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SUPREME COURT OF VIRGINIA
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IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 911456
(S.C.C. CASE NO PST910001)

COLUMBIA GAS TRANSMISSION CORPORATION,
Appellant,

v.

STATE CORPORATION COMMISSION,
Appellee

APPENDIX

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Charleston, West Virginia 25324

Hon. Mary Sue Terry
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Office of the Attorney General
101 N. Eighth Street
Richmond, Virginia 23219

Counsel for Appellant

Counsel for Appellee

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TPH, Jr., Commissioner

Thomas P. Harwood, Jr., Commissioner
State Corporation Commission
Jefferson Building
Bank & Governor Streets
Richmond, Virginia 23219

PST 910001

100 APR 23 11 08 19

Columbia Gas Transmission Corporation --
Property Tax Assessment

Dear Judge Harwood:

Pursuant to Rules 3:3 and 5:4 of the Commission's Rules of Practice and Procedure, I am writing on behalf of Columbia Gas Transmission Corporation ("Columbia Transmission") to complain of action by the Public Service Taxation Division (the "Division") classifying Columbia Transmission as a "pipe line distribution company" as defined in §58.1-2600 of the Code of Virginia for the purposes of assessment of property taxes and requiring Columbia Transmission to file an Annual Tax Report, Form CCTD-7, with the Commission.

The Division's action was taken in letters dated December 13, 1990 to James P. Holland, President of Columbia Transmission, and February 21, 1991 to Joseph J. Bartoletta, Manager, State and Local Taxes of Columbia Transmission, copies of which are attached to this letter.

Columbia Transmission has been classified a "pipe line transmission company" as defined in §58.1-2600, and assessed by the State Tax Department (the "Department") since 1983. Contrary to the action of the Division, Columbia Transmission believes that it should continue to be so classified and does not know why there should be a change of classification arising out of the recent merger into Columbia Transmission of Commonwealth Gas Pipeline Corporation, as indicated in Mr. O'Bryan's December 13, 1990 letter to Mr. Holland. Moreover, Columbia Transmission questions whether the Commission, as opposed to the Department,

[0001]

has the jurisdiction to make the determination that an entity that has been previously assessed by the Department should be "reclassified" and assessed by the Commission.

Accordingly, this is to respectfully request that you review and reverse the Division's action reclassifying Columbia Transmission as a "pipe line distribution company." Columbia Transmission respectfully requests that the Division explain in detail the reason for its reclassification, including any legal authority supporting that action. The attached correspondence does not contain such an explanation.

Upon receiving this information, Columbia Transmission wishes an opportunity to respond and to meet with you and the Division to resolve the matter.

In the meantime, Columbia Transmission plans to file its property tax return on April 15 with the Department.

Thank you for your consideration.

Very truly yours,

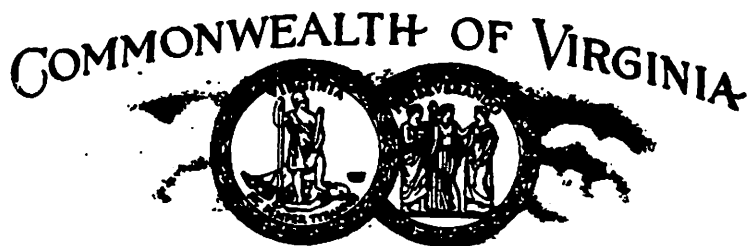


Stephen H. Watts, II

SHWII/lp
Enclosures

cc: A. L. O'Bryan, Director
Wayne N. Smith, Esq.
William H. Forst, Director
H. L. Snyder, Esq.
Joseph J. Bartoletta

A. L. O'BRYAN
DIRECTOR
(804) 786-3670
I. POWELL JR.
DEPUTY DIRECTOR
TEL. (804) 786-3670



DEC 17 1990

P.O. BOX 1187
RICHMOND, VA. 23208

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STATE CORPORATION COMMISSION
PUBLIC SERVICE TAXATION DIVISION

December 13, 1990

Columbia Gas Transmission Corporation
Mr. James P. Holland, President
P. O. Box 1273
Charleston, West Virginia 25314

Dear Mr. Holland:

Pursuant to the recent merger of Commonwealth Gas Pipe Line and Columbia Gas Transmission Corporation. The surviving company, Columbia Gas Transmission Corporation, will be classified as a pipe line distribution company, as defined in Section 58.1-2600 of the Code of Virginia, and your company will be assessed by the Public Service Taxation Division of the Commission as provided by Section 58.1-2627.1.

Columbia Gas Transmission Corporation will be required to file an annual tax report, form CCTD-7, with the Commission on or before April 15, 1991 for the 1991 tax year. You will receive a copy in early January.

It is requested that a representative from Columbia Gas Transmission Corporation contact this office on or before January 11, 1991 in order to discuss the Commission's reporting requirements.

If I can be of any assistance, please do not hesitate to call.

Sincerely,

A. L. O'Bryan

A. L. O'Bryan
Director

ALO'B:atk

cc: Mr. William H. Forst
Mr. Stephen H. Watts, II ✓

[0003]

000004

FROM: CHARLESTON COLUMBIA GAS TO: 7208105 FEB 27, 1991 9:45AM P.01

COMMONWEALTH OF VIRGINIA

A. L. O'BRYAN
DIRECTOR
TEL. (804) 786-3679
W. J. POWELL JR.
DEPUTY DIRECTOR
TEL. (804) 786-3670

P.O. BOX 1197
RICHMOND, VA. 23208

STATE CORPORATION COMMISSION PUBLIC SERVICE TAXATION DIVISION

February 21, 1991

Columbia Gas Transmission Corporation
Joseph J. Bartoletta, Manager
State and Local Taxes
1700 MacCorkle Avenue, S.E.
P. O. Box 1273
Charleston, West Virginia 25325-1273

Dear Mr. Bartoletta:

It is the view of this office that Columbia Gas Transmission Corporation should be classified as a pipe line distribution company as defined in Section 58.1-2600 of the Code of Virginia, and should be assessed as provided by Section 58.1-2627).

In order for this office to appraise all land owned by the Columbia Gas Transmission Corporation, it is requested that you furnish on or before March 11, 1991 the location (City, County or Town), size (acre or square feet) and legal description of each parcel own by Columbia Gas Transmission Corporation in Virginia as of January 1, 1991. (see attached forms)

If I can be of any assistance, please do not hesitate to call.

Sincerely

A. L. O'Bryan
A. L. O'Bryan
Director

ALO'B:atk
Enc.

[0004]

COMPANY NAME: _____

REAL ESTATE TRANSACTION IN 19__

CITY / COUNTY:

DISTRICT / TOWN:

DESCRIBE TRANSACTION:

OTHER PARTY:

PROPERTY DESCRIPTION (INCLUDE FACILITY'S NAME):

SIZE:

LOCAL MAP NUMBER:

CONSIDERATION:

DATE OF DEED:

DATE DEED DELIVERED:

DATE DEED RECORDED:

DEED BOOK_____, PAGE_____

LIST IMPROVEMENTS:

NOTE: All of this information may not be available to you,
however please fill in as completely as possible.

(ATTACH COPY OF PLAT TO THIS STATEMENT)

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COMPANY NAME: _____

REAL ESTATE TRANSACTION IN 19__

CITY / COUNTY:

DISTRICT / TOWN:

DESCRIBE TRANSACTION:

OTHER PARTY:

PROPERTY DESCRIPTION (INCLUDE FACILITY'S NAME):

SIZE:

LOCAL MAP NUMBER:

CONSIDERATION:

DATE OF DEED:

DATE DEED DELIVERED:

DATE DEED RECORDED:

DEED BOOK_____, PAGE_____

LIST IMPROVEMENTS:

NOTE: All of this information may not be available to you,
however please fill in as completely as possible.

(ATTACH COPY OF PLAT TO THIS STATEMENT)

[0006]

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STATE CORPORATION COMMISSION

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1991 APR 23 PM 2:13

AT RICHMOND, APRIL 23, 1991

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

v.

CASE NO. PST910001

COLUMBIA GAS TRANSMISSION
CORPORATION,
DefendantRULE TO SHOW CAUSE

IT APPEARS that Columbia Gas Transmission Corporation is a corporation doing in the Commonwealth the business of a pipeline distribution company.

IT FURTHER APPEARS that Columbia Gas Transmission Corporation did not file on or before April 15, 1991, the annual report of property and gross receipts required by § 58.1-2628(B) of the Code of Virginia.

As provided by Rules 3:2 and 5:4 of the Commission's Rules of Practice and Procedure, Columbia Gas Transmission Corporation made an informal complaint on April 12, 1991, to Commissioner Thomas P. Harwood, Jr. for review of the Division of Public Service Taxation's classification of Columbia Gas Transmission Corporation as a pipeline distribution company for purposes of requiring an annual report for property tax assessment. The Commission finds that this matter of classification for reporting purposes should be considered by the full Commission in its judicial capacity. The Commission will make the informal complaint part of the record in this proceeding. Accordingly,

[0007]

IT IS ORDERED:

(1) That Columbia Gas Transmission Corporation appear before the State Corporation Commission at 10:00 a.m., May 20, 1991, in the Courtroom, 13th Floor, Jefferson Building, Bank and Governor Streets, Richmond, Virginia, and show cause why a penalty for failure to file its annual report should not be imposed pursuant to § 58.1-2610 of the Code of Virginia;

(2) That, as provided by Rule 5:16(c) of the Commission's Rules of Practice and Procedure, Columbia Gas Transmission Corporation be authorized to file an original and fifteen (15) copies of an answer to this Rule with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216, on or before May 1, 1991;

(3) That, inasmuch as the Commission's judgment on this Rule could affect assessments made by the Department of Taxation, the Tax Commissioner and the Attorney General shall be authorized to file with the Clerk of the Commission and serve on the Defendant, on or before May 10, 1991, any comments on Columbia Gas Transmission Corporation's obligation to file with the Commission an annual report; and

(4) That the Commission Staff be authorized to file with the Clerk of the Commission and serve on the Defendant, on or before May 10, 1991, any comments on Columbia Gas Transmission Corporation's obligation to file with the Commission an annual report.

