elects or seeks to be a default supplier outside of its service territory, then the Commission may designate the default supplier for that Public System in accordance with this Plan.

(g) Prior to the end of the thirteenth year of the transition period, the Commission shall determine how customers that have not chosen a power supplier are to be served after the thirteenth year.

Section 9 - Rates:

(a) Prior to the starting date the Commission shall establish unbundled rates for all retail customers by rate element, including but not limited to rate elements for transmission, distribution, power supply, metering, billing and collecting, and other ancillary services. The components of such unbundled retail customer rates, as well as the sum total of such unbundled rates, shall not exceed the components or the total rates for such services in effect prior to the starting date. Such unbundling shall reflect the roll-in of fuel rates within the power supply function.

(b) For the first four years following the starting date of the Plan, retail customers' rates for each element of service shall be capped and may not be modified except as specifically provided in this Plan. For this initial four-year period, any changes in FERC regulated transmission rates that impact retail

transmission rates shall result in an equal and opposite change in retail distribution rates.

(c) After the fourth year, rates may be adjusted as follows:

(1) Beginning on January 1, 2005, or the fifth year of the Plan if the starting date for customer choice is delayed beyond January 1, 2001, the rates for all categories of service except for power supply shall no longer be capped. Such rates will be subject to change pursuant to applicable laws and Rules of the Commission pertaining to rate changes by public utilities.

(2) Unless otherwise ordered by the Commission, beginning January 1, 2005, or the fifth year of the Plan if the starting date for customer choice is delayed beyond January 1, 2001, the power supply rate for new large commercial and industrial customers or expanded load of any existing large commercial and industrial customer in excess of 20% of such customer's highest load level reached prior to January 1, 2005, shall not be regulated or otherwise determined pursuant to the default service schedule; provided, however, that under this provision the load of a new customer assuming all or any part of the operations of an existing customer shall not be considered new load to the extent of the load of the operations assumed.

(3) Beginning January 1, 2005, or the fifth year of the Plan, the power supply rate component for default service shall be subject to annual modification pursuant to the following schedule:

Years 5, 6 and 7 The prior year's rate escalated at the higher of two percent (2 %) or the annual percentage change in the Gross Domestic Product Price Index (GDP-PI) minus one percent (1%).

Year 8 The prior year's rate escalated by the lesser of ten percent (10%) or the amount necessary to bring such rate to ninety percent (90%) of the market price of power for each rate schedule, but in no event shall this adjustment be less than zero.

Year 9 The prior year's rate escalated at the higher of two percent (2 %) or the annual percentage change in the GDP-PI minus one percent (1%).

Year 10 The prior year's rate escalated by the lesser of ten percent (10%) or the amount necessary to bring such rate to ninety percent (90%) of the market price of power for each rate schedule, but in no event shall this adjustment be less than zero.

Years 11, 12 and 13 Beginning in the eleventh year after the starting date, the power supply rate shall be equal to the market price of comparable power for each rate schedule.

(d) The filing dates and requirements for modifying the rates in each utility's tariff shall be established by future Commission Order.

(e) This schedule shall apply in its entirety for residential and small commercial customers through year 13.

Beginning January 1, 2008, or the eighth year following the starting date, the power supply rate component for large commercial and industrial customers shall no longer be regulated or otherwise determined pursuant to the schedule set forth above, unless otherwise directed by the Commission pursuant to the terms and conditions of this Plan.

(f) For Wheeling Power Company, the foregoing provisions of this Section shall apply, except that its rates for the period January 1, 2003, through December 31, 2005, shall be adjusted in accordance with agreements made in Case No. 99-0409-E-GI.

(g) The Commission shall assert full authority over the provision of electric service (including rights and obligations under the Plan) and, if necessary, to modify the provision of electric service or this Plan in such manner as the Commission may find to be just, reasonable, and in the public interest, upon the motion of a large industrial electricity consumer that, as of the date of Legislative approval of this Plan, is located within the service territory of an incumbent electric utility but is directly served or indirectly served (through an arrangement with another large industrial consumer) by an out of state utility. The foregoing shall not abrogate any other rights or obligations to which such a consumer otherwise may be entitled or subject to under this Plan or under a special contract for service.

