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I. INTRODUCTION

What is contemplated by the concept of restructuring of the electric utility industry? Simply stated restructuring contemplates replacing the traditional governmental rate regulation of electric power supply with competitive market forces. It is widely believed that a competitive electric power supply market can now exist without the need for governmental oversight; and that competition will produce economic gains for customers.

Historically, electric utilities have been awarded a monopoly to serve all retail customers within their designated service territories. Retail customers located in these exclusive service territories could buy power only from the local certificated utility. The utility was obligated to build or purchase adequate amounts of generation and other necessary infrastructure to serve the customer load in its service territory. In return for this government granted monopoly, the utility was subjected to government regulation that would not apply to competitive businesses. The Public Service Commission would set the rates for electric service, based on the cost of providing the service. The PSC would also set the terms and conditions of service to assure fair and nondiscriminatory treatment of all customers. Utilities were entitled to recover the reasonable costs of providing electric service and earn a reasonable return on their investment in facilities necessary to provide electric service. It was widely believed that this regulated monopoly approach to electric service was more efficient than to allow multiple companies to build duplicate plants and compete for the same load.

The provision of electric service can be broken down into three main functional categories. These are generation, transmission and distribution. The costs for the generation component consist of the costs associated with the capital needed to build power plants, fuel to run those plants and labor and other costs involved to operate the plants. The costs for the transmission component consist of similar costs related to the high voltage bulk power grid. Finally, the costs for the distribution function can be thought of as the costs related to the poles and wires that run through our neighborhoods. The electric utilities that perform all three of these functions are said to be fully vertically integrated. In most cases, the rates that these utilities charge are bundled into a single rate representing the total costs of providing each of the functional services.

Today many parties believe that generation portion of the electric business should operate in a competitive environment as opposed to being part of a fully bundled or vertically integrated regulated utility. The basic premise is that generators would compete for customers. In other words customers would have a choice power providers. Under most scenarios the transmission and distribution functions would remain regulated. The end result of this scenario is customers paying a market rate for generation and then a regulated transmission and distribution rate to have their power supply transported over the wires to them.

The practical possibility of a deregulated power supply market did not develop over night. Indeed incremental steps over the past few decades have brought us to this point.

The Public Utilities Regulatory Policy Act of 1978 (PURPA) required utilities to buy power from non-utility qualifying facilities for the first time and a new class of generator was born. During the 1980's state mandated competitive bidding requirements for new capacity created competition for new load between utility, PURPA projects and other independent power projects. Technological advances and price decreases in gas turbines have changed the economies of scale that had heretofore supported large base load utility owned power plants. The Federal Energy Regulatory Commission (FERC) expanded competition in the wholesale power markets with Order No. 888 in 1996.

Today nearly every state is actively studying the issue of restructuring and introducing competition into the power supply of their retail markets. There are also various proposals for national legislation mandating such competition.

The Public Service Commission of West Virginia (the Commission) currently sets the bundled rates of retail electric utilities serving West Virginia. In 1996 the Commission initiated Case No. 96-1491-E-GI to examine the issue of retail competition in West Virginia. A copy of the Commission Order initiating this proceeding is attached to this report as Appendix 1. All interested parties were invited to participate in this proceeding. A wide cross section of interests accepted this invitation and provided input for the Commission's consideration. These interests included both large and small investor and publicly owned utilities, large industrial customers, commercial customers, groups having an environmental concern, academia, residential advocates, energy marketers and others. In initial and reply comments filed with the Commission, there was disagreement among the participants on whether or not restructuring would be an improvement over traditional regulation, given the unique circumstances of West Virginia.

On May 8, 1997 the Commission created a task force consisting of all interested parties to examine the restructuring issue in depth. A copy of the Commission Order setting up this task force is attached to this report as Appendix 2. A listing of the task force participants is attached as Appendix 3.

As a threshold question, the task force was to report on the benefits/detriments of either restructuring or maintaining the status quo. However, regardless of the debate on restructuring versus status quo, in order to address the mechanisms, timing, safeguards and other issues, the task force was directed to assume that restructuring will occur. Working under this assumption the task force was charged with developing consensus on a multitude of issues associated with moving to a deregulated power supply market. The task force was directed to issue a final report on nine broad areas by October 15, 1997.

The task force was unable to reach a unanimous recommendation on each of the issues

which it discussed. (For purposes of this report, unanimous agreement was required before a recommendation is considered to be a consensus.) In many cases there were strong majority positions, with most of the members agreeing, but one or two some minority hold outs which prevented consensus. In some cases the split was greater with nearly equal diverse opinions. Where there was consensus that is reflected in the report. Where consensus could not be reached, the report sets forth the general views of the majority separately from the opinions of the minority. The members expressing either a majority or minority opinion are different from issue to issue. Finally, it must be noted that in many cases consensus was reached conditioned on certain assumptions as to structure, timing, or other components of an overall restructuring plan. Each task force member wishes to be recorded as expressing conditional opinions which may not be representative of the opinion or recommendation that would be forthcoming under different general restructuring scenarios.