ATTESTED COPIES of this Rule shall be served by registered mail, return receipt requested, on the registered agent for Columbia Gas Transmission Corporation, Stephen H. Watts, II, Esquire, McGuire, Woods, Battle & Boothe, One James Center, Richmond, Virginia 23219; on The Honorable Mary Sue Terry, Attorney General of Virginia, Supreme Court Building, 101 North Eighth Street, Richmond, Virginia 23219; and on The Honorable William Forst, Tax Commissioner, Department of Taxation, P.O. Box 6-L, Richmond, Virginia 23282.

AN ATTESTED COPY of this Rule shall be sent to the Director of Public Service Taxation.

COMMONWEALTH OF VIRGINIA

1001 MAY -1 PM 5:03 BEFORE THE

STATE CORPORATION COMMISSION

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

v.

CASE NO. PST910001

COLUMBIA GAS TRANSMISSION
CORPORATION,
Defendant

ANSWER

OF

COLUMBIA GAS TRANSMISSION CORPORATION

Pursuant to Rule 5:16(c) of the Commission's Rules of Practice and Procedure and the Rule To Show Cause issued by the Commission in this proceeding on April 23, 1991, Columbia Gas Transmission Corporation ("Columbia"), by counsel, hereby makes the following Answer to the Rule to Show Cause.

I. BACKGROUND

Columbia is an interstate natural gas transmission company, engaged in the transportation and sale for resale of natural gas in interstate commerce. As such, Columbia is a "natural gas company" as defined in the Natural Gas Act, and its rates, facilities and service are regulated by the Federal Energy Regulatory Commission ("FERC"). Columbia is a general business corporation organized under the laws of Delaware and is authorized to do business in Virginia.

In order to provide sales for resale and transportation service to its customers, Columbia owns and operates an extensive system of natural gas pipelines and related compression, storage and other facilities spread through the states of Ohio, Kentucky, West Virginia, Virginia, Maryland, Pennsylvania, New Jersey and New York. A map showing Columbia's transmission system is attached to this Answer.

Within Virginia, Columbia sells natural gas to a number of gas distributors, including Virginia Natural Gas, Inc. ("VNG"), Commonwealth Gas Services, Inc. ("Services"), and the City of Richmond ("Richmond"), for resale by them to end-users and also transports gas purchased by these distributors, and by end-users served by them, from suppliers other than Columbia. Columbia also transports gas for one direct industrial customer, the Allied-Signal, Inc. fibers plant in the City of Hopewell ("Allied") purchased by Allied from suppliers other than Columbia. Columbia makes no sales of gas to end-users in Virginia.

Before December 11, 1990, VNG, Richmond, Services and Allied received all of their natural gas supplies through the gas pipeline facilities of Commonwealth Gas Pipeline Corporation ("Commonwealth Pipeline"), a Virginia public utility all of whose facilities were located within Virginia and whose rates, facilities and service were regulated by this Commission. Commonwealth Pipeline received all of its deliveries of gas from Columbia and another interstate pipeline, Transcontinental Gas

Pipe Line Corporation ("Transco") at delivery points in Virginia. A map of the former Commonwealth Pipeline facilities is also attached to this Answer.

Before November 1, 1989, Columbia and Transco sold gas to Commonwealth Pipeline for resale by it to VNG, Services, Richmond and Allied and also transported gas purchased by Commonwealth Pipeline from other suppliers for its own system supply. Columbia and Transco also transported for VNG, Services and Richmond (and for end-users served by them), and for Allied, gas that had been purchased by them from other suppliers and that was delivered to Commonwealth Pipeline for transportation and redelivery to them.

Effective November 1, 1989, these arrangements were restructured as Commonwealth Pipeline ceased making any sales of gas, and VNG, Services and Richmond became direct sale for resale customers of Columbia and Transco at those pipelines' points of delivery to Commonwealth Pipeline. Allied declined to become a sales customer of either Columbia or Transco and instead continued to use Columbia solely for transportation of gas purchased by Allied from other suppliers. Commonwealth Pipeline became solely a transporter within Virginia of gas already purchased by VNG, Services and Richmond (or customers served by them), and by Allied, from other sources.

Effective December 11, 1990, Commonwealth Pipeline was merged into Columbia (the "Merger"), which was the surviving corporation. The Merger had the effect of extending Columbia's

interstate pipeline system further into Virginia to include the former Commonwealth pipeline facilities and of moving the delivery points for its sales for resale and transportation service to VNG, Services and Richmond, and for its transportation service to Allied, "downstream" to the points where Commonwealth Pipeline had formerly made deliveries to those customers. Otherwise, Columbia's operations in Virginia were unchanged by the Merger.

Since the recodification of Va. Code Title 58.1 in 1984¹, Columbia's real and tangible personal property has been assessed by the State Tax Department (the "Department") because Columbia has been a "pipeline transmission company," as defined in Code §58.1-2600.² This case has arisen because the Commission's Division of Public Service Taxation (the "Division") has determined that Columbia should be "reclassified" as a "pipeline distribution company" and assessed for property tax purposes by the Commission, effective for the tax year beginning January 1, 1991. In correspondence to Columbia, the Division stated that its determination was made "[P]ursuant to" the Merger.

Columbia believes that these facts are not in basic dispute and that the issue presented is one of statutory interpretation. Accordingly, Columbia will work with the Division to develop an

¹1984 Acts of Assembly, ch. 675.

²At the time of the recodification of Title 58.1 in 1984, assessment responsibility for Columbia had already been transferred to the Department, effective January 1, 1984, by legislation passed by the General Assembly in the 1983 Session. 1983 Acts of Assembly, ch. 570.

appropriate stipulation of facts in an effort to reduce or eliminate the need for the presentation of evidence at the hearing.

II. ARGUMENT

Although the Division has only stated in correspondence to Columbia that its determination to assess Columbia as a "pipeline distribution company" is made "[P]ursuant to" the Merger, counsel for Columbia has been informally advised by the Director of the Division and by Staff Counsel that this determination was based on the fact that, as a result of the Merger, Columbia facilities became directly connected with those of its industrial transportation customer, Allied. This interpretation is contrary to the intent and structure of the applicable statutes and should be rejected by the Commission.

Under the present statutory structure for taxation of gas and petroleum pipeline companies, a distinction is drawn between "pipeline transmission companies" and "pipeline distribution companies," which are separately defined in § 58.1-2600, as follows:

'Pipeline Distribution Company' means a corporation, other than a pipeline transmission company, which transmits, by means of a pipeline, natural gas, manufactured gas or crude petroleum and the products or by-products thereof to a purchaser for purposes of furnishing heat or light.

'Pipeline Transmission Company' means a corporation authorized to transmit natural gas, manufactured gas or crude petroleum and the products or by-products thereof in the

public service by means of a pipeline or pipelines from one point to another when such gas or petroleum is not for sale to an ultimate consumer for purposes of furnishing heat or light.

Under §§ 56-2627.1 and 56-2628, "pipeline transmission companies" submit their property tax returns to the Department, which then performs the assessment, while "pipeline distribution companies" submit their property tax returns to and are assessed by the Division. Under subsection D of § 56-2627.1, a company qualifying as both a "pipeline transmission company" and a "pipeline distribution company" is considered for property tax purposes to be a pipeline distribution company. -

The definition of "pipeline distribution company" only applies to "a corporation, other than a pipeline transmission company, which transmits," Therefore, the question whether a given activity qualifies an entity as a "pipeline distribution company" must first turn on whether that same activity qualifies the entity as a "pipeline transmission company."³ If it does, by definition that activity cannot qualify the entity as a "pipeline distribution company." Put another way, the definition of "pipeline distribution company" is expressed in direct relation to whether the definition of "pipeline transmission company" would apply. The reverse is not true.

³Subsection D of § 58.1-2627.1 applies where an entity is engaged in one type of activity that falls under the definition of "pipeline distribution company" and in another type of activity that falls under the definition of "pipeline transmission company."

The definition of "pipeline transmission company" makes no reference to direct connection or service to the ultimate consumer.

The term "purchaser" in the definition of "pipeline distribution company" means an entity purchasing the gas from the pipeline in question and not from some other supplier.

Similarly, the term "not for sale to an ultimate consumer" refers to sale by the pipeline in question to the ultimate consumer.

Otherwise, these definitions would not make any sense, as applied to actual transactions between sellers, purchasers and transporters in the natural gas marketplace. This can be seen by applying these definitions to Columbia's service to Allied.

In the case of Allied, Columbia transmits gas (and is authorized in the public convenience and necessity to do so under its FERC certificates) from one point (the point at which it receives gas already purchased by Allied from another supplier) to another (the point at which Columbia delivers the gas to Allied). Columbia understands that Allied uses this gas both for feedstock and fuel in the operation of its Hopewell plant. However, the gas is not for sale to Allied by Columbia (or by anyone else, for that matter) when Columbia is transmitting the gas to Allied, because it has already been purchased by Allied before it reaches Columbia. The transaction falls squarely within the wording of the definition of "pipeline transmission company" and, therefore, cannot trigger application of the definition of "pipeline distribution company." The result

of this analysis as applied to Columbia's service to Allied is unaffected by the Merger.

The same result obtains when the definition of "pipeline distribution company" is applied to Columbia's service to Allied. Columbia does transmit gas for and to Allied, which uses a portion of that gas as a fuel. However, Allied is not a purchaser of this gas from Columbia, as is indicated above. Therefore, Columbia's transportation service to Allied does not fall within the definition of "pipeline distribution company," even if this activity did not come within the definition of "pipeline transmission company," which it does. .

The Division somehow may have interpreted the terms "purchaser" and "not for sale to an ultimate consumer" to refer to purchases from and sales by suppliers other than the "transmitting" pipeline. But such an interpretation would wipe out the distinction between the two definitions and produce otherwise irrational results. In every interstate gas transaction, there will be a seller and a purchaser that is the ultimate consumer. If the term "not for sale to an ultimate consumer" in the definition of "pipeline transmission company" refers to purchases from suppliers other than the "transmitting" pipeline, then no transportation movement could come within that definition, and all interstate pipelines providing transportation service through facilities in Virginia would be considered "pipeline distribution companies." These definitions cannot be

construed in a way that would destroy the very distinction they were intended to create.