Section 10 - Changes in Capped Rates During the Transition Period:

(a) The Commission may adjust the rate caps applicable to the first seven years of the transition period for any incumbent electric utility subject to such rate caps if, upon petition or a proceeding on the Commission's own motion, and after hearing, the Commission determines that continued operation under the rate caps would either improve or impair, to a significant degree, the Company's financial condition. For purposes of this Section, the determination of financial condition shall include the financial condition of the incumbent electric utility, the financial condition of the generation assets that were owned by the incumbent generation electric utility as of the starting date (providing such assets remain under the ownership of the incumbent generation electric utility or an affiliate) and the direct full requirements purchased power contracts of the incumbent generation electric utility as of the starting date.

(b) If the Commission is unable to enter a final order within 120 days of the filing of a petition and proposed rates under this section the Commission shall issue an interim order, setting forth the rates to be charged by the Company, pending a final order by the Commission. Such interim rates shall be subject to refund with interest as further ordered by the Commission.

Section 11 - Right of Return:

(a) Any customer who chooses to receive power supply service from an alternative supplier shall have

the right to return to default service subject to the following conditions:

(1) Any customer returning to default service under the capped rates shall be required to remain a default customer for twelve months after such return.

(2) Any customer who acquires power supply service from an alternative supplier for a period of more than twenty-four (24) consecutive months shall forfeit the right to return to default service under the capped rates.

(3) Large commercial and industrial customers may not exercise the right to return to default service under the capped rates more than one time except that this limitation shall not preclude such customers from returning to default service in the event of an unauthorized change of power supplier or similar violation of Commission Rules.

(4) Residential and small commercial customers may not exercise the right to return to default

service under the capped rates more than two times, except that this limitation shall not preclude such customers from returning to default service in the event of an unauthorized change of power supplier or similar violation of Commission Rules.

(5) Beginning January 1, 2005, or the fifth year after the starting date, no large commercial or industrial customer shall have the right to return to default service under the capped rates.

(6) Beginning January 1, 2009, or the ninth year after the starting date, no residential or small commercial customer shall have the right to return to default service under the capped rates.

Section 12 - Rate Stabilization Deferral:

(a) In order to facilitate the transition to full retail choice and market competition in ten years, and to provide an additional measure of rate stability to default residential and small commercial customers in the eleventh, twelfth and thirteenth year following the starting date of the Plan, a rate stabilization deferral account (RSD) shall be created for each incumbent generation electric utility, as provided herein.

(b) Based on adoption of this Plan as of the first available year (year one), the RSD shall be a contractual commitment of each incumbent generation electric utility and shall be accounted for in such manner as is acceptable to the Commission. Each utility may account for the establishment of the RSD in any appropriate manner, including, but not limited to, accounting for the RSD from year 2000 revenues. The RSD shall be equal to \$ 56.75 million for Allegheny Power and \$81 million for American Electric Power as of the end of the tenth year following the start date.

(c) The RSD shall be applied as an offset to the price for retail electric energy paid by patient residential and small commercial customers in such manner as the Commission shall provide. For purposes of determining which customers shall be entitled to the offset to the retail price of electric energy, the term "patient residential and small commercial customers" shall refer to those residential and small commercial customers identified by the Commission as being entitled to such offset.

(d) No customer shall be entitled to both the RSD applicable to residential and small commercial customers and the rate reductions available to large commercial and industrial customers under the Plan.

Section 13 - Rate Modification Prior to the Starting Date:

(a) For AEP, the basis for unbundled and default service rates shall be the rates in effect immediately preceding the starting date; provided, however, in lieu of an RSD, beginning July 1, 2000 rates for large commercial and industrial customers of Appalachian Power Company shall be reduced by 1% off of such customer's total rate as of July 31, 1999. The dollar value of such rate decreases off of the individual customer's total rate shall be reflected in the customer's unbundled distribution charge. These decreased rate levels will be the basis for the schedule of unbundled default service rates applicable to all large commercial and industrial customers during the first four years of the Plan. The decreases shall expire on December 31, 2004. Rate escalations under the schedule of default service rates shall be applied to the original unbundled power supply rate, without regard to these decreased rate levels .