II. EXECUTIVE SUMMARY

A task force to review restructuring of the electric utility industry in West Virginia and to address specific questions asked by the Public Service Commission was created by Commission Order dated May 8, 1998. This task force undertook the development of a consensus plan to implement restructuring of the electric utility industry in West Virginia. This task proved to be too great to achieve in the time allotted despite all parties' best efforts to find common ground.

The majority of the task force participants are advocates of competition in the electric industry. However, despite this commonality of interests, a comprehensive agreement on how to get from today's regulated industry to a future deregulated market could not be achieved.

The lack of agreement among the parties for a basic restructuring plan indicates that litigated adversarial proceedings before the Commission will be necessary. The path to deregulation has become more clear. As opposed to consensus, litigation of the issues would seem to be the road to deregulation. This will most likely lengthen the time it takes to achieve customer choice. However, the process has not been a failure. Many issues, such as the expected and/or appropriate structure for a deregulated electric supply market, potential tax issues, principles to guide the Commission, statutory and/or rule changes, a restructuring blueprint, or road map, cross subsidization, need for a code of conduct for participants in the competitive power supply market and several other issues have been more thoroughly explored by the task force and the task force agreements on many of these issues should enable the Commission to better focus any future proceedings.

This report describes the possible positive and negative attributes of changing and maintaining the structure of the electric industry; the present power supply market with price information; stranded costs/benefits options; the appropriate structure for a competitive electric industry; tax revenue implications; guiding restructuring principles; proposed rule and statutory changes; and a blue print for restructuring. While consensus was reached on several areas, a complete plan was not developed.

In its May 8, 1997 Order, the Commission listed nine specific areas of inquiry for which it wanted a report from the task force. In this document, each request contained in the May 8 Order is repeated and followed by the task force report on those areas of inquiry.

(1) The task force is charged with producing a report on the net benefits (positive or negative) if electric restructuring is to occur. This position should be accompanied by a quantification of the benefits of restructuring as well as the offsetting detriments. The Commission is specifically interested in determining if any class or sub-class of customers will be harmed by restructuring of the industry. The Task force should address this issue and any regulatory safeguards that are necessary to protect such class or sub-class of customers.

All members commented on the possible benefits and detriments of restructuring. As expected, members of the task force had differing views on the magnitude of possible benefits and detriments. Many predict that benefits will far outweigh detriments.

Although an effort was made to quantify benefits, the task force did not develop the quantification requested by the Commission. Although various scenarios relating to overall benefits from increased use of existing generation facilities were suggested, there was no agreement that any such benefit could be predicted with any degree of certainty. Furthermore, there was no agreement that restructuring in West Virginia was a pre-requisite for achieving any of the suggested overall benefits from increased use of natural resources and increased use of state power plants.

Only Staff and the Consumer Advocate Division of the Commission (CAD) argued strongly that there were significant possible detriments.

As with most of the issues taken up by the task force, at least partial consensus was reached on a list of benefits and detriments. The consensus reached, strong majority opinions and minority concerns over detriments are as follows:

CONSENSUS OPINION

Benefits:

Customer choice in and of itself is a benefit.

It is expected that restructuring the electric industry will result in more accurate price signals being given to customers.

Competition will bring greater service offerings to customers.

Customers' ability to forecast power costs should improve.

More innovative technologies will be developed.

Detriments:

The only detriment the Task force could agree on is that the restructured electric industry could be poorly designed.

Safeguards:

All parties agreed that transmission and distribution functions should remain regulated.

There was also agreement that pure competition for all customers be preceded by a transitional period.

It was agreed that there should be generation rate caps during the transition for customers that remain with their incumbent utility.

It was agreed that the Commission should assure that there was a default provider, at least during the transition period, that would provide power supply at a Commission sanctioned price for customers who chose not to shop for power supply (patient customers).

It was agreed that the Commission should assure that the incumbent utilities were responsible to use their best efforts to provide emergency power at a market price to customers who had chosen power supply alternatives that became unexpectedly unavailable.

It was agreed that there should be ample notice and explanation to customers prior to customer choice.

It was agreed that fair aggregation plans for a customer's separate service locations and for groups of customers should be allowed.

It was agreed that there should be no exit fees unrelated to demonstrated costs. For the purpose of this recommendation, it was agreed that charges designed to recover stranded costs and/or regulatory assets would not be considered to be exit fees.

A consensus was reached that if interruptible service was to be provided the physical capability to interrupt had to be present and that a customer could purchase power from another supplier if he was interrupted. There was some disagreement concerning from whom the power could be purchased if the customer was actually interrupted.

MAJORITY OPINION

In addition to the consensus items listed above, a majority of the task force members wished to report the following benefits to the Commission:

Restructuring should result in:

Increased generating resources located in West Virginia.

Increased use of existing generating capacity.

Increased non-utility tax revenue.

Increased jobs, housing, goods and services.

Improved quality of life.

Positive coal industry impacts.

Electric power rate reductions.

Increased efficiency and productivity in the electric industry.

Lower power plant production costs.

End of cost plus mentality in the electric generation sector.

Positive natural gas industry impacts.

MINORITY OPINION

A minority of task force participants suggested that there were more potential detriments of restructuring than the single detriment listed under the consensus list. These detriments listed by a minority of members were:

Restructuring could result in:

Higher electric rates to residential and smaller customers.

Decreased rate stability.

Increased customer confusion.