WHEREFORE, Columbia respectfully requests the Commission to dismiss the Rule To Show Cause on the grounds that Columbia is not a "pipeline distribution company" subject to assessment as such by the Division.

Respectfully submitted,

COLUMBIA GAS TRANSMISSION CORPORATION

By Stephen H. Watts, II
Of Counsel

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McGuire, Woods, Battle & Boothe
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Richmond, Virginia 23219
(804) 775-4357

Giles D. H. Snyder, General Counsel
H. L. Snyder, Assistant General Counsel
Columbia Gas Transmission Corporation
P.O. Box 1273
Charleston, West Virginia 25324
(304) 357-2737

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was hand-delivered or mailed to the following on May 1, 1991:

The Honorable Mary Sue Terry
Attorney General of Virginia
Supreme Court Building
101 North Eighth Street
Richmond, Virginia 23219

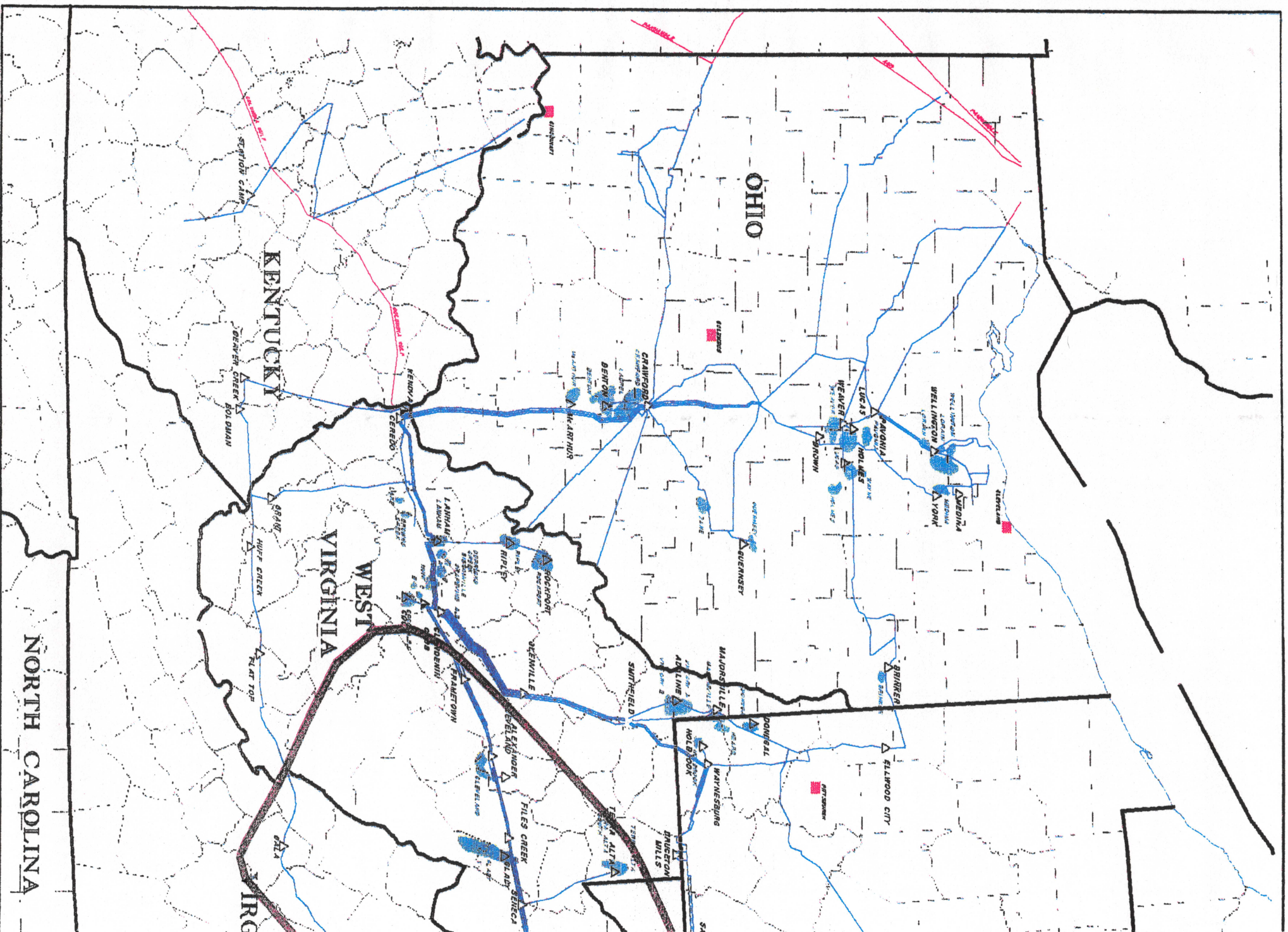
The Honorable William Forst
Tax Commissioner
Department of Taxation
P.O. Box 6-L
Richmond, Virginia 23282

Wayne N. Smith, Esq.
Associate General Counsel
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Richmond, Virginia 23219

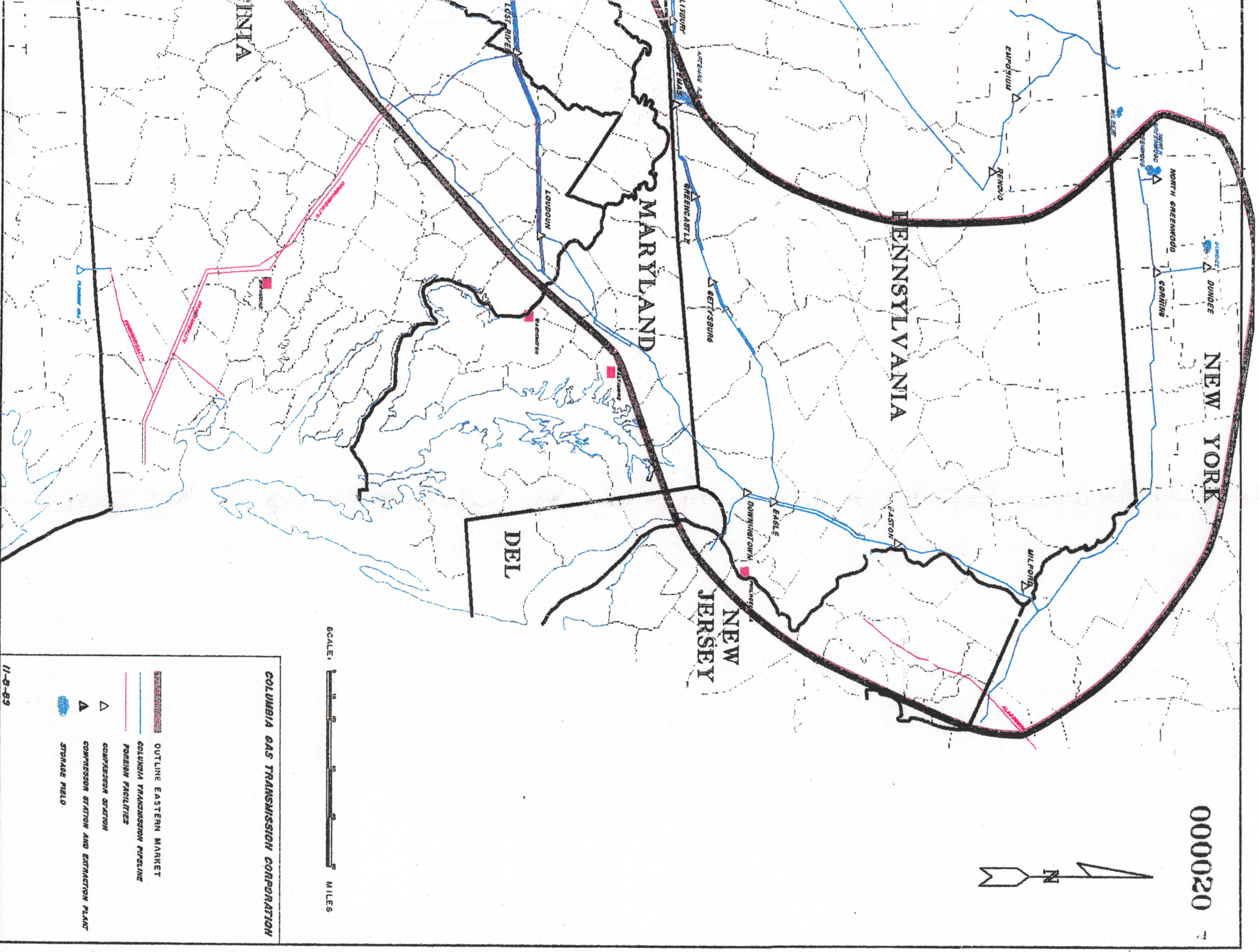
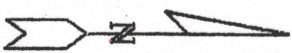
A. L. O'Bryan, Director
Division of Public Service Taxation
State Corporation Commission
Jefferson Building, 9th Floor
Bank & Governor Streets
Richmond, Virginia 23219



Stephen H. Watts, II



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1991 MAY 10 AM 11:11

COMMONWEALTH OF VIRGINIA, <u>ex rel.</u>)	
STATE CORPORATION COMMISSION)	
v.)	CASE NO. PST910001
COLUMBIA GAS TRANSMISSION CORPORATION,)	
Defendant)	

COMMISSION STAFF MEMORANDUM

On April 23, 1991, the Commission issued a Rule directing Columbia Gas Transmission Corporation ("Columbia" or "Company") to show cause why a penalty should not be imposed for its failure to file an annual report of property and gross receipts. In its answer to the Rule, Columbia argued that it was under no obligation to file a report with the Commission. The Commission Staff now files these comments on the issue of Columbia's obligation to file with the Commission.

In its answer, Columbia concludes, and the Staff agrees, that the issue before the Commission is one of statutory interpretation. The question is whether Columbia, like its predecessor, Commonwealth Gas Pipeline Corporation (Pipeline), qualifies as both a pipeline transmission company and a pipeline distribution company as those terms are defined in Title 58.1 Virginia Code. The Staff believes that Columbia does qualify as both a transmission and a distribution company. Consequently, the Company must file a report of gross receipts and property with the State Corporation Commission.

