Public Service Commission
Of West Virginia

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May 8, 1997

The Honorable John D. Dingell, Ranking Member
Commerce Committee Democratic Office
564 Ford House Office Building
U.S. house of Representatives
Washington, D.C. 20515

Dear Representative Dingell:

By way of introduction I am an engineer on the Staff of this Commission. The Chairman has forwarded to me your letter of April 10, 1997. The Commission is currently in the midst of a formal proceeding examining the merits of restructuring. Therefore, I am responding to your request instead of Chairman Charlotte Lane.

Thank you for your interest in the views of this Commission on the issue of electric restructuring. Since this Commission is in the early stages of considering this complex issue, it has not taken a position on most of the questions you have posed. The following responses are written on behalf of the Staff and not the Commission.

1. **Has your Commission or State legislature considered or adopted retail competition? If retail competition is occurring at this point, what effect has it had on consumer prices?**

   This Commission currently has an open docket (Case No. 96-1491-E-GI) on retail competition. Extensive testimony from all stakeholder groups has been received and the initial hearing on this matter was just concluded. No decision on this matter has been reached.

2. **Has your State asked Congress to enact legislation mandating retail competition? Has it sought Congressional action to enable or assist it in adopting retail competition? Has it requested or recommended any other type of Congressional action?**

   We have not sought any Congressional action to date.

3. **Does your Commission currently have sufficient authority to resolve stranded cost issues in the event Congress enacts legislation providing for retail competition by date certain? If not, what timing and other problems might ensue? What could Congress do to address any such problems?**

   We believe that we have sufficient authority to resolve stranded cost issues.

4. **Are there any other areas in which your State currently does not have the necessary authority to address issues arising from federal legislation mandating competition, or repeal of the Public Utility Holding Company Act of 1935 (PUHCA) or the Public Utility Regulatory Policy Act of 1978?**

   If PUHCA is repealed, states should have authority over transactions of holding companies which could affect utility operations.

5. **Would any constitutional issues be raised by federal legislation:**

   a. **Mandating that states choose between adopting retail competition by a date certain and having a federal agency preemptively impose retail competition?**

      Yes.

   b. **Requiring states to conduct a proceeding on retail competition, reserving to the states discretion not to adopt retail competition if they determine doing so would not be in its consumers' best interests?**

      No.

6. **From a practical standpoint, what problems would arise if Congress adopted legislation mandating retail competition which did not grandfather prior state action?**

   Such a mandate could undo massive restructuring efforts that had already taken place. It could also disrupt supply contracts and other decisions made by end users and suppliers. A one size fits all approach to restructuring the electric industry is simply imprudent. States should have the option to develop their own restructuring/retail competition plans. States electing to deregulate should be free to develop plans which are most appropriate to the circumstances of that state.

7. **In hearings before the Energy and Power Subcommittee during last Congress, some witnesses took the position that Congressional legislation mandating retail competition is necessary to protect the interests of small and residential consumers. This was based on the assertion that large industrial customers are able to negotiate lower rates with state utility commissions, and that the incidence of such rate reductions is on the increase.**

   a. **Are you aware of any study or analysis relevant to your State that supports this conclusion?**

      No.

   b. **Please provide any information you can on the historical relationship between residential and industrial rates, the extent to which one customer class has subsidized another, and whether or not this trend has altered in recent years.**

      Recent class cost of service studies for some of our major electric companies indicate that some cross subsidization exists. Where cross subsidization does exist, generally it is the industrial class subsidizing the residential class. However, to the extent that some cross subsidization does exist and has existed in the past, this Commission has acted to reduce the level of subsidy with the goal of eliminating any subsidization.

8. **Although electricity rates vary widely within the U.S., they have fallen recently in some parts of the country. Please provide any information you can about rate trends in your State, and how they affect various customer classes.**

   Attached to this response is a series of rate comparisons for residential customers in West Virginia and surrounding states. The series begins in 1990 and continues to the present. We do not produce a similar comparison for commercial or industrial customers. However, it is our belief that if such a comparison did exist it would show similar results.

9. **Some proponents of retail competition hold the view that all electricity resources should be sold at a market price and that state authority to regulate retail prices should be eliminated. How would such a policy affect shareholders and ratepayers? What mechanisms could states or Congress employ to manage these issues? In a restructured electric industry, who should receive the benefits of these low-cost resources -- utility ratepayers, utility shareholders or the highest bidder?**

   This issue is currently under review by this Commission.

10. **Of those states which have adopted retail competition, how many have addressed the issue of "reciprocity", (that is , whether or not the state can bar sellers in states which have not adopted retail competition from access to its retail markets)? Whose interests does a reciprocity affect? Is a reciprocity requirement the only way to protect those interests, or are there alternatives? Would such a requirement raise constitutional issues?**

    Since this state has not adopted retail competition the first question is not applicable. Staff has not developed a position on reciprocity at this time.

11. **If Congress were to require "unbundling" of local distribution company services as part of a retail competition mandate, what practical problems might this present to state regulators?**

At this point, we do not see that such a mandate involving unbundling of rates would present much in the way of problems. However, since we are in the early stages of debating retail competition, issues could surface in the future.

12. **Does your Commission face particular problems in connection with public power or federal power in an increasingly competitive electricity market?**

No. There are no public or federal power producers in the state and very few public distribution companies.

13. **How would federal legislation mandating competition by a near term date certain affect funding needs for your Commission? If additional funding were needed, would it be available, and what problems might arise if it were not?**

At this time it is believed that a one time budget increase would be required. Unless federal funding were available we would ask our State Legislature for permission to apply a supplemental utility assessment.

14. **Has your Commission considered or adopted securitization plans as a means of providing for recovery of utility stranded assets? What risks are inherent in this approach, and who bears them?**

We have neither considered or adopted securitization plans as a means for recovery of utility stranded costs.

15. **There is a wide divergence of opinion as to whether or not PUHCA should be modified or repealed. Given the record level of merger activity, this question may become significant for all state regulators, whether or not they currently have regulatory responsibilities relating to registered holding company activities.**

    a. **Do you believe PUHCA impedes competition, at the wholesale or retail level? Can effective competition be achieved regardless of whether Congress enacts changes to PUHCA?**

    No. Effective competition can be achieved with

PUHCA in effect. However, we believe that PUHCA should be modified as outlined in our response to Questions 4 and 15b.

b. **Do you believe Congress should modify or repeal PUHCA? If so, why and under what conditions?**

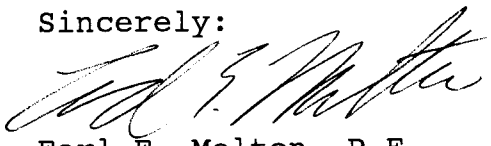
We believe that PUHCA should be modified to retain federal jurisdiction over holding companies until states provide notification that they have jurisdictional authority over holding company transactions with a jurisdictional utility or that can affect a jurisdictional utility.

c. **Should Congress enact legislation to modify the holding in Ohio Power Co. V. FERC, 954 F.2d 779(D.C. Cir. 1992)?**

As long as state commissions have the necessary authority over utility transactions of holding companies then no action with respect to above referenced case is necessary.

I hope this information is of use to you. If you or your staff wish to discuss this matter please feel free to contact me at (304) 340-0392.

Sincerely:



Earl E. Melton, P.E.
Energy Section
Utilities Division

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cc: Charlotte Lane