(b) For APS, the basis for unbundled and default rates shall be the rates in effect immediately preceding the starting date; provided however, in lieu of an RSD, beginning July 1, 2000 rates for large commercial and industrial customers shall be reduced by 3% off of such customer's total rate as of July

31, 1999. The dollar value of such rate decreases off of the individual customer's total rate shall be reflected in the customer's unbundled distribution charge. These decreased rate levels will be the basis for the schedule of unbundled default service rates applicable to all large commercial and industrial customers during the first four years of the Plan. The decreases shall expire on December 31, 2004. Rate escalations under the schedule of default service rates shall be applied to the original unbundled power supply rate, without regard to these decreased rate levels. Rates in effect immediately preceding the starting date will only be adjusted for agreements reached in Case Numbers 99-0261-E-GI, 99-0262-E-GI, and 99-1407-EG-PC.

Section 14 - Wires Charge:

(a) All retail customers who receive distribution service from APS shall be subject to a wires charge according to the following schedule (regardless of whether such service is provided at distribution or transmission voltages):

January 1, 2001 through December 31, 2001	2.6 mils per kWh.
January 1, 2002 through December 31, 2002	2.4 mils per kWh.
January 1, 2003 through December 31, 2003	2.2 mils per kWh.
January 1, 2004 through December 31, 2005	1.8 mils per kWh.
January 1, 2006 through December 31, 2007	1.2 mils per kWh.
January 1, 2008 through December 31, 2010	0.75 mils per kWh.

(b) All retail customers who receive distribution service from AEP (regardless of whether such service is provided at distribution or transmission voltages) shall be subject to a wires charge of .5 mils per kWh for the period January 1, 2001 through December 31, 2010.

(c) This wires charge shall not be added to the total bundled rate that is the basis for the rate caps established herein, but it will be considered to be part of such rate. The charge will be unbundled from the applicable tariff rates and shall be set forth as a separate rate increment within the unbundled non-power supply rates applicable to all retail customers. Customers that provide their own power supply through self generation shall not be subject to this wires charge to the extent of such self generation.

(d) None of these provisions or any other portion of this Plan or the fact of deregulation pursuant to this Plan shall abrogate or modify the rights and obligations of the parties under the terms of any electric power purchase agreement which has been approved by the Commission.

(e) A supplier of retail electric energy may pay any or all of the wires charge owed by any customer. The supplier may not only pay such wires charge on behalf of any customer, but may also contract with any customer to finance such payments.

Section 15 - Emergency Service Provider:

(a) Whenever any supplier fails to fulfill an obligation, resulting in the failure of retail electric energy to be delivered into the area serving the supplier's retail customer(s), the default service provider shall obtain power supply to serve such customer(s) at market prices. Payment for such power shall be the responsibility of the defaulting supplier. The Commission shall establish Rules for the provision of such emergency service to retail customers of alternative energy suppliers. Such Rules shall require that the defaulting supplier pay the full cost of replacement energy, including the cost of energy, the cost incurred by others as a result of the default, and the assessment of penalties as may be approved either

by the Commission, to the extent not precluded by federal law, or by the Federal Energy Regulatory Commission. Such Rules shall also provide that the default service provider is held harmless from such costs.

Section 16 - Licensing of Retail Electric Energy Suppliers:

(a) As a condition of doing business in the State each person, including affiliates of incumbent electric utilities, seeking to sell, offering to sell, or selling electric energy to any retail customer in the State on and after January 1, 2001 shall obtain a license from the Commission to do so; provided, however, that an incumbent electric utility shall not be required to obtain a license in order to serve as a default or emergency service provider.

(b) The license shall authorize that person to engage in the activities authorized by such license until the license expires or is otherwise terminated, suspended or revoked.

(c) The Commission shall establish licensing Rules. As a condition of obtaining, retaining and renewing any license issued pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, which shall include, but not be limited to, requirements that such person:

(1) be duly authorized to conduct business within the State;

(2) demonstrate, in a manner satisfactory to the Commission, financial responsibility;

(3) post a bond, corporate undertaking or such other financial guarantees as are deemed adequate by the Commission to ensure that financial responsibility;

(4) pay an annual license fee to be determined by the Commission; and

(5) pay all taxes and fees lawfully imposed by the State or by any municipality or other political subdivision of the State.