Negative environmental impacts.

Negative outlook for construction of new coal fired power plants in a restructured regime, at least in the short run.

Potential for market power abuses.

Abusive sales tactics.

Loss of regulatory oversight of generation decisions.

Lower reliability of the bulk power system.

Potential for a negative financial impact on utilities, particular with regard to their power supply affiliates and parent companies, that could affect their ability to attract capital and provide safe, reliable service.

Safeguards:

Not necessarily related to the potential detriments listed above, some of the task force members argued for additional safeguards. However, consensus could not be reached on these safeguards. They were:

Divestiture of generation assets with deferral of net profits to offset higher market value generation costs and to eliminate market power concerns.

The power supply rate caps should be for a longer period of time than the two to four year period transition period suggested by several parties, but not to exceed the life of existing generation assets. Furthermore, these rate caps should be expanded to reflect total rate caps which would be in effect for an extended period of time after initiation of customer choice.

Special considerations for low and fixed income customers.

Prohibit service limiters and prepayment procedures.

(2) The task force is charged with producing a report on the expected impact (including quantified benefits and offsetting detriments) on West Virginia assuming no change in the status quo of monopoly supply of electricity to end users.

The task force was unable to reach any consensus on any benefit to continuing the present system of regulation. The majority of the task force that argued for many benefits and almost no potential detriments of restructuring would strongly argue that all of the benefits addressed in response to the Commission's first question would be foregone. This potential for foregone benefits would be the detriment of maintaining the status quo. Conversely, the minority members who argued that there were potential detriments from restructuring would see the certain avoidance of such potential detriments as a benefit of maintaining the present system of regulated power supply.

It should be pointed out, however, that several task force members holding to the minority view of potential detriments suggested that the Commission could assure mitigation of such detriments by limiting continued regulation of power supply costs only as it pertains to existing generation facilities available to serve West Virginia customers. By doing this, and requiring that any incumbent utility bid out future power supply requirements, a more structured and less volatile move to a competitive power supply market might be obtained.

(3) The task force is charged with producing a detailed description of the power supply market that would be presently available to West Virginia retail customers (assuming open access transmission and/or distribution). The Commission is interested in the market price for power in this currently available supply market. Then, considering actions taking place in other states and at the federal level, the Task force should file a statement of the expectations for the extent of the power supply market in the short-term and long-term.

The Task force agreed that the supply participants in a retail market in West Virginia would likely include: electric utilities currently operating in the State, electric utilities operating in surrounding states, power marketers and brokers, and other alternative suppliers including non-utility generation sources both within and outside of the State. Further the participants agreed that the size and strength of the power supply market would be influenced greatly by the strength and availability of transmission services as well as access to nearby power markets.

No consensus could be reached as to price expectations of the participants for the short-term or long-term power supply market. The inability to reach a consensus related to both the uncertainty of the model for restructuring which would be implemented as well as the unpredictability of actions by other states and at the federal level.

(4) The task force is charged with producing a report on the appropriate quantification of stranded costs. It has been suggested that a changed market structure (regulated monopoly to competitive) will cause the book value of some utility assets to exceed their market value. Some parties have also taken the position that for West Virginia utilities there may be significant assets that have a market value that exceeds book value. This would suggest a negative stranded cost or a stranded benefit. The Task force should quantify any such book value/market value imbalances for each electric utility in the state. Whether the final conclusion is that there is a positive or negative stranded cost, the Task force should develop a position on who should pay the stranded costs and how they will be paid, or who will retain the benefits of negative stranded costs and how will the benefits be reflected in customer rates.

The Task force was unable to reach any consensus on this issue. Indeed, this issue was the most contentious subject debated by the Task force. There was disagreement on how to determine stranded costs/benefits, the time period over which such a determination should be made and the treatment of any such amount once determined.

A working group on stranded costs was formed and this group met on several occasions. However, the polarity of the parties' positions made a workable compromise unreachable. In the end it was agreed to disagree.

The Commission is well aware of each party's position on stranded costs/benefits from the testimony and comments filed in this proceeding. The parties stand by those written submittal to the Commission. Since this Task force is charged with assuming that restructuring will occur, we have concluded that the Commission will rule on the proper treatment of the stranded costs/benefits issue after litigation of the issue.

American Electric Power believes that it will have significant stranded costs. For the two AEP affiliates serving West Virginia AEP estimates that the total jurisdictional stranded costs could be as high as \$537 million. These costs are driven by AEP's projections that their own generation costs are significantly above the future market price it expects to be able to receive for its power. However, AEP does not believe it is necessary for the Commission to absolutely determine its total stranded costs over the life of its current generation assets or to provide a charge to assure recovery of such a calculated stranded cost. The proposal submitted by AEP envisions a four or five year transition period during which it (and other fully vertically integrated electric utilities) would be assured of continuing to receive its current revenue levels. The transition period would begin on the first day customers would have the ability to choose. Of course not all customers will exercise that right on day one. During the transition period customers not exercising choice would continue to receive service from the incumbent utility at the current regulated rate. Customers that select an alternative generation supplier during the transition period would pay an access charge. The access charge would be the difference between the incumbent utility's embedded generation rate and the market value for the same power supply. During this transition period utilities would have the opportunity to reduce costs

and otherwise prepare for competition. The access charge would be eliminated at the end of the transition period. At the end of the transition period all customers will pay a market rate for power.

