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PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

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.  
Case No. 98-0452-E-GI

**Direct Testimony of  
Timothy Woolf**

**On Behalf of  
The Consumer Advocate Division**

June 15, 1999

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Exhibit TW-1: Resume of Timothy Woolf.

Exhibit TW-2: *Measures to Ensure Fair Competition and Protect Consumers In a Restructured Electricity Industry in West Virginia*, prepared for the Consumer Advocate Division, prepared by Synapse Energy Economics, June 15, 1999.

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1 **I. INTRODUCTION AND QUALIFICATIONS**

2 **Q. What is your name, position and business address?**

3 A. My name is Timothy Woolf. I am the Vice-President of Synapse Energy  
4 Economics, Inc, 22 Crescent Street, Cambridge, MA 02138.

5 **Q. Please describe Synapse Energy Economics.**

6 A. Synapse Energy Economics is a consulting firm specializing in electricity industry  
7 restructuring, regulation and planning. Synapse works for a variety of clients,  
8 with an emphasis on consumer advocates, regulatory commissions, and  
9 environmental advocates.

10 **Q. Please describe your experience in the area of electric utility restructuring,  
11 regulation and planning.**

12 A. My experience is summarized in my resume, which is attached as Exhibit TW-1.  
13 Electric power system planning and regulation have been a major focus of my  
14 professional activities for the past seventeen years. In my current position at  
15 Synapse, I investigate a variety of issues related to the restructuring of the electric  
16 industry; with a focus on market power, stranded costs, performance-based  
17 ratemaking, customer aggregation, information disclosure, air quality, energy  
18 efficiency and many aspects of consumer protection.

19 **Q. Please describe your professional experience before beginning your current  
20 position at Synapse Energy Economics.**

21 A. Before joining Synapse Energy Economics, I was the Manager of the Electricity  
22 Program at Tellus Institute, a consulting firm in Boston, Massachusetts. In that  
23 capacity I managed a staff that provided research, testimony, reports and  
24 regulatory support to state energy offices, regulatory commissions, consumer  
25 advocates and environmental organizations in the US. Prior to working for Tellus  
26 Institute, I was employed as the Research Director of the Association for the  
27 Conservation of Energy in London, England. I have also worked as a Staff  
28 Economist at the Massachusetts Department of Public Utilities, and a Policy  
29 Analyst at the Massachusetts Executive Office of Energy Resources. I hold a

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1 Masters in Business Administration from Boston University, as well as a BS in  
2 Mechanical Engineering and a BA in English from Tufts University.

3 **Q. On whose behalf are you testifying in this case?**

4 A. I am testifying on behalf of the Consumer Advocate Division (CAD).

5 **Q. Have you testified previously in this docket?**

6 A. No, I have not.

7 **Q. What is the purpose of your testimony.**

8 A. The purpose of my testimony is to address the first set of issues identified by the  
9 Public Service Commission (the Commission) in its procedural order in this case,  
10 dated December 23, 1998. In that order the Commission scheduled evidentiary  
11 hearings to further investigate some of the electricity industry restructuring issues  
12 that have been debated in a series of workshop meetings in 1997 and 1998. In  
13 particular, the Commission sought input on (1) certification, licensing, bonding,  
14 etc. of competitive electric suppliers; reliability of power supply; universal  
15 service; and consumer protection, and (2) code of conduct.

16 I have prepared a report for the Consumer Advocate Division on these issues.  
17 The report is attached to my testimony as Exhibit TW-2. The primary purpose of  
18 my testimony is to present this report to the Commission, and to summarize the  
19 major recommendations.

20 **Q. How is your testimony organized?**

21 A. My testimony is organized as follows:

22 I. Introduction and Qualifications.

23 II. Summary of Conclusions and Recommendations.

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1 **II. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS**

2 **Q. Please describe your overall approach to the Phase I issues identified by the**  
3 **Commission in this proceeding.**

4 A. The Commission has set forth several specific issues to be addressed in Phase I,  
5 such as codes of conduct and licensing standards. However, in order to address  
6 any of these specific issues it is first necessary to discuss an overall approach to  
7 the transcendent problem of market power of existing electric utilities.

8 **Q. What do you mean by market power of existing utilities?**

9 A. For many years, existing electric utilities have owned and controlled the facilities  
10 necessary to generate, transmit and distribute electricity to retail customers. They  
11 also have customer information, customer contacts, name recognition, financial  
12 backing, trained employees, and experienced corporate management that has  
13 accrued over time as a result of operating as a regulated monopoly within their  
14 service territories. All of these attributes provide existing electric utilities with  
15 opportunities to discriminate against competing generation marketers, to cross-  
16 subsidize competitive business activities with regulated business activities, or to  
17 behave in ways that inhibit the development of a fully-competitive electricity  
18 market. Market power is the term used to describe the ability to conduct any such  
19 anti-competitive behavior.