The Statutory Structure

The current statutory structure divides pipeline companies into two categories. The property of some pipeline companies is assessed for taxation by the Commission while the property of others is assessed by the Department of Taxation ("Department"). Historically, the Commission had assessed for taxation the property of all pipeline companies. The bifurcation of assessment responsibility dates from 1983 when the General Assembly amended former § 58-503.1 of the Virginia Code to read as follows:

Section 58-503.1. Assessments for taxation. - The State Corporation Commission is designated as the central state agency to assess for taxation the real estate and tangible personal property of all public service corporations upon which the Commonwealth shall levy a state franchise, license, or other similar tax based upon or measured by its gross receipts or gross earnings, or any part thereof. The Department of Taxation is designated as the central state agency to assess the real and personal property of railroads and pipeline companies, except those pipeline companies whose operations and facilities are wholly within the Commonwealth.

1983 Va. Acts 769.

This division of responsibility became effective on January 1, 1984. Id. 777. In tax year 1984, the Commission found only one pipeline company, Pipeline, had operations and facilities wholly within Virginia and assessed its real estate and property. See In re Assessment for 1984 of Heat, Water, Light and Power Corporations and Gas and Pipe Line Corporations, Order No. APS840061 (Gas) (Sept. 6, 1984).

This first basis for classifying pipeline companies and dividing assessment responsibilities was in place for only one tax year. In 1984, Virginia's tax laws were recodified as Title 58.1 of the Virginia Code. 1984 Va. Acts 1178. The new law continued a division of responsibility between the Commission and the Department, but changed the classification of pipeline companies on which the division of responsibility is based. In § 58.1-2600, the General Assembly defined two types of pipeline companies, a "pipeline transmission company" and a "pipeline distribution company." By operation of that same Code provision, the Department was made responsible for the assessment of pipeline transmission companies, and the Commission was made responsible for the assessment of pipeline distribution companies. A companion provision, § 58.1-2627.1(D), provides that if a pipeline company qualifies as both a pipeline transmission company and a pipeline distribution company, it shall be treated as the later for property assessment purposes.

Title 58.1 of Virginia Code, with its new classification structure, became effective on January 1, 1985. 1984 Va. Acts 1462. The definitions of the two classes of pipeline companies, as enacted by the General Assembly in 1984 and unchanged since then, follow:

"Pipeline distribution company" means a corporation, other than a pipeline transmission company, which transmits, by means of a pipeline, natural gas, manufactured gas or crude petroleum and the products or by-products thereof to a purchaser for purposes of furnishing heat and light.

"Pipeline transmission company" means a corporation authorized to transmit natural gas, manufactured gas or crude petroleum and the products or by-products thereof in the public service by means of a pipeline or pipelines from one point to another when such gas or petroleum is not for sale to an ultimate consumer for purposes of furnishing heat or light.

§ 58.1-2600 Virginia Code.

Administration of the Tax Structure 1985-1990

In tax year 1985 and successive tax years through 1990, the Commission classified only one company as a "pipeline distribution company", Pipeline. E.g., In re Assessment for 1985 of Heat, Water, Light and Power Corporations and Gas and Pipe Line Transmission Corporations, Order No. 850000024 (Gas) (Aug. 27, 1985). For the same period, 1985-1990, Pipeline was also "pipeline transmission company." Pipeline transported gas and sold gas to regulated gas distribution companies and the City of Richmond who in turn distributed the gas to ultimate consumers. Pipeline also transported and sold gas to Allied Chemical Corporation (later Allied-Signal Inc.) at its Hopewell facility (hereinafter "Allied-Hopewell"). See, e.g., Commonwealth Natural Resources, Inc. v. Commonwealth, 219 Va. 529, 531-33, 248 S.E.2d 791, 793-94 (1978); Commonwealth Gas Pipeline Corp., 1989 S.C.C. Ann. Rept. 323.

In selling and transporting gas to the City of Richmond and to the distribution companies for resale to ultimate consumers, Pipeline functioned as a pipeline transmission company. Gas was transmitted to a receiver for redistribution to end users. In selling and transporting gas to Allied-Hopewell for use in its

industrial facility, Pipeline functioned as a pipeline distribution company. Gas was transmitted to a receiver who did not redistribute gas but used it. As provided by § 58.2627.1(D), however, it is irrelevant whether a distribution company also qualifies as a transmission company, since qualification as distribution company triggers assessment by the Commission.

In 1989, Pipeline discontinued all natural gas sales service, but continued to transport natural gas owned by others through its facilities. Commonwealth Gas Pipeline Corp., 1989 S.C.C. Ann. Rept. 323-24. Although Pipeline had discontinued gas sales and provided only transportation service, the Commission classified the Company as a pipeline distribution company for tax year 1990. In re Assessment for 1990 of Heat, Water, Light and Power Corporations and Gas and Pipeline Distribution Corporations, Order No. 900000021 (Gas) (Aug. 15, 1990). Pipeline had not contested its classification, and it had filed the appropriate property report. The Commission assessed Pipeline's real and personal property at a value of \$50,001,244.

The Columbia-Pipeline Merger and Tax Year 1991

As authorized by the Federal Energy Regulatory Commission, Pipeline and Columbia merged, effective November 1, 1990, with Columbia as the surviving corporation. Columbia Gas Transmission Corp., 53 F.E.R.C. para. 61,347 (1990), Errata Notice, 54 F.E.R.C. para. 61,154 (1991). (Hereinafter FERC Order). The Commission also approved various transactions related to the merger. Commonwealth Gas Pipeline Corp., Case No. PUA900041, Order on Motion for Jurisdictional Determination (Nov. 1, 1990),

Errata (Nov. 9, 1990); Commonwealth Gas Services, Inc., Case No. PUA900050, Order Granting Authority (Sept. 5, 1990); Commonwealth Gas Pipeline Corp., Case No. PUA900063, Order Granting Authority (Nov. 6, 1990).

In its order approving the merger, the FERC recognized that Pipeline had provided service directly to Allied-Hopewell, and the agency authorized Columbia to provide sales and transportation service to Allied-Hopewell after the merger. Before commencing this service for Allied-Hopewell, Columbia was expressly ordered to file a revised sales agreement. FERC Order, 53 F.E.R.C. para. 61,347, at 62,254-55, 62,263. In its answer to the Rule, at 2, Columbia describes Allied-Hopewell as a direct industrial customer. At 7 and 8 of the same pleading, Company states its understanding that Allied-Hopewell uses the gas transmitted by Columbia as feedstock and fuel.

Despite the FERC's order and its own acknowledgement of Allied-Hopewell's use of gas, Columbia contends that Allied-Hopewell is not a purchaser from a pipeline distribution company. Columbia argues that a pipeline distribution company must sell gas directly to a purchaser. Since it now provides only transportation services, Columbia contends it has no purchasers for purposes of § 58.1-2600 and thus cannot be a pipeline distribution company.

By implication, the Commission has already rejected this argument. In tax year 1990, the Commission determined that Pipeline was a pipeline distribution company, notwithstanding the fact that the Commission had authorized discontinuing all sales

service the previous November. The change in Pipeline's function from a gas seller to a gas transporter for Allied-Hopewell did not change its classification as a pipeline distribution company under § 58.1-2600. Pipeline's former business remains a distribution function, notwithstanding its assumption by Columbia by virtue of the merger.

The definition of pipeline distribution company found in § 58.1-2600 of Virginia Code does not compel Columbia's reading of the statute. The wording of the law does not qualify or limit the definition of pipeline distribution company to the last owner of the gas prior to delivering to the purchaser's facility. It requires "transmission" of the gas to "a purchaser" who is an end-user, not "sale" of the gas to that purchaser.

Columbia's interpretation of the statute would require the Commission to consider complex transactions among suppliers of natural gas, gas pipelines, and users of natural gas to identify any sale from a pipeline to a customer who then uses the gas for fuel. Purchaser-supplier relationships could change over time. A pipeline which was not selling gas one year could sell gas the next year. Likewise, a customer could make purchases from any number of suppliers in one year and rely upon only a few or even none of the same suppliers the next year. Accepting Columbia's arguments could lead to constant reclassification of companies as pipelines and customers pursued their respective economic advantage. To discharge their respective assessment responsibilities, the Commission and the Department would involve themselves in continuous monitoring of pipelines' business and

contractual arrangements to determine the Company's tax status from year to year.

Certainty and administrative simplicity dictate applying the test for classifying a pipeline distribution company which the Commission implicitly used in tax year 1990. Rather than look to the elements of each gas delivery arrangement of each pipeline, it should look to the use of the gas. If the pipeline delivers gas to ultimate consumers under any commercial arrangement, it is a pipeline distribution company. A pipeline which delivers gas to another pipeline or to a local distribution company for redelivery is a pipeline transmission company. Direct delivery of gas to major industrial concerns, like Allied-Hopewell for its uses, or to independent power producers or qualifying facilities for generation of electric power, requires classification as a pipeline distribution company, in Staff's view. This test does not ignore the language in the definition of pipeline distribution company. Rather, it permits prompt identification of pipeline distribution companies without intrusion into the increasingly competitive gas marketplace.

In conclusion, the Commission's Staff believes that the simplest analysis is the best analysis. Rather than attempting to discern the role of each participant in a particular gas sale, the Commission should simply look at the use of the gas after it leaves the pipeline's facilities. Such an analysis would simplify administration of property taxation and would avoid shifts in classification as purchasers change sources of supply and pipelines enter and exit the market for supplying gas, as

distinguished from simply transporting gas. By virtue of its service to Allied-Hopewell, Pipeline was a pipeline distribution company whose property was assessed by the Commission. As a result of the merger, Columbia has taken from Pipeline the business of serving Allied-Hopewell and has become both a pipeline transmission company and a pipeline distribution company. Consequently, Columbia must file a report of gross receipts and property with the Commission as required by § 58.1-2628(B) of Virginia Code.