Allegheny Power believes that it will have significant stranded costs as well. The two APS affiliates estimate that their jurisdictional share of stranded costs could reach a total of \$996 million. Allegheny Power has also proposed an access charge. However, APS seeks to recover all PURPA related stranded costs from consumers for the life of the contracts. Determination of stranded costs would be made by the Commission for each utility following an evidentiary hearing. Stranded costs would be the difference between current power supply rates and the market price obtainable for released power supply.

The industrial participants also favor having the Commission administratively determine the amount of stranded costs, if any, or stranded benefits, if any, for each utility. However, the industrials do not believe that there will be large stranded costs, when netted against benefits. Some portion of the fully mitigated net stranded cost, if any, determined by the Commission should be recovered via a competitive transition charge paid by all consumers. (Note: Participants on the task force representing industrial customers have indicated that they may expand on this explanation in a separate report.)

The Staff of the Commission, the Consumer Advocate and Enron favor divestiture of all generating assets via a public auction to determine any market to book imbalances. These parties believe that a market determination of stranded costs/benefits is superior to an administrative determination. These parties also believe that the market value of existing generation will exceed book values.

Other participants have their own vision of how any stranded costs/benefits should be recovered.

(5) The task force is charged with producing a report on the appropriate structure of a competitive electric industry in West Virginia including any phases necessary to obtain the ultimate structure. The ultimate industry may be a fully separate and unregulated supply market, a regulated transmission system operated on a regional basis and a regulated distribution monopoly acting as both a transporter and supplier for customers who choose to be full requirements distribution customers. However, there may be incremental steps along a long term path to arrive at the ultimate electric supply and distribution market. As part of this phase-in discussion, the Commission is particularly interested in an evaluation of the regional nature of a successful restructuring. Can there be a restructuring in West Virginia in the absence of restructuring in any neighboring states? Or, can restructuring that is contemplated in neighboring states be inconsistent with each other? Is it important to obtain regional consensus on electric restructuring? If so, what is the proper forum for regional cooperation?

CONSENSUS OPINION

It is noted that the task force recognizes that the electric utilities in West Virginia range from fully integrated privately owned utilities to distribution only publicly operated utilities. There was consensus that the effects of restructuring, including the potential benefits and detriments, may be different for the distribution utilities that have no financial interests as potential sellers of power supply produced by themselves or affiliates. Accordingly, the task force members agree that any restructuring plan that makes economic sense for the fully integrated utilities may not make sense for a distribution-only utility. To recognize this fact, the task force recommends that the Commission consider alternatives for the distribution-only utilities that would enable them to offer choice to their customers but which would not require the rate cap safeguard. These utilities should be allowed to choose to be relieved of any rate cap obligation imposed on the fully integrated electric utilities. However, to the extent the distribution-only utility obtained power supply for patient customers, that utility would continue to have an obligation to charge no more than the actual cost of such power supply.

Keeping in mind the above stated agreement regarding differing types of electric utilities, the task force reached a consensus in two broad areas regarding the appropriate structure of a competitive electric industry in West Virginia.

First, the task force agreed on functional disaggregation of the industry as the appropriate structure of a competitive electric industry. In order to achieve workable competition in the industry, the three functional components of electric service must be unbundled. The functions of power supply, transmission and distribution must be separated from each other and each function should operate independently.

Once there is a functional separation, the power supply function can be deregulated. The participants agree the PSC will continue to regulate the functions of local distribution companies, while the Federal Energy Regulatory Commission will continue to regulate transmission.

Second, a general consensus was reached on the incremental phases necessary to implement restructuring:

1) Design phase: This phase would be cover implementation of necessary or appropriate enabling legislation and/or regulations to clarify the direction, authority and powers of the Commission and allow participants to raise concerns. Initial dissemination of information to public would also begin.

2) Transition phase: The following steps would take place during the transition phase:

- (1) The Commission may need to conduct hearings on stranded costs.
- (2) Utilities and customers prepare for full competition.
- (3) The option of choosing alternative power supplies becomes available to customers.
- (4) Implementation of necessary safeguards while a market emerges.
- (5) Tariff charges must be unbundled.
- (6) Recovery of net transition cost or benefit.

3) Post-transition: - Customer choice. Ability to aggregate loads of multiple facilities. Variety of power and energy services available to customers.

However no consensus was reached on the implementation date, specific components of each phase or their duration.

No clear consensus was reached on the necessary regional nature of successful restructuring. Some participants contended a regional consensus was not necessary for West Virginia to move ahead successfully. Other participants contended that not only was a regional consensus necessary but federal legislation was required.

Some discussion occurred about whether the Public Utilities Holding Company Act and the Public Utilities Regulatory Policy Act must be repealed. No consensus was reached.

The necessity of the formation of an Independent System Operator (ISO) for non-

discriminatory open access transmission services and the formation of a Regional Power Pool (RPX) for facilitating trading were discussed. While there was consensus that vertical market power should be mitigated, it was agreed that neither an ISO or RPX was necessary prior to the development of a competitive market in electric power supply.