(d) In addition, as a condition of obtaining, retaining and renewing any license pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, including but not limited to requirements that such person demonstrate:

(1) technical capabilities as the Commission may deem appropriate;

(2) access to generation and generation reserves; and

(3) adherence to minimum market conduct standards.

(e) Nothing in this Plan shall limit the right of any retail electric energy supplier to seek proprietary treatment of any information required to be submitted to the Commission.

(f) The Commission shall establish a reasonable period within which any retail customer may cancel, without penalty or cost, any contract entered into with a supplier licensed pursuant to this section.

(g) The Commission may adopt other Rules governing the requirements for obtaining, retaining,

and renewing a license to supply electric energy to retail customers, and may, as appropriate, refuse to issue a license to, or suspend, revoke, or refuse to renew the license of, any person that does not meet those requirements. The Commission's Rules shall set forth the circumstances under which failure to deliver electricity may result in the revocation of the supplier's license.

Section 17 - Codes of Conduct and Affiliate Relationships:

(a) The Commission shall not require any incumbent electric utility to divest itself of any generation, transmission or distribution assets pursuant to this Plan, but shall direct through appropriate rulemakings a Code of Conduct that provides for the functional separation of generation from retail transmission and distribution of all incumbent electric utilities in connection with the provisions of this Plan. In addition, the Commission shall direct through appropriate rulemaking the functional separation of all non-regulated businesses, other than generation, of all incumbent electric utilities regardless of the election of such utility to fully participate under this Plan. Such Rules for Code of Conduct shall also require the corporate separation of generation from retail transmission and distribution as soon as possible after the starting date, but in any event no later than January 1, 2005, or within one year of the starting date if the starting date comes after January 1, 2004.

(b) The Commission shall, to the extent necessary to guard against cross-subsidization, promote effective competition in the State and to carry out the provisions of this Plan, promulgate Rules which shall include, but not be limited to the following provisions:

(1) An incumbent electric utility shall not give an affiliate any undue preference or advantage over a non-affiliate nor unduly discriminate against a non-affiliate in processing a request by any customer for retail electric power supply.

(2) An incumbent electric utility shall apply the provisions of its tariffs to all electric energy suppliers in a nondiscriminatory manner and shall offer the same tariffed products or services to non-affiliates as are offered to affiliates.

(3) Except at the written request of a customer, an incumbent electric utility shall not disclose to any affiliated electric energy supplier or non-affiliated electric energy supplier, any information, including customer load and usage information, obtained in connection with providing retail electric distribution service.

(4) An incumbent electric utility shall not tie any product, service or information to any discount of rates or condition the provision of any Commission-regulated retail distribution service or

product to the provision or use of any other product or service offered by the incumbent electric utility or any affiliate.

(5) Unless requested by a customer, employees of an incumbent electric utility shall not share the following with an affiliated electric energy supplier or other electric energy supplier:

(a) any market information acquired from an affiliated electric energy supplier or other electric energy supplier; or

(b) any market information developed by the incumbent electric utility in the course of responding to requests for retail electric distribution service. This provision does not apply to information relating to the provision of general and administrative support services.

(6) An incumbent electric utility shall not subsidize any affiliate. An incumbent electric utility and its affiliates shall keep separate accounts and records and shall implement processes and procedures to prevent each from accessing the accounts and records of the other. The accounts and records of the incumbent electric utility shall be retained in accordance with the Commission's Rules for the retention of records, and shall be subject to review by the Commission for the purposes of enforcing this paragraph. Any competitively sensitive information obtained by the Commission in connection with this paragraph may be entitled to confidential treatment, notwithstanding any other provision of law.

(7) To the extent practicable, the employees of an incumbent electric utility and those of an affiliate shall operate independently of one another; provided however, that this provision shall not prevent employees from transferring from one to the other so long as the effect of such transfer is not to circumvent the requirements of this Code of Conduct or the law. However, any employee transferring from an incumbent electric utility to an affiliate, or from an affiliate to an incumbent electric utility shall not thereafter transfer back to the company of his prior employment for a reasonable period of time which shall be subject to determination by the Commission. Sharing of office space, equipment, services and systems between an incumbent electric utility and any affiliate shall be subject to West Virginia law governing transactions between a utility and its affiliates.