20 **Q. Please summarize your primary recommendations with regard to vertical**  
21 **market power and the divestiture of generation assets.**

22 A. Divestiture of generation assets is necessary to mitigate vertical market power  
23 problems and promote a fully competitive electricity market. In the absence of  
24 divestiture, vertically integrated electric utilities would have too much opportunity  
25 to influence the ability of competing generation companies to gain access to the  
26 transmission and distribution (T&D) system. Just the perception of market power  
27 abuse by a vertically integrated utility can dampen the competitive market by  
28 discouraging potential market entrants.

29 Divestiture, on the other hand, creates a clear, immediate and permanent boundary  
30 between the operator of the transmission and distribution system and the

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1 competing generation companies. I recommend that the Commission take all  
2 steps within its jurisdiction to encourage the utilities in West Virginia to divest all  
3 of their generation assets. Additional considerations related to divestiture are  
4 discussed in the testimony of CAD witness Byron Harris.

5 **Q. Is divestiture alone sufficient to eliminate the potential for vertical market**  
6 **power problems in a restructured electricity industry.**

7 No, it is not. Distribution utilities that have affiliated generation marketing  
8 companies create many of the same risks of anti-competitive behavior and cross-  
9 subsidization as vertically integrated utilities. Consequently, I recommend that  
10 generation marketing companies that are affiliated with a distribution utility be  
11 strictly prohibited from selling power within that utility's service territory.

12 As an alternative, but less desirable, approach the Commission could impose a  
13 temporary ban of at least five years on generation marketing companies from  
14 selling power within the service territory of an affiliated distribution company. At  
15 a minimum, the Commission should require that generation marketing companies  
16 limit their operations within an affiliated utility's service territory to a maximum  
17 of 20 percent of the total energy market.

18 **Q. Please summarize your primary recommendations with regard to codes of**  
19 **conduct.**

20 A. The study attached as Exhibit TW-2 describes some of the key principles to use in  
21 designing a code of conduct. In sum, the Commission should recognize that  
22 codes of conduct offer only very limited protection from anti-competitive  
23 behavior. Competitive generation and marketing affiliates will naturally seek to  
24 maximize the advantages of their relationship with the utility -- up to the limits  
25 imposed by regulatory intervention. Codes of conduct are difficult to monitor and  
26 enforce, and are easy to circumvent, because of the many transactions that can  
27 take place between a utility and its affiliates that go undetected by the  
28 Commission, competitive generation companies, or customers. Consequently, I  
29 recommend that the Commission establish codes that are clear and  
30 comprehensive, promote greater separation between a utility and its affiliate, and  
31 prohibit many types of transactions that could lead to anti-competitive behavior.

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1 **Q. Do you have specific recommendations for a code of conduct that would**  
2 **apply in West Virginia?**

3 A. Yes. I recommend that the code of conduct proposed by the “Competitors’  
4 Subcommittee” during last summer’s workshop sessions be used as the basis for a  
5 code of conduct in West Virginia. This code is much more comprehensive and  
6 clear than the alternative code proposed by the “Utility Subcommittee.” I further  
7 recommend that the Competitors’ proposal be strengthened in the following ways:

- 8 • Utilities should be required to make additional information available to the  
9 Commission and others, including a list of all affiliated businesses and a  
10 “discount report” that includes details about any and all discounts that are  
11 offered to affiliates.
- 12 • All publicly available information that the utility is required to provide to  
13 competing generation and marketing companies should be posted on the  
14 utility’s web site, and located on a page that is directly and conspicuously  
15 linked to the home page.
- 16 • The books and records of the utility and its affiliates should be open to  
17 inspection by the Commission, Commission Staff and the Consumer  
18 Advocate Division, with respect to transactions between the utility and its  
19 affiliates.
- 20 • The code should prohibit the transfer between a utility and its affiliates of  
21 employees that work with information and have knowledge that would  
22 provide an affiliate with an advantage in competitive markets.
- 23 • The code should establish more clear boundaries for what type of  
24 corporate support might be shared between a utility and its affiliates.  
25 Corporate officers and board members should only be shared if an electric  
26 distribution company and its affiliates are controlled by a holding  
27 company. A board member or corporate officer should only be allowed to  
28 serve the holding company and either the electric utility or its affiliate, but  
29 not both.