(6) The task force is charged with producing a report on the effect of a restructured competitive electric market on state tax revenues. This report should address whether present public utility tax laws can or will continue to apply and whether they will apply to sales to end users from competitive non-utility suppliers.

At the initial meeting of the task force, tax subcommittee was established to review and address the issue of taxation. This subcommittee subsequently identified and reviewed a number of tax areas for potential impacts. On August 6, 1997 a draft report was circulated to the full task force. On August 13, 1997, the tax subcommittee's final report was filed. It is included in its original form as Appendix IV. The participants were provided until August 20, 1997, to file any written responses.

The task force agreed that the subcommittee's report correctly identifies current taxes applicable to the electric industry in West Virginia and the revenues associated with those taxes. The subcommittee report points out the tax complexity involved in creating a new model for the electric industry.

After considering the subcommittee's report, the task force reached a consensus on the following principles that should be adopted when considering tax goals for a restructured electric utility industry:

- (1) Restructuring should reasonably preserve tax revenues for state and local governments.
- (2) Restructuring should not result in a shift of the tax burden to any customer or customer group.
- (3) The tax system should not disadvantage any competitor in the marketplace.

The task force members also agreed that the exact methods for accomplishing these goals require further study.

The tax subcommittee identified specifically seven areas of tax law which need to be reviewed and considered. Following are those areas and a brief description of the subcommittee's findings, along with any differing opinions expressed by individual task force members:

1. West Virginia State B &O Tax

The West Virginia B&O Tax (W.Va. Code §11-13-2o) consists of two components: a tax on generating capacity installed in the state (the Capacity Tax); and a tax on power sold, but not generated in the state by the taxpayer (the Distribution Tax). In summary, the tax works as

follows:

1. If a taxpayer generates electricity within the state but does not sell within the state, the taxpayer pays the Capacity Tax.
2. If a taxpayer sells electricity in the state but does not generate, the taxpayer pays the Distribution Tax.
3. If a taxpayer sells more electricity in the state than it generates within the state, then the taxpayer would be subject to the Capacity Tax on its generation and also subject to the Distribution Tax on electricity sold in excess of what it generated.

Discussion on the West Virginia State B&O tax with regard to the restructuring of the electric industry raised the following points:

1. The subcommittee discussed the possibility that under the current tax law, if the existing generating facilities of the local utilities are owned and operated in the future by a separate company, with the local utility thereafter purchasing the power needs of the customers, the potential exists for a possible increase in the B&O Tax passed through to consumers. This could result if the power distributed in the state by non-generation marketers begins to incur the distribution tax even though the source of the power continues to incur the capacity tax.
2. A concern was raised (although no consensus was reached on this concern) regarding the effect of the capacity tax on the competitive position of West Virginia generation relative to generation in other states. It was further recognized that the capacity tax must also be considered in combination with West Virginia property taxes when determining this competitive position. These tax issues are applicable both to current generation investment as well as potential future generation.

The subcommittee recognized that the current capacity tax is a result of legislation implemented in 1995 to eliminate the then energy-based tax methodology in order to improve the competitive position of West Virginia generating plants in the production of energy. That change, while accomplishing its intended goal, was implemented within the context of the present regulated retail electric industry. The subcommittee report suggested that a restructured electric industry would place new pressures on West Virginia generation to be competitive. The report further noted that the capacity tax poses a unique burden on this generation because West Virginia is the only state that imposes such a tax. (As noted below, there was a significant minority opinion to the contrary).

The subcommittee agreed that additional study would be required on this tax issue.

MAJORITY OPINION

The task force was of the general opinion that the current State B&O Tax places West Virginia generation in an uncompetitive position in relation to electricity generated in other states. The task force recognizes that the capacity tax could affect the choice for location (in or out of West Virginia) of new generation facilities. The Commission should urge the Governor's Commission on Tax Fairness to study closely the anti-competitive impacts of the tax on West Virginia generation.

MINORITY OPINION

Some members believe the current capacity tax does not hinder existing West Virginia generation facilities' ability to compete with facilities in other states. They believe the present system has the advantage of zero marginal costs. (Note: One task force member, Enron, has expressed an interest in following up on this issue with separate comment on this issue.)

2. Municipal Public Utility Tax

The Municipal Public Utility Tax (W.Va. Code §8-13-5a) is a local utility tax assessed against consumers of electricity within municipal corporate limits. The local utility collects the tax on behalf of the municipal entity as a percent (presently limited to a maximum of 2%) of each consumer's electricity bills. The local utility then remits the tax to the governmental entity.

In a restructured industry, consumers presently subject to the tax will be eligible to purchase the generation component of their electricity from any entity, including nontraditional generation providers or power marketers. Based on cost information supplied to the Task force by the utilities, under current regulated rates, approximately 60% of the total electric sales price relates to the production component. The subcommittee recognized that a question exists as to the obligation of third party generation providers to collect the tax on their portion of the consumer's electric cost. As such, unless changes are made in the tax statutes and corresponding local tax ordinances, the following negative effects could occur:

1. The municipality could see a shortfall in the public utility tax revenue.
2. Local utilities subject to the tax would be competitively disadvantaged relative to other suppliers.
3. The municipality's shortfall becomes a revenue transfer to the generation supplier. (The revenue transfer refers to the situation where a new power supplier, by not having to pay the local tax, can price its generation higher by the amount of the tax and equal or beat the incumbent suppliers cost. Effectively, this transfers the municipality's tax receipts to a profit for the new supplier.)