Respectfully submitted,

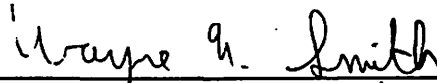
By Wayne N. Smith
Wayne N. Smith
Associate General Counsel
State Corporation Commission

Anthony Gambardella, General Counsel
Deborah V. Ellenberg, Deputy General Counsel
Wayne N. Smith, Associate General Counsel
State Corporation Commission
Office of General Counsel
P.O. Box 1197
Richmond, Virginia 23209

Dated: May 10, 1991

CERTIFICATE

I certify that copies of this memorandum were served on this 10th day of May on Steven H. Watts, II, Esquire, McGuire, Woods, Battle & Boothe, One James Center, Richmond, Virginia 23219, Counsel to Columbia Gas Transmission Corporation; on The Honorable Mary Sue Terry, Attorney General of Virginia, Supreme Court Building, 101 North 8th Street, Richmond, Virginia 23219; and on The Honorable William Forst, Tax Commissioner, Department of Taxation, P.O. Box 6-L, Richmond, Virginia 23282.



Wayne N. Smith
Associate General Counsel
State Corporation Commission

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McGUIRE WOODS
BATTLE & BOOTHE

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North Fairfax Street
Alexandria, VA 22314Court Square Building
Charlottesville, VA 229018280 Greensboro Drive
McLean, VA 221021991 MAY 16 PM 4: 11 One James Center
Richmond, Virginia 23219(804) 775-1000
Fax: (804) 775-1061World Trade Center
Norfolk, VA 23510The Army and Navy Club Building
1627 Eye Street, N.W.
Washington, DC 20006Avenue des Arts 41
1040 Brussels, Belgium

May 16, 1991

HAND DELIVEREDWilliam J. Bridge
State Corporation Commission
Document Control Center
Level B-1, Room 15
Jefferson Building
Richmond, Virginia 23219Commonwealth of Virginia, ex rel.
State Corporation Commission v. Columbia Gas
Transmission Corporation -- SCC Case No. PST910001

Dear Mr. Bridge:

After reviewing the Staff's Memorandum filed May 10, 1991 (the "Memorandum") I have today sent to the Staff a proposed stipulation of facts for use in this proceeding. However, I am writing to advise the Commission regarding the possible need for Columbia Gas Transmission Corporation ("Columbia") to present evidence at the hearing scheduled for May 20.

I anticipate that Columbia would need to provide only very brief evidence on limited matters, assuming the remaining factual record can be stipulated by agreement.

The Staff has argued in its Memorandum that Columbia should be assessed as a "pipeline transmission company" for 1991 in part because Commonwealth Pipeline was assessed as such for 1990, although its sales of natural gas to Allied-Signal, Inc. ("Allied") were discontinued November 1, 1989.

However, the assessment of Commonwealth Pipeline's property for 1990 relates only to that assessment of that taxpayer, that property and that year, is not before the Commission in this proceeding and is not binding on Columbia or the Commission in this proceeding, which is on the assessment of Columbia's property in Virginia (of which the property acquired by merger from Commonwealth Pipeline is only a fraction) for 1991.

[0033]

A similar situation was presented in City of Alexandria v. Richmond, Fredericksburg and Potomac R.R., 223 Va. 293 (1982), in which the railroad had sought in proceedings brought in Alexandria City and Henrico County Circuit Courts to correct the Commission's statewide property tax assessment for 1975 as it applied to the railroad's property in that city and county, based on an earlier ruling by the Virginia Supreme Court that the Commission's assessments of the railroad's property in Arlington County for 1976, 1977 and 1978 had been erroneous. The railroad had not previously challenged the statewide assessment for 1975. The Court rejected the railroad's claim, based on the following reasoning:

In the Arlington County case, we held that the procedure employed by SCC to evaluate RF&P's Arlington County property was unconstitutional and that such procedure rendered the evaluation of that property invalid. The validity of SCC's August 1975 order fixing values state-wide was not before the Commission or before us on appeal, and, with respect to RF&P's Alexandria and Henrico County properties, that order was not reversed or otherwise altered by our mandate.

223 Va. at 293 (emphasis by the Court).

Accordingly, Columbia respectfully requests that the Commission determine that the assessment of Commonwealth Pipeline for 1990 is not relevant to, and will receive no consideration in, this proceeding. In the alternative, Columbia anticipates the need to present evidence on this issue.

Secondly, the Staff has argued in its Memorandum that Columbia should be assessed by the Commission as a "pipeline distribution company" in order to avoid alleged "constant reclassification" of companies. Absent agreement of the Staff to stipulate the specific facts as to Columbia's service to Allied, which is the only basis for this proceeding, Columbia anticipates the need to present evidence on this issue.

Finally, Columbia believes the record should include an estimate of the difference in taxes that Columbia would pay for 1991 if it is assessed by the Commission as a "pipeline distribution company," compared with the amount it would pay if it is assessed for 1991 if it is assessed by the State Tax Department as a "pipeline transmission company" and information on the level of revenues received by Columbia from its transportation service to Allied. Accordingly, Columbia anticipates the need to present evidence on these subjects if they cannot be covered in a stipulation with the Staff.

Columbia appreciates the opportunity to bring these matters to the Commission's attention in advance of the hearing.

Very truly yours,



Stephen H. Watts, II

SHWII/lp

cc: Theodore V. Morrison, Jr., Chairman
Thomas P. Harwood, Jr., Commissioner
Preston C. Shannon, Commissioner
Wayne N. Smith, Associate General Counsel
A. L. O'Bryan, Director
Mary Sue Terry, Attorney General
William Forst, Tax Commissioner
Joseph J. Bartoletta
H. L. Snyder

000034

COMMONWEALTH OF VIRGINIA
BEFORE THE
STATE CORPORATION COMMISSION

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

v.

CASE NO. PST910001

**COLUMBIA GAS TRANSMISSION
 CORPORATION,
 Defendant**

STIPULATION OF FACTS

Columbia Gas Transmission Corporation ("Columbia") and the Commission's Staff, by counsel, hereby stipulate for the purposes of this proceeding as follows:

1. Columbia is an interstate natural gas transmission company engaged in the transportation and sale for resale of natural gas in interstate commerce. As such, Columbia is a "natural gas company" as defined in the Natural Gas Act, and its rates, facilities and service are regulated by the Federal Energy Regulatory Commission ("FERC").
2. Columbia is a general business corporation organized under the laws of Delaware and is authorized to do business in Virginia.
3. Columbia owns and operates an extensive system of natural gas pipelines and related compression, storage and other facilities spread through the states of Ohio, Kentucky, West Virginia, Virginia, Maryland, Pennsylvania, New Jersey and New

Case No. PST 910001
 Date Filed May 20, 1991
 Time Filed 12:27 PM

Witness Staff
 Deputy Clerk Deborah A. Smith
Deborah A. Smith

1991 MAY 20 PM 12:27

York. A map showing Columbia's transmission system is attached to and made a part of this Stipulation as Attachment No. 1.

4. Within Virginia, Columbia sells natural gas to a number of gas distributors, including Virginia Natural Gas, Inc. ("VNG"), Commonwealth Gas Services, Inc. ("Services"), and the City of Richmond ("Richmond"), for resale by them to end-users and also transports gas purchased by these distributors, and by end-users served by them, from suppliers other than Columbia. Columbia's pipeline facilities connect directly to the facilities of these distributors. Columbia's transportation of gas for end-users served by these distributors includes transportation of gas for Allied-Signal, Inc. ("Allied"), all of which is purchased from suppliers other than Columbia before it is delivered to Columbia, that is delivered to Services for transportation and redelivery by Services to Allied at the Allied Technical Center and Allied Fibers Plant delivery points from Services in Chesterfield County and at the Allied Chemical Plant delivery point from Services in the City of Hopewell.

5. Columbia also transports gas for Allied, all of which gas is purchased by Allied from suppliers other than Columbia before the gas is delivered to Columbia, that is delivered to the Allied Chemical Plant in the City of Hopewell through Columbia facilities that are directly connected to facilities of Allied. There is no intermediate gas distributor transportation for this gas. This is the only instance where gas transported by Columbia

for a Virginia end-user is not delivered to the end-user through the facilities of an intermediate distributor.

6. Copies of Columbia's transportation service agreements with Allied under which such transportation service is made are attached to and made a part of this Stipulation as Attachment Nos. 2 and 3, respectively.

7. Columbia makes no sales of gas to end-users in Virginia. Columbia has the necessary legal authority from the FERC to make sales of gas to end-users in Virginia. Columbia has advised the FERC that it proposes to offer an interruptible sales service to Allied, with transfer of title to take place at receipt points into Columbia's system and Columbia to transport such gas under existing transportation agreements, if so purchased.

8. Before December 11, 1990:

A. VNG, Richmond, Services and Allied received all of their natural gas supplies through the gas pipeline facilities of Commonwealth Gas Pipeline Corporation ("Commonwealth Pipeline"), a Virginia public utility all of whose facilities were located within Virginia and whose rates, facilities and service were regulated by this Commission; and

B. Commonwealth Pipeline received all of its deliveries of gas from Columbia and another interstate pipeline, Transcontinental Gas Pipe Line Corporation ("Transco") at delivery points in Virginia. A map of the former Commonwealth

Pipeline facilities is attached to and made a part of this Stipulation as Attachment No. 4.

9. Before November 1, 1989:

A. Columbia and Transco sold gas to Commonwealth Pipeline for resale by it to VNG, Services, Richmond and Allied and also transported gas purchased by Commonwealth Pipeline from other suppliers for its own system supply; and

B. Columbia and Transco also transported for VNG, Services and Richmond (and for end-users served by them), and for Allied, gas that had been purchased by them from other suppliers and that was delivered to Commonwealth Pipeline for transportation and redelivery to them.

10. Effective November 1, 1989:

A. The arrangements described in Paragraph No. of this Stipulation were restructured as Commonwealth Pipeline ceased making any sales of gas, and VNG, Services and Richmond became direct sale for resale customers of Columbia and Transco at those pipelines' points of delivery to Commonwealth Pipeline;

B. Allied declined to become a sales customer of either Columbia or Transco and instead continued to use Columbia solely for transportation of gas purchased by Allied from other suppliers; and

C. Commonwealth Pipeline became solely a transporter within Virginia of gas already purchased by VNG, Services and Richmond (or customers served by them), and by Allied, from other sources.