(8) Neither an incumbent electric utility nor any of its affiliates shall falsely or unfairly state or imply:

(a) that retail distribution service provided by the incumbent electric utility for an affiliated electric energy supplier is inherently superior, solely on the basis of the affiliation of the incumbent electric utility and the affiliated electric energy supplier;

(b) that any advantage accrues as a result of dealing with an affiliate of the incumbent electric utility;

(c) that merchant services for power are being provided by the incumbent electric utility rather than the affiliated electric energy supplier;

(d) that the power purchased from any other electric energy supplier is of lesser quality or reliability than that provided by an affiliated electric energy supplier; or

(e) that the incumbent electric utility speaks on behalf of the affiliated electric energy supplier, or any other affiliate.

(9) Notwithstanding any other provision of this Code of Conduct, in emergency situations, an incumbent electric utility shall be authorized to take any such actions that may be necessary to ensure the public safety and system reliability. An incumbent electric utility shall maintain a log of all such actions, which log shall be subject to review by the Commission.

(10) An incumbent electric utility shall establish and file with the Commission accelerated dispute resolution procedures to address alleged violations of this Code of Conduct. Such dispute resolution procedures shall be in addition to existing Commission complaint procedures.

(11) Contractual relationships between an incumbent electric utility and an affiliate shall be subject to the authority of the Public Service Commission of West Virginia, which has the authority to grant its prior consent and approval, pursuant to the current provisions of W. Va. Code § 24-2- 12. Provided, however, that information obtained about the non-regulated affiliate as a consequence of any

such Commission review may be entitled to confidential treatment, notwithstanding any other provision of the law.

(12) An incumbent electric utility shall not participate in joint advertising, joint marketing, joint sales calls or joint proposals with its affiliates.

Section 18 - Consumer Education, Consumer Protection and Truth in Advertising:

(a) The Commission shall develop a consumer education program designed to provide information to retail customers during the period of transition to retail competition and thereafter.

(b) The Commission shall establish Rules for consumer protection. Such Rules shall ensure that no electric service supplier shall use any deception, fraud, false pretense, misrepresentation, or any deceptive or unfair practices in providing, distributing or marketing electric service. Such Rules shall include, but not be limited to Rules governing:

- (1) Customers' rights of cancellation following execution of any contract;
- (2) Pricing and other key contract terms and conditions;
- (3) Telemarketing for energy services;
- (4) Requirements for providing a toll-free telephone number for customer assistance;

(5) Standards for billing information to be furnished by energy service providers. Such billing information standards shall require that billing information:

- (a) Clearly distinguishes between charges for regulated services and unregulated services;
- (b) Itemizes any and all non-bypassable wires charges;
- (c) Includes such other billing information as the Commission deems necessary and appropriate in the public interest.

(6) Such other and further marketing information and truth-in-advertising requirements as the Commission may deem necessary and appropriate in the public interest. These Rules shall provide that all suppliers of power that is advertised or marketed in any way as to be from any specific type of generation technology or fuel source shall be required to provide accurate verification of the source and amount of such power that is a part of each supplier's portfolio of retail electric energy. Suppliers shall be permitted to promote, advertise and market the electric energy they offer based on assertions of environmental, ecological or any other advantage, subject to strict truth-in-advertising Rules to be established by the Commission. The truth-in-advertising Rules shall include requirements for the accurate, verifiable and uniform labeling of the source, amount and proportion of any portfolio of electric energy supplies which a supplier intends to advertise, promote or market as available, preferable or advantageous relative to other sources or portfolios of electric energy.

(c) The Commission shall also require that all suppliers, including default service providers, provide accurate information on emissions and fuel mix to their customers upon request, and publish such information on at least an annual basis, or as frequently and in such format as the Commission determines is necessary to provide adequate public disclosure.

Section 19 -System Benefits Charge:

(a) The Commission shall approve a System Benefits Charge (SBC) of \$.0003 (0.3 mils) per kilowatt hour on all retail electric energy delivered to retail customers in the State. This charge shall be assessed beginning with implementation of choice for customers of each incumbent electric utility and shall be in addition to the current rate levels of any incumbent electric utility. The minimum monthly SBC to any retail customer shall be \$0.60 and the maximum monthly SBC to any retail customer shall be \$450. Low income electric utility customers receiving "special reduced rates" under West Virginia Code 24-2A-1 et seq. shall be exempted from the requirement to pay the SBC. The SBC shall be collected by each incumbent electric utility or other billing entity and shall be disbursed pursuant to the requirements contained in Sections 20 and 21 of the Plan. Collection and disbursement of the SBC shall be subject to Commission jurisdiction and oversight.