The subcommittee agreed that it would be important to ensure that a level competitive

playing field exists for all power suppliers. It was noted that one means to avoid the concerns listed above would be to modify the current tax statute and local tax ordinances to change the Municipal Public Utility Tax from a revenue-based tax to a tax on energy consumption. This would provide for the local distribution utility to collect and remit the tax regardless of the source of the power supply. It was further recognized that the current public utility tax statute is applicable to utility services other than electricity. A similar problem has occurred in the gas industry with large industrial customers purchasing from resellers without paying the tax.

MAJORITY OPINION

The Commission should recommend that the Legislature amend the Municipal Public Utility Tax provision of the West Virginia Code such that the tax revenue presently received by the municipality will, in the future, be based on energy consumption and collected by the local distribution utility. It should also be studied how this change would impact the incidence of tax on different classes of consumers. The Commission should urge the Governor's Commission on Tax Fairness to study this issue.

MINORITY OPINION

Some members specifically except to the tax subcommittee majority opinion that the Municipal Public Utility Tax be changed to a charge based on energy consumption. They believe this is an unfair allocation of taxes and places large, high-consumption customers in a "worse-off" position.

3. Municipal B&O Tax

The Municipal B&O Tax is a local tax assessed on businesses, including utilities serving consumers within municipal corporate limits. The tax is computed by multiplying a rate times the gross income received by the utility from customers in the municipality. A utility generally recovers the tax on its business by means of a percentage surcharge applied to each consumer's electric bill.

In a restructured industry, consumers presently subject to the tax will be eligible to purchase the generation component of their electricity from any entity, including nontraditional generation providers or power marketers. Accordingly, as with the Municipal Public Utility Tax, the local distribution utility may only be charging the customer for a portion of a customer's total electricity cost. It is questionable as to the obligation of a third party provider to be responsible for the tax on its portion of consumer's electric costs. The same negative effects could occur with this tax as with the Municipal Public Utility Tax.

The subcommittee agreed that a recommendation should be made to modify the current statute and local ordinances to change the Municipal B&O tax on electricity from a tax on revenue to a tax on energy consumption. This would require the incumbent distribution utility to

collect the tax regardless of the source of the power supply. It was further discussed and agreed that a consolidation of the Municipal Public Utility Tax and the Municipal B&O tax may be an item for consideration.

Another issue raised for consideration was a potential modification to the Municipal B&O Tax to eliminate the difficulty involved in assessing different tax rates against utility sales for lighting service and for power service. The current process requires the utility provider to determine what portion of a combined commercial or industrial customer's bill is related to lighting service and what is related to power service.

MAJORITY OPINION

The Commission should recommend that the Legislature amend the Municipal B&O Tax provision of the West Virginia Code such that the tax revenue presently received by the municipality from electric suppliers will in the future, be based on energy consumption and collected by the local distribution utility. The Commission should recommend that the tax base be modified to eliminate the problem of dual tax rates applicable to lighting service and power service. A study should be undertaken to determine how this change would impact the incidence of tax on different classes of consumers. The Commission should urge the Governor's Commission on Tax Fairness to study this issue.

MINORITY OPINION

Some members specifically except to the Tax subcommittee majority opinion that the Municipal B&O Tax be changed to a charge based on energy consumption. They believe this is an unfair allocation of taxes and places larger, high-consumption, customers in a "worse-off" position.

Some members recommend measures should be taken to prevent an additional burden to ratepayers from the distribution tax.

4. PSC Maintenance Fee

The PSC Maintenance Fee (W.Va. code §24-3-6) is an assessment on public utilities as defined in Chapter 24 of the West Virginia Code, for the purpose of funding the operation of the Commission. The fee is based on two components; a rate up to a maximum of \$0.10 per \$100 of utility investment and up to \$0.40 per \$100 dollars of all electric utility revenue. The group recognized that regardless of the structure of the utility industry, it is necessary that funding be provided for the continued operation of the Commission. The following questions were raised with regard to this issue:

1. If electric generation is deregulated, should the PSC Maintenance Fee statute be modified to exclude investment in generating plants from assessment?

2. If all power suppliers selling to retail customers in West Virginia are required to be certified by the Commission, does this provide a means to assess a portion of the PSC Maintenance Fee on a power marketer or non-West Virginia supplier?
3. If the generation investment is eliminated for the purpose of the assessment, will there be sufficient revenue to cover the operation of the Commission?

CONSENSUS OPINION

The Commission should recommend that the Legislature amend the PSC Maintenance Fee provision of the West Virginia Code to exclude investment and revenue from electric generating facilities from the calculation of the fee. The Commission should impose the fee upon all entities over which it exercises a form of regulation using the intrastate revenue assessment. The Commission should review the basis of its annual assessment to insure the fair and equitable treatment of all the entities it regulates and that adequate revenues exist for the operation of the Commission.