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- 1 • Utilities and their affiliates should be prohibited from making any joint  
2 purchases of goods and services. Joint purchases might result in subtle  
3 and undetectable forms of cross-subsidization between regulated and  
4 unregulated companies.
  - 5 • The code of conduct should place certain limits on how much of an  
6 investment a utility can make in its affiliates. The code should prohibit a  
7 utility from investing more than five percent of the its capitalization in an  
8 affiliate, without specific approval from the Commission.
  - 9 • The code should include a section that describes the extent to which a  
10 utility can offer new or competitive services. All new products and  
11 services should be provided through affiliates. A utility should only be  
12 allowed to offer products and services that are currently being provided, or  
13 are unbundled versions of existing utility products and services.
  - 14 • The code of conduct should include additional language regarding  
15 regulatory oversight and enforcement mechanisms. The code should  
16 include provisions that enable violations to be detected as soon as  
17 possible, and allow for expeditious resolution of complaints and disputes.

18 **Q. Please summarize your primary recommendations with regard to licensing**  
19 **standards.**

20 A. Licensing standards are important as a means of ensuring that retail electric  
21 suppliers offer quality services to customers at fair terms and conditions.  
22 Licensing standards should be designed to achieve an appropriate balance  
23 between filtering out non-viable applicants, but not creating barriers to entry that  
24 could stifle competition. I recommend that the “Sample Application,” developed  
25 during the subcommittee workshops last year, be used as the basis for developing  
26 licensing standards regulations in West Virginia. These regulations should clearly  
27 identify the conditions necessary for a retail supplier to maintain a license in good  
28 standing. Such conditions should include, for example, compliance with all  
29 relevant reliability requirements; compliance with any relevant code of conduct;  
30 compliance with information disclosure requirements; and compliance with any



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1 consumer protection standards established by the Commission, such as standards  
2 against slamming and cramming and standards pertaining to customer billing and  
3 termination.

4 **Q. Please summarize your primary recommendations with regard to reliability**  
5 **and service quality issues.**

6 A. I recommend that the Commission require all distribution companies to file  
7 annual reports documenting a number of reliability and service quality issues. If  
8 the Commission observes a deterioration in reliability or service quality over time,  
9 then it should adopt comprehensive performance standards, including penalties  
10 for inferior performance. I also recommend that a supplier of last resort be  
11 established to ensure all customers have constant access to generation services,  
12 but that retail electricity suppliers bear the responsibility for any costs associated  
13 with not meeting their obligations to provide generation services.

14 **Q. Please summarize your primary recommendations with regard to low-**  
15 **income customers.**

16 A. I support the two main provisions to protect low-income customers in a  
17 competitive electricity market. First, the 20 percent low-income rate discount  
18 should be continued. Second, a low-income system benefits charge should be  
19 established and dedicated primarily to low-income energy efficiency and  
20 weatherization services.

21 **Q. Please summarize your primary recommendations with regard to consumer**  
22 **education and uniform disclosure of information.**

23 A. Both a well-designed consumer education program and uniform requirements for  
24 information disclosure are necessary to ensure customer participation, protect  
25 customers from misleading marketing efforts, and maximize the potential benefits  
26 of a competitive electricity market. Information disclosure requirements should  
27 be applied to all suppliers of retail electricity, should be uniform and standardized  
28 as much as possible, and should be made readily available to consumers at key  
29 points in their decision-making process.

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1 **Q. Should the Commission have the power to impose fines or penalties for**  
2 **violations of the code of conduct, reliability requirements, consumer**  
3 **protection measures, or licensing requirements?**

4 A. Yes. The Commission may need to take remedial actions to enforce these  
5 requirements, including fines and penalties. I recommend that if a plan is adopted  
6 for restructuring the electricity industry, the Commission seek specific authority  
7 from the legislature to impose fines and penalties for violations of the code of  
8 conduct, reliability requirements, consumer protection measures, and licensing  
9 requirements.

10 **Q. Why is it appropriate for the Commission to have the authority to impose**  
11 **fines or penalties to enforce these requirements?**

12 A. Fines and penalties provide the Commission with a flexible means of enforcing  
13 the various consumer protection measures. Fines and penalties can be tailored --  
14 in terms of amount, timing, duration, or other variables -- to match the severity of  
15 the violation. In the absence of fines or penalties, the Commission's primary  
16 option for enforcing codes of conduct and licensing standards is to revoke the  
17 license of a retail supplier. The Commission is likely to be hesitant to utilize this  
18 option because of the impact on the retail supplier, and because it would eliminate  
19 one of the competitors in the market, thereby working against the goal of  
20 increasing competition in the electricity market. If retail suppliers come to  
21 recognize this hesitancy by the Commission, they might discount the threat of  
22 having their license revoked.

23 **Q. Does this conclude your testimony?**

24 A. Yes, it does.