11. Effective December 11, 1990, Commonwealth Pipeline was merged into Columbia (the "Merger"), which was the surviving corporation. After the Merger, Columbia now makes sales for resale and delivers transportation gas directly to VNG, Services and Richmond, and delivers transportation gas to Allied, at the delivery points at which they formerly received service from Commonwealth Pipeline.

12. Since the recodification of Va. Code Title 58.1 in 1984, Columbia's real and tangible personal property has been assessed by the State Tax Department (the "Department") pursuant to Code § 58.1-2627.1B.

13. By letter dated December 13, 1990, Commission Director of Public Service Taxation A. L. O'Bryan advised Columbia's President, James P. Holland, that the Division would classify Columbia as a pipeline distribution company in tax year 1991. In the same letter, Mr. O'Bryan stated that the appropriate form for reporting property would be mailed to Columbia in January, 1991. Columbia received the appropriate report form in January, 1991.

14. Columbia made an informal complaint to Commissioner Thomas P. Harwood on April 12, 1991, pursuant to Rules 3:2 and 5:4 of the Commission's Rules of Practice and Procedure to review and reverse the Division's determination to classify Columbia as a pipeline distribution company for tax year 1991.

15. Columbia did not file a completed and certified report with the Commission on or before April 15, 1991.

16. Columbia timely filed a completed and certified form for reporting property with the Department for the tax year 1991.

Respectfully submitted,

COLUMBIA GAS TRANSMISSION CORPORATION

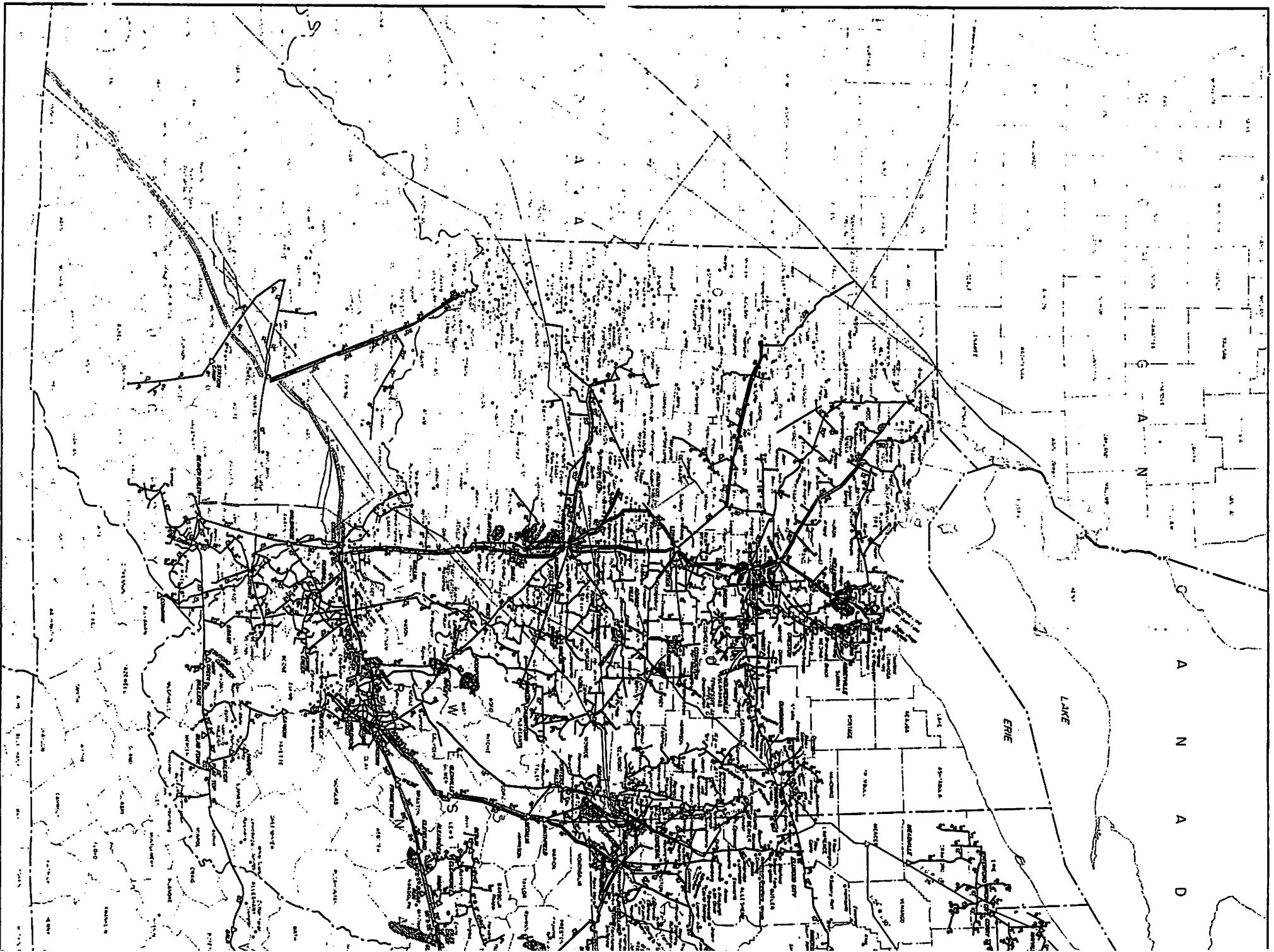
By Steph Huatso
Of Counsel

STATE CORPORATION COMMISSION STAFF

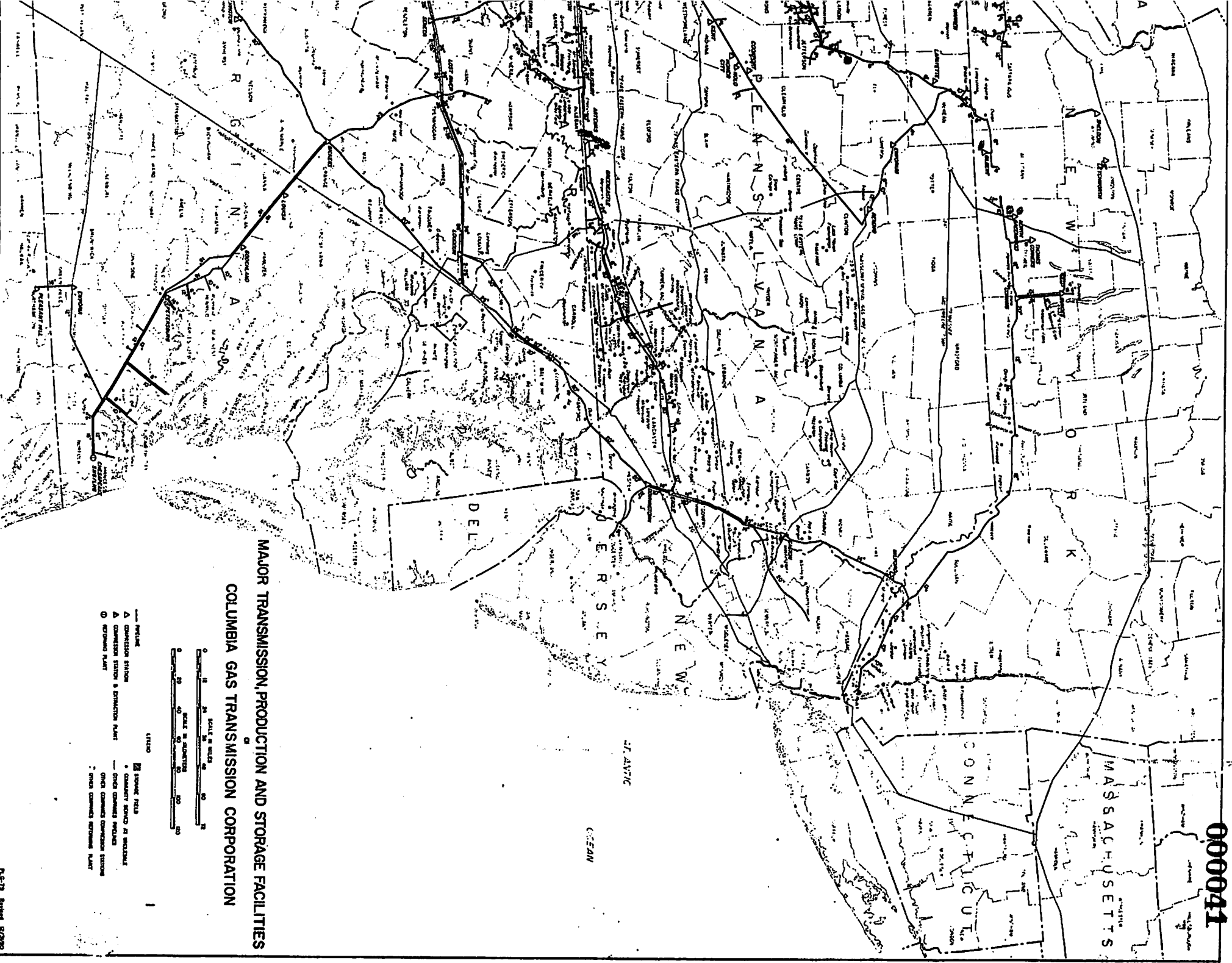
By Wayne G. Smith
Of Counsel

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ATTACHMENT NO. 1



000041



**MAJOR TRANSMISSION, PRODUCTION AND STORAGE FACILITIES
COLUMBIA GAS TRANSMISSION CORPORATION**

--- PERIOD
 ▲ COMPLETION STATION
 ▲ COMPLETION STATION & EXTRACTOR PLANT
 ▲ EXTRACTOR PLANT
 --- LITING
 ■ STREET FIELDS
 * COWLEY STATION IN SHADOWS
 --- OTHER COWLEY FIELDS
 ○ OTHER COWLEY COMPLETION STATIONS
 - OTHER COWLEY EXTRACTOR PLANT

PLG-79 Revised R/3/90

000042

ATTACHMENT NO. 2

SERVICE AGREEMENT FOR
SERVICE UNDER FTS RATE SCHEDULE

THIS AGREEMENT, made and entered into as of the 1st day of November, 1989, by and between COLUMBIA GAS TRANSMISSION CORPORATION, a Delaware corporation (hereinafter called "Seller"), and ALLIED-SIGNAL INC., P.O. Box 2006R, Morristown, NJ 07962-2006, a Delaware corporation (hereinafter called "Buyer"), and COMMONWEALTH GAS PIPELINE CORPORATION, 800 Moorefield Park Drive, Richmond, VA 23236-3659, a Virginia corporation (hereinafter called "Intermediate Transporter", if any).