5. Low Income B&O Tax Credit (20% Discount)

W.Va. Code §11-13F-1 et seq. provides that qualified low-income customers are eligible to receive a 20% rate discount on their electric bills in select winter months. After completion of the winter billing period, the utility files information with the Commission on the amount of the revenue discount applied during the previous winter period. The Commission certifies the revenue deficiency, which the utility then becomes eligible to deduct from its B&O tax liability.

In a restructured industry, the power supply component of eligible low-income customers bills may be provided and billed by an entity that would have no current B&O tax liability against which to credit the discount. Furthermore, there may be a question as to the obligation of the power supplier to provide the credit under the current statute. If the current tax credit is applied to all revenue components of eligible residential customers' bills, there would be no effect on state tax revenues. If, however, the discount is not applied on the power production portion of the bill, then state B&O revenue would be increased. This increase would come at the expense of higher utility bills for low income customers.

CONSENSUS OPINION

The subcommittee recommends that this matter be examined further in the context of the final model for electric industry restructuring to determine a means to insure that all eligible low-income customers are able to receive the credit. This may require modification of the current statute to provide an alternative tax credit mechanism such that the alternative power supplier is not affected either positively or negatively.

6. Property Tax

The current property tax as it applies to generating plants in the state values generating facilities on a unit valuation and income based appraisal methodology. It was noted that in a deregulated environment, this method may not be fair or appropriate. Depending upon the value of the plants when selling power at market prices, there may be an effect on tax revenues. The subcommittee does not have sufficient information in order to make an assessment of the potential impact, if any.

CONSENSUS OPINION

The Commission should advise the Governor's Commission on Tax Fairness of a need to review the impact of a deregulated electricity environment on property tax revenues.

7. Other Taxes

CONSENSUS OPINION

There are several other state taxes that may be impacted by a restructuring of the electric industry. These include the Business Franchise Tax, Consumer Sales Tax, Corporate Net Income Tax and the Severance Tax. The subcommittee reviewed these taxes and based on the discussion, it was believed that the impact, if any, on these tax items as a direct result of restructuring, would be minimal.

(7) The task force is charged with producing a set of principles that should guide any restructuring of the electric industry in West Virginia. These principles should address, but are not limited to, the following areas:

**Economic efficiencies and rate benefits
Fair and equitable treatment of stranded costs
Universal service
System reliability and safety
Customer choice and information
Environmental quality
Impacts on the West Virginia coal, oil and natural gas industries
Impacts on economic development in West Virginia**

The Task force was able to reach a consensus on the following principles to guide electric restructuring in West Virginia.

1. Restructuring should result in potential benefits available to all customers. While some customers may be immediately benefited by reductions in electricity costs, depending on their individual needs and choices, no customer should be worse off as a result of restructuring.
2. The safety and reliability of electric service should be maintained or improved.
3. Universal electric service should be provided at reasonable rates. Adequate protections for low-income customers, should be maintained.
4. Customer should have the opportunity to make choices among electricity providers and services. To provide this opportunity, and foster the development of the competitive market that will benefit customers:

Information that will enable customers to make informed choices must be widely available.

Customers should be allowed to participate in reasonable aggregation programs.

Customer choice should not be unreasonably constrained or restricted.

All customers should have simultaneous access to power supply markets as opposed to a phase-in of the availability of choice.

Customer choice should not be unreasonably delayed and should

be made available as soon as reasonably possible.

All customers should be able to participate on equal terms.

5. Customers should be protected from anti-competitive behavior and undue discrimination.
6. Customers should be protected from poor service, unfair billing/collection procedures and disconnection practices.
7. A State Mandated Code of Conduct should be developed and all participants should be required to adhere to the Code of Conduct as a condition of the right to serve West Virginia customers.
8. Restructuring policies for the electric industry should be developed in public processes.
9. Structural changes in the electric industry should not impact on compliance with environmental rules and regulations.
10. The public benefits of energy efficiency, renewable resource technologies and research and development should be maintained.
11. The continued use of West Virginia's coal, oil, natural gas and other energy resources should be encouraged, and should not be negatively impacted by restructuring of the electric industry.
12. Existing commitments of utilities arising from past decision made pursuant to historical regulatory and legal principles should be addressed in a fair and reasonable manner.
13. Tax consensus language:
 - Restructuring should reasonably preserve tax revenues for state and local governments.
 - Restructuring should not result in a shift of the tax burden to any customer or customer group.
14. The goal should be workable competition with a level playing field for all buyers and sellers.

(8) The task force is charged with producing a recommendations on any proposed rule changes that should be initiated by the Commission and any statutory changes that should be supported by the Commission.

At the initial meeting of the Task force, the Chairman established a Statutory and Regulatory subcommittee to review and address any necessary rule changes that should be initiated by the Commission and any statutory changes that should be supported by the Commission. The Statutory and Regulatory subcommittee met twice independent of the Task force. On August 26, 1997 the Statutory and Regulatory subcommittee filed a report with the Executive Secretary's Office. It is included in its original form as Appendix VI.