(b) Any person served through multiple meters, or at multiple delivery points, at a single location shall be treated as a single retail customer; provided, however, that the customer has the burden of demonstrating that it is a single retail customer.

(c) The SBC shall be in effect for retail customers of an incumbent electric utility for a period of ten years from the starting date and may be extended.

Section 20 -Protection for Low Income Customers:

(a) Two thirds of the revenue generated from the SBC shall be deposited in a Trust Fund account administered by the Governor's Office of Economic Opportunity for the benefit of low income electric consumers and low income families and shall be distributed through the existing weatherization provider system. Fifty percent (50%) of the money deposited in such trust fund shall be used to assist low income consumers in the payment of electric bills and fifty percent (50%) will be used to provide weatherization assistance to low income families.

(b) The Commission may consider an application made after the third, fifth, and seventh years to modify the distribution of SBC funds for the benefit of low income consumers and low income families set forth in (a), above; however, the amount and applicability of the SBC to retail customers shall not be modified by the Commission.

(c) In addition to establishing the SBC for low income electric consumers and low income families, to assure protection of low income customers entitled to "special reduced rates", West Virginia Code 24-2A-1 shall be modified to replace the existing "special reduced rate" for eligible electric energy customers of twenty percent (20%) with a \$0.012 per kilowatt hour credit on all qualifying customer bills during the winter heating months.

Section 21 - Protection for Employees:

(a) There are no provisions in this Plan that mandate, or are expected to require, any specific actions on the part of incumbent electric utilities that will have a negative impact on their employees, or on employees in directly related industries, such as mining and construction and transportation. However, the Commission recognizes that restructuring pursuant to this Plan, as well as restructuring pursuant to requirements in other States, changes in the technology of electricity generation, changes in the availability of independent power supply, changes in Federal Regulations and other factors may

cause some shifting of job responsibilities, functional and corporate separation of employees, new job responsibilities and general changes in the electric power and directly related industries. Therefore, the Commission shall continue to review the impact of all of these changes on the relationships between incumbent electric utilities and their employees and directly related industries and their employees. In addition, the Commission shall require the specific protective measures for employees of incumbent electric utilities as set forth in section (b) below, and shall require specific protective measures for employees of directly related industries as set forth in section (c) below.

(b) No later than six months prior to the starting date, each incumbent electric utility, excluding non-generation public systems, shall be required to file with the Commission an employee protection Plan for protection of jobs, employee benefits, job retraining, continuity of employee contractual rights and privileges, and continuity of benefits to present and future retirees. The Commission shall conduct such hearings, and issue such orders, as it deems necessary with regard to such employee protection Plans filed by incumbent electric utilities. Each such employee protection Plan shall include the following provisions:

(1) Electric utility employees who are terminated without fault of their own as a direct result of this Plan, shall receive at least the following benefits funded by the incumbent electric utility:

(a) Severance pay equal to two weeks of base pay for each full year of full-time employment, not to exceed 52 weeks;

(b) Any employee entitled to receive severance pay shall be eligible to receive health care insurance at the full benefit and contribution level of employees retained by the utility. Duration of eligibility for health care coverage shall be equal to the total number of full weeks of severance pay entitlement or until replacement coverage is obtained through re-employment, whichever occurs first.

(c) Outplacement assistance, including assistance from the utility in seeking out any state or federal funds available to assist employees with job retraining;

(d) Other benefits and programs that may be available to such employees, such as relocation

assistance, educational assistance, employee counseling services, and early retirement programs.

(2) In the event that an incumbent electric is currently obligated by a collective bargaining agreement or other company policy to provide benefits that exceed those listed in section (b)(1) above, the utility shall provide the greater benefits until the obligation is changed through good faith negotiations or modification of company policy. In no event shall the benefits offered as a whole be less than those shown in section (b)(1) above.