WITNESSETH: That in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Section 1. Service to be Rendered. (a) In accordance with the applicable provisions of the effective FTS Rate Schedule of Seller's FERC Gas Tariff, Original Volume No. 1 (Tariff), on file with the Federal Energy Regulatory Commission (Commission), and the terms and conditions herein contained, Seller shall receive the quantities of gas requested by Buyer to be transported and shall redeliver thermally equivalent quantities of gas (less company-use and unaccounted-for quantities (Fuel), when applicable) to or for the account of Buyer on a firm basis.

(b) The transportation service described herein shall be provided on behalf of Intermediate Transporter subject to the provisions of Part 284, Subpart (B) of the Commission's Regulations. Intermediate Transporter avers that it will receive a substantial benefit from this arrangement.

Section 2. Transportation Demand. Subject to the provisions herein contained, Seller's maximum obligation to deliver gas to or for Buyer hereunder shall be 50,075 Dth per day (Transportation Demand). Seller's maximum daily obligation to receive gas at each point of receipt and maximum daily delivery obligation (MDDO) at each point of delivery shall be as specified in Appendix A.

Section 3. Points of Receipt and Delivery. The points of receipt at which Buyer shall deliver gas or cause gas to be delivered into Seller's system shall be those specified in Appendix A. The points of delivery at which Seller shall redeliver thermally equivalent quantities (less Fuel, when applicable) to Buyer or for Buyer's account shall be those specified in Appendix A. Appendix A may be amended from time to time by agreement of Buyer and Seller.

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To Stephen Watts	From Dave Davidson	
Co. McGuire Woods	Co. TCO	
Dept.	Phone # 357-2593	
Fax # 804-775-1061	Fax #	

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[35267]

SERVICE AGREEMENT FOR
SERVICE UNDER FTS RATE SCHEDULE (CONT'D)

Section 4. Rate and Payment. Unless otherwise agreed to by Seller and Buyer in writing, Buyer shall pay Seller (a) the maximum Reservation Charge per Dth of Transportation Demand, and (b) the maximum firm commodity charge per Dth of gas delivered by Seller hereunder. In addition, Buyer shall pay Seller the Gathering Charge where Buyer has gas transported hereunder through Seller's gathering facilities, as identified on Appendix A. Seller shall also retain for Fuel a percentage of the gas received for transportation for Buyer unless Seller and Buyer mutually agree that Seller will furnish the Fuel and charge Buyer for such Fuel, as set forth on Appendix A. The charges and percentage of Fuel retainage shall be those set forth in the currently effective Sheet No. 16A2 of Seller's Tariff. Seller shall bill and Buyer shall pay all charges in accordance with the applicable terms set forth in Seller's Tariff.

Section 5. Intermediate Transporter. [This provision is applicable only if there is an intermediate transporter (i.e., a local distribution company, intrastate pipeline company or interstate pipeline company) between the systems of Seller and Buyer.] Intermediate Transporter shall coordinate its efforts with Seller and Buyer to provide service in accordance with the provisions of Seller's FTS Rate Schedule. Intermediate Transporter shall provide, upon request, information to Seller regarding the actual quantities of transported gas ultimately delivered by Seller to or for Buyer. Any transportation services provided by Intermediate Transporter for Buyer shall be governed by the terms of a separate gas transportation agreement.

Section 6. General Terms and Conditions. This Agreement in all respects shall be subject to the applicable provisions of Seller's FTS Rate Schedule and the General Terms and Conditions of its Tariff incorporated therein, as the same may be amended or superseded in accordance with the rules and regulations of the Commission, which are by reference made a part hereof.

Section 7. Regulation. This Agreement is contingent upon the receipt and continuation of all necessary regulatory approvals and authorizations upon terms acceptable to Seller. This Agreement shall become void or expire, as appropriate, if any necessary regulatory approval or authorization is not so received and continued. All parties shall cooperate to obtain and continue all necessary approvals and authorizations, but no party shall be liable to any other party for failure to obtain or continue such approvals or authorizations.

Section 8. Term. This Agreement shall become effective, and, for purposes of the Reservation Charge, transportation service shall be deemed to commence, as of November 1, 1989 and shall continue in full force and effect until October 31, 2004 and from year-to-year thereafter unless terminated by either party in writing six months prior to the anniversary date.

. SERVICE AGREEMENT FOR
SERVICE UNDER FTS RATE SCHEDULE (CONT'D)

000045

Section 9. Notices. Notices to Seller under this Agreement shall be addressed to it at Post Office Box 1273, Charleston, West Virginia 25325, Attention: Director of Transportation and Exchange; notices to Buyer shall be addressed to it at P.O. Box 2006R, Morristown, NJ 07962-2006, Attn: Mr. Edward R. Pruitt; and notices to Intermediate Transporter shall be addressed to it at P.O. Box 35800, Richmond, VA 23235-0800, Attn: Mr. Richard Belcher; unless and until changed by written notice. Interruption and curtailment notices may be by telephone or telegraph and shall be given to the dispatcher of Seller's wholesale customer when such customer is either the Buyer or Intermediate Transporter. Otherwise, such notices shall be communicated directly to Buyer's designated contact.

Section 10. Superseded Agreements. This Agreement supersedes and cancels, as of the effective date hereof, the following contracts: N/A.

Section 11. Contingencies. (a) Service of 15,000 Dth per day of the Transportation Demand, is contingent upon receipt of a certificate of public convenience and necessity in Seller's Docket No. CP89-1929-000, in form and content acceptable to Seller, and construction of the facilities authorized therein. Until such time as the facilities identified therein are constructed and placed into service, 15,000 Dth per day of the Transportation Demand shall be provided by the Seller subject to reduction in accordance with the September 8, 1989 agreement without liability therefor; provided, however, that for each day that Seller is unable to provide firm service for any portion of the aforesaid 15,000 Dth per day, it will provide Buyer with a D-1 demand charge credit applicable to the level of service not furnished by Seller, prorated on a daily basis.

(b) This agreement is further contingent upon final approval and acceptance of the Stipulation and Agreement initially approved by the Commission on October 19, 1989, in Seller's Docket No. RP86-168-000, et al.

[35267]

SERVICE AGREEMENT FOR
SERVICE UNDER FTS RATE SCHEDULE (CONT'D)

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The parties hereto have accordingly and duly executed this Agreement.

COLUMBIA GAS TRANSMISSION CORPORATION

By: *Ann Melton, Jr.* *CW2*
Vice President *[Signature]*

ALLIED-SIGNAL INC.
(Buyer)

By: *William E. Doughton* *ERP*
Its: Director-Raw Materials Purchases *MH*
7/18/90

COMMONWEALTH GAS PIPELINE CORPORATION
(Intermediate Transporter)

By: *JW Stanich*
Its: PRESIDENT

[35267]

FORM OF SERVICE AGREEMENT FOR
SERVICE UNDER FTS RATE SCHEDULE (CONT'D)

000047

Appendix A to Service Agreement
between Columbia Gas Transmission Corporation (Seller)
and ALLIED-SIGNAL INC. (Buyer)
dated November 1, 1989

1. POINT(S) OF RECEIPT BY SELLER

<u>Description 1/</u>	<u>Max. Daily Quantity (Dth) 2/</u>
1) Delivered to Seller via Columbia Gulf Transmission Company at Leach, KY.	27,133
2) Delivered to Seller via Tennessee Gas Pipeline Company at Broad Run, WV.	22,942

2. POINT(S) OF DELIVERY TO OR FOR BUYER

<u>Description</u>	<u>MDDO (Dth)</u>
Delivered to Commonwealth Gas Pipeline Corporation via Seller at Bickers Measuring Station, No. 802750, Greene Co., Virginia for redelivery to Buyer's facility at Hopewell, Virginia.	50,075 2/

- 1/ Specify each receipt point where Seller's gathering facilities are utilized.
- 2/ Quantities subject to reduction in accordance with Agreement between Seller and Buyer dated September 8, 1989.

Agreement No. 35267
Control No. 891011-010

SUPPLEMENT NO. 1
TO
TRANSPORTATION SERVICE AGREEMENT
UNDER FTS RATE SCHEDULE

THIS SUPPLEMENTAL AGREEMENT, made and entered into this 8th day of December, 1990, by and between COLUMBIA GAS TRANSMISSION CORPORATION, a Delaware corporation (hereinafter called "Seller"), and ALLIED-SIGNAL INC., a Delaware corporation (hereinafter called "Buyer").

W I T N E S S E T H:

WHEREAS, on November 1, 1989, Seller, Allied-Signal Inc. and Commonwealth Gas Pipeline Corporation entered into a Gas Transportation Agreement numerically designated by Columbia as shown above ("Agreement"); and

WHEREAS, on December 8, 1990, the Federal Energy Regulatory Commission issued an order approving Seller's proposal to acquire by merger the facilities of Commonwealth Gas Pipeline Corporation; and

WHEREAS, the parties hereto desire to amend Section 1 to the Agreement to provide a change to the regulatory authority under which this transportation service is being provided; and

WHEREAS, the parties hereto desire to amend Appendix A to the Agreement to provide for the addition and/or deletion of points of receipt and/or points of delivery;

NOW, THEREFORE, in consideration of the premises and the mutual benefits to be derived therefrom, and in accordance with the terms and conditions of Seller's FERC Gas Tariff, the parties hereby agree as follows:

Effective as of December 8, 1990, Section 1 to the Agreement is amended to provide that henceforth, the transportation service will be provided under Part 284, Subpart (G) of the Commission's Regulations and Appendix A to the Agreement, as previously supplemented or amended, is hereby cancelled and replaced with the Appendix A attached hereto and made a part hereof.