A consensus was reached that while there appears to be no specific prohibition to open access in either the West Virginia Code or the Rules and Regulations of the West Virginia Public Service Commission, enabling legislation would be desirable. There was also agreement that the statutory scheme and rules would require further review. The participants agreed that regardless of the model implemented by the Commission an evaluation of the impact must be made on the following West Virginia Code sections:

Chapter 24 the general modification of all sections to recognize a more competitive, less regulated generation market, consideration to a broadening of electric utilities' ability to engage in various transactions which are presently strictly circumscribed by §24-2-12, and perhaps a modification to §§ 24-2A-1 et seq., low-income assistance to continue to carry out the program in a fair manner;

§ 24-2-1d - relating to future electric generating capacity requirements;

§ 24-2-8 - relating to the proper system of accounts;

§ 24-2-11 - the applicability of certificates of convenience and necessity for generating facilities;

§ 24-2-3c - evaluate the appropriateness of enacting legislation comparable to this section, expressly effecting a cessation of Commission jurisdiction over certain electric commodities and services which are determined to be "subject to

workable competition".

Chapter 11 - relating to business and occupation tax provisions must be reviewed, and possibly amended to ensure that they are not counter productive and to guard against unfair allocation;

§ 11-13-2d

§ 11-13-2m

§ 11-13-2n

§ 11-13-2o

§ 11-13H-1, et seq.

Chapter 8 - relating to the municipal tax provisions must be reviewed, and possibly amended to ensure that they are not counter productive and to guard against unfair allocation.

§ 8-13-5

§ 8-13-5a

With regard to Regulatory rules, the Commission does not have in place any rules that contemplate a restructured electric industry. A consensus was reached that a Code of Conduct should be adopted by the Commission.

(9) The task force is charged with producing a blueprint for restructuring that sets forth a time line for actions and goals. This blueprint should take into consideration all findings and recommendations of the Task force on the areas identified above or identified by the Task force.

The Task force agreed that if this Commission decides to restructure that an effort should be made to have any necessary enabling legislation passed in the 1998 session of the West Virginia Legislature. It was also agreed that the legislation should be aimed at achieving the start of customer choice by no later than January 1, 2000. (It is noted that this timetable assumes that agreement can be reached on a basic restructuring plan.) All customers would be eligible to select alternative generation suppliers at that point.

While an exact time line could not be agreed upon, there was general agreement that certain actions must be taken between now and the start of customer choice. These actions include:

The Commission must promulgate rules for customer protection, universal service requirements, quality of service standards, metering, billing, codes of conduct, certification of power marketers.

The Commission must insure that rates for electric service are unbundled.

The Commission must determine the treatment of stranded costs/benefits and regulatory assets.

Customer education programs must be developed and implemented.

Utilities must develop information systems to facilitate customer choice.

After the start of competition there was also general agreement that at least the generation portion of rates would remain capped for customers that do not exercise choice during a transition period. The length of time for a transition period could not be agreed upon. Transition period proposals varied from two to eight years. Some parties believe that the total rate should be capped not just the generation component.

It was agreed that the Commission would monitor the progress of competition during the transition period. Regardless of the initial timetable regarding the end of the transition period, it was agreed that the transition to full competition would not occur until the Commission determined that there was a workably competitive power supply market.

Once the transition period ends all customers would pay a market rate for the power supply portion of their power bill. There was not agreement on what to do with the customers that do not elect a power supplier of choice by the end of the transition period.

Incumbent utilities believe that a customer that does not choose has in effect decided to remain a customer of the incumbent utility. Some argued that these customers should be assigned by lottery to eligible marketers or the load that is represented by the default customers should subject to bidding.

(10) Other task force agenda items

Environmental issues

A working group was formed to examine environmental issues.

There were several broad areas that a general agreement was reached. The first area involved the predictable impacts of deregulating the electric industry on West Virginia's environment. The second area involved suggested actions the Commission should take related to environmental aspects of restructuring.

On the national level there have been concerns raised about possible increases in air emissions in a deregulated electric industry. The Federal Energy Regulatory Commission examined this issue prior to issuing Order 888 which promoted competition in wholesale power markets. In the Final Environmental Impact Statement in that proceeding the FERC concluded that any environmental impact of wholesale competition would be small and uncertain.

In general the Task force has confidence in the existing state and federal environmental regulatory agencies to properly assess and react to deregulation environmental concerns, should there be any. Accordingly the Task force recommends that no specific action by this Commission be taken.

There was also agreement that the Commission should not mandate a specific percentage of a utilities generation portfolio be composed of renewable or other "green" sources. It was felt that if customers wanted such sources and were willing to pay whatever price premium that is associated with green power, then a free and competitive market would make such products available. However, if a utility or marketer were selling so called green power the seller should be obligated to be able to verify that the power sold came from the sources advertised. This is a basic truth in advertising principle.

Territorial Boundaries

The task force discussed the issue of territorial boundaries for distribution utilities. Following discussion, it was agreed that if the Commission goes forward with restructuring, the distribution territory issue should be considered by the Commission in the context of the restructured industry.

Cross subsidization

The cross subsidization issue was raised by the West Virginia Chapter of the National Electrical Contractors Association (NECA). The NECA has concerns that utilities are or could be subsidizing unregulated activities (such as electrical contracting) through regulated utility

rates. The Task force agreed that there are adequate laws in place to prevent cross subsidization and to the following language: "West Virginia should continue to pursue its current policies to insure that regulated businesses are not subsidizing non-regulated businesses.