(3) Collective bargaining agreements with such incumbent electric utilities shall remain in effect for the duration of the agreements. Any new entity receiving incumbent electric utility property or operations as a result of sales, transfers, reorganizations or mergers shall, as a condition thereof, honor the existing agreement, recognize the existing bargaining unit and be required to bargain in good faith with the existing bargaining unit when the contract expires.

(c) No later than six months prior to the starting date, there will be created a Joint Labor-Management Council.

(1) The purpose of the Joint Labor-Management Council will be:

(a) to review and monitor the effects of the Plan on employees in industries directly related to the electric utility industry, such as mining, construction and transportation;

(b) to determine if any employees in industries directly related to the electric utility industry have been terminated without fault of their own as a direct result of this Plan;

(c) and if so, to provide assistance with retraining, education, counseling, and outplacement for such employees within the limits of the resources provided in this Plan.

(2) The Joint Labor-Management Council shall be composed of eight (8) members, four (4) of which shall be appointed by the West Virginia AFL-CIO, and four (4) of which shall be appointed by the West Virginia Chamber of Commerce. At least one of the members appointed by the West Virginia AFL-CIO shall be a representative of workers in the mining industry and at least one of the members shall be a representative of workers in the construction industry. At least one of the members appointed by the West Virginia Chamber of Commerce shall be a representative of the mining industry and at least one of the members shall be a representative of the construction industry.

(3) The Joint Labor-Management Council shall be empowered to open a Trust Fund account to

receive SBC funds and to disburse funds in accordance with this Plan. The Joint Labor- Management Council is also empowered to work with other funds and programs which provide worker retraining, education, counseling and outplacement in order to maximize the resources available for such activities.

(4) One third of the revenue generated from the SBC shall be deposited in a Trust Fund account administered by the Joint Labor-Management Council for the benefit of employees in industries directly related to the electric utility industry which have been terminated without fault of their own as a direct result of this Plan.

(5) The Joint Labor-Management Council shall file an annual report of its activities and disbursement of funds with the Commission. Such report shall be filed no later than January 31 of each year.

(6) Any undisbursed SBC funds remaining in the Trust Fund account administered by the Joint Labor-Management Council at the end of ten years from the starting date shall be disbursed as directed by the Commission.

Section 22 - Retention of Authority During Implementation:

(a) Subject to the foregoing, following implementation of the Plan, in addition to the Commission's other responsibilities, authority and jurisdiction, the Commission shall retain and have authority and jurisdiction over all utilities, including suppliers, to insure compliance with the requirements of this Plan.

(b) Provided, however, that the power supply price caps established herein, the availability of such caps to existing and new customers and all Commission jurisdiction and authority over the prices at which incumbent utilities may provide default service shall cease pursuant to schedules established herein unless the Commission, upon application or on its own motion, determines that workable competition does not exist in the market for the sale of electric energy to such customers.

(c) In determining whether there is "workable competition" in the provision of retail electric service, the Commission shall consider factors including, but not limited to, the following:

- (1) ease of market entry;
- (2) the extent to which the service is available from alternative suppliers in the relevant market;
- (3) the number and size of alternative providers of that service; and
- (4) the ability of alternative suppliers to make functionally equivalent or substitute services readily available at competitive prices, terms, and conditions.

Section 23 - Potential State or Local Tax Consequences:

(a) Implementation of this Plan is conditioned upon the reasonable preservation of tax revenues for state and local governments. Furthermore, restructuring of the electric utility industry should neither result in a shift of the tax burden to any customer or customer group nor result in a tax system which places any competitor in the market place at a disadvantage. The Plan should not result in double taxation upon electricity transferred between affiliated corporations, except to the extent necessary to preserve present state tax revenues under West Virginia Code §11-13-2o.

(b) To this end, the commission has studied the tax issues, and has received a report from a tax sub-committee (which included representatives from the Department of Tax and Revenue) created by the Commission during its investigation of electric restructuring. Based on its investigation, the Commission shall issue a report to the governor, the president of the Senate, the speaker of the House of Delegates and the Department of Tax and Revenue on the potential state or local tax consequences, which might be created by implementation of this deregulation Plan, along with recommendations for statutory changes, if any are necessary, to satisfy the above stated conditions.