SUPPLEMENT NO. 1 TO
TRANSPORTATION SERVICE AGREEMENT (CONT'D)

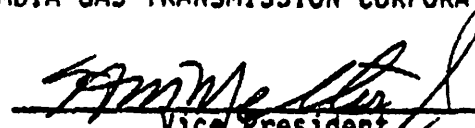
000049

All other terms and conditions of the Agreement, as it may have been otherwise supplemented or amended, shall remain in full force and effect.

IN WITNESS WHEREOF, this Supplemental Agreement is executed as of the date and year first above written.

COLUMBIA GAS TRANSMISSION CORPORATION

By:

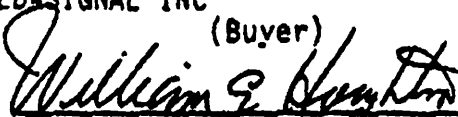

Vice President



ALLIED-SIGNAL INC

(Buyer)

By:



Its:

Director - Raw Materials Purchases

ERF

000050

FORM OF SERVICE AGREEMENT FOR
SERVICE UNDER FTS RATE SCHEDULE (CONT'D)

Appendix A to Service Agreement
between Columbia Gas Transmission Corporation (Seller)
and ALLIED-SIGNAL INC. (Buyer)
dated November 1, 1990

1. POINT(S) OF RECEIPT BY SELLER

<u>Description</u>	<u>Max. Daily Quantity (Dth) 1/</u>
1) Delivered to Seller via Columbia Gulf Transmission Company at Leach, KY.	27,133
2) Delivered to Seller via Tennessee Gas Pipeline Company at Broad Run, WV.	22,942

2. POINT(S) OF DELIVERY TO OR FOR BUYER

<u>Description</u>	<u>MDDO (Dth)</u>
Delivered to Buyer via Seller at Hopewell, Virginia.	50,075 2/

- 1/ Company-use and unaccounted-for quantities shall be added to the quantities shown in the column when Seller retains fuel.
- 2/ Quantities subject to reduction in accordance with Agreement between Seller and Buyer dated September 8, 1989.

SERVICE AGREEMENT FOR
SERVICE UNDER FTS RATE SCHEDULE

THIS AGREEMENT, made and entered into as of the 1st day of November, 1989, by and between COLUMBIA GAS TRANSMISSION CORPORATION, a Delaware corporation (hereinafter called "Seller"), and ALLIED-SIGNAL INC., P.O. Box 2006R, Morristown, NJ 07962-2006, a Delaware corporation (hereinafter called "Buyer"), and COMMONWEALTH GAS PIPELINE CORPORATION, 800 Moorefield Park Drive, Richmond, VA 23236-3659, a Virginia corporation (hereinafter called "Intermediate Transporter", if any).

WITNESSETH: That in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Section 1. Service to be Rendered. (a) In accordance with the applicable provisions of the effective FTS Rate Schedule of Seller's FERC Gas Tariff, Original Volume No. 1 (Tariff), on file with the Federal Energy Regulatory Commission (Commission), and the terms and conditions herein contained, Seller shall receive the quantities of gas requested by Buyer to be transported and shall redeliver thermally equivalent quantities of gas (less company-use and unaccounted-for quantities (Fuel), when applicable) to or for the account of Buyer on a firm basis.

(b) The transportation service described herein shall be provided on behalf of Intermediate Transporter subject to the provisions of Part 284, Subpart (B) of the Commission's Regulations. Intermediate Transporter avers that it will receive a substantial benefit from this arrangement.

Section 2. Transportation Demand. Subject to the provisions herein contained, Seller's maximum obligation to deliver gas to or for Buyer hereunder shall be 50,075 Dth per day (Transportation Demand). Seller's maximum daily obligation to receive gas at each point of receipt and maximum daily delivery obligation (MDDO) at each point of delivery shall be as specified in Appendix A.

Section 3. Points of Receipt and Delivery. The points of receipt at which Buyer shall deliver gas or cause gas to be delivered into Seller's system shall be those specified in Appendix A. The points of delivery at which Seller shall redeliver thermally equivalent quantities (less Fuel, when applicable) to Buyer or for Buyer's account shall be those specified in Appendix A. Appendix A may be amended from time to time by agreement of Buyer and Seller.

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Post-It™ brand fax transmittal memo 7671 • of pages • 20

To Stephen Watts	From Dave Davidson
Co. McGuire Woods	Co TCO
Dept.	Phone # 357-2593
Fax # 804-775-1061	Fax #

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[35267]

SERVICE AGREEMENT FOR
SERVICE UNDER FTS RATE SCHEDULE (CONT'D)

Section 4. Rate and Payment. Unless otherwise agreed to by Seller and Buyer in writing, Buyer shall pay Seller (a) the maximum Reservation Charge per Dth of Transportation Demand, and (b) the maximum firm commodity charge per Dth of gas delivered by Seller hereunder. In addition, Buyer shall pay Seller the Gathering Charge where Buyer has gas transported hereunder through Seller's gathering facilities, as identified on Appendix A. Seller shall also retain for Fuel a percentage of the gas received for transportation for Buyer unless Seller and Buyer mutually agree that Seller will furnish the Fuel and charge Buyer for such Fuel, as set forth on Appendix A. The charges and percentage of Fuel retainage shall be those set forth in the currently effective Sheet No. 16A2 of Seller's Tariff. Seller shall bill and Buyer shall pay all charges in accordance with the applicable terms set forth in Seller's Tariff.

Section 5. Intermediate Transporter. [This provision is applicable only if there is an intermediate transporter (i.e., a local distribution company, intrastate pipeline company or interstate pipeline company) between the systems of Seller and Buyer.] Intermediate Transporter shall coordinate its efforts with Seller and Buyer to provide service in accordance with the provisions of Seller's FTS Rate Schedule. Intermediate Transporter shall provide, upon request, information to Seller regarding the actual quantities of transported gas ultimately delivered by Seller to or for Buyer. Any transportation services provided by Intermediate Transporter for Buyer shall be governed by the terms of a separate gas transportation agreement.

Section 6. General Terms and Conditions. This Agreement in all respects shall be subject to the applicable provisions of Seller's FTS Rate Schedule and the General Terms and Conditions of its Tariff incorporated therein, as the same may be amended or superseded in accordance with the rules and regulations of the Commission, which are by reference made a part hereof.

Section 7. Regulation. This Agreement is contingent upon the receipt and continuation of all necessary regulatory approvals and authorizations upon terms acceptable to Seller. This Agreement shall become void or expire, as appropriate, if any necessary regulatory approval or authorization is not so received and continued. All parties shall cooperate to obtain and continue all necessary approvals and authorizations, but no party shall be liable to any other party for failure to obtain or continue such approvals or authorizations.

Section 8. Term. This Agreement shall become effective, and, for purposes of the Reservation Charge, transportation service shall be deemed to commence, as of November 1, 1989 and shall continue in full force and effect until October 31, 2004 and from year-to-year thereafter unless terminated by either party in writing six months prior to the anniversary date.

SERVICE AGREEMENT FOR
SERVICE UNDER FTS RATE SCHEDULE (CONT'D)

000053

Section 9. Notices. Notices to Seller under this Agreement shall be addressed to it at Post Office Box 1273, Charleston, West Virginia 25325, Attention: Director of Transportation and Exchange; notices to Buyer shall be addressed to it at P.O. Box 2006R, Morristown, NJ 07962-2006, Attn: Mr. Edward R. Pruitt; and notices to Intermediate Transporter shall be addressed to it at P.O. Box 35800, Richmond, VA 23235-0800, Attn: Mr. Richard Belcher; unless and until changed by written notice. Interruption and curtailment notices may be by telephone or telegraph and shall be given to the dispatcher of Seller's wholesale customer when such customer is either the Buyer or Intermediate Transporter. Otherwise, such notices shall be communicated directly to Buyer's designated contact.

Section 10. Superseded Agreements. This Agreement supersedes and cancels, as of the effective date hereof, the following contracts: N/A.

Section 11. Contingencies. (a) Service of 15,000 Dth per day of the Transportation Demand, is contingent upon receipt of a certificate of public convenience and necessity in Seller's Docket No. CP89-1929-000, in form and content acceptable to Seller, and construction of the facilities authorized therein. Until such time as the facilities identified therein are constructed and placed into service, 15,000 Dth per day of the Transportation Demand shall be provided by the Seller subject to reduction in accordance with the September 8, 1989 agreement without liability therefor; provided, however, that for each day that Seller is unable to provide firm service for any portion of the aforesaid 15,000 Dth per day, it will provide Buyer with a D-1 demand charge credit applicable to the level of service not furnished by Seller, prorated on a daily basis.

(b) This agreement is further contingent upon final approval and acceptance of the Stipulation and Agreement initially approved by the Commission on October 19, 1989, in Seller's Docket No. RP86-168-000, et al.

[35267]

SERVICE AGREEMENT FOR
SERVICE UNDER FTS RATE SCHEDULE (CONT'D)

000054

The parties hereto have accordingly and duly executed this Agreement.

COLUMBIA GAS TRANSMISSION CORPORATION

By: *[Signature]*
Vice President

CWZ
[Signature]

ALLIED-SIGNAL INC.

(Buyer)

By: *William E. Houghton*
Its: Director-Raw Materials Purchases

ERP
MH
7/18/90

COMMONWEALTH GAS PIPELINE CORPORATION
(Intermediate Transporter)

By: *JW Stanil*
Its: PRESIDENT

[35267]

FORM OF SERVICE AGREEMENT FOR
SERVICE UNDER FTS RATE SCHEDULE (CONT'D)

000055

Appendix A to Service Agreement
between Columbia Gas Transmission Corporation (Seller)
and ALLIED-SIGNAL INC. (Buyer)
dated November 1, 1989

1. POINT(S) OF RECEIPT BY SELLER

<u>Description</u> 1/	<u>Max. Daily Quantity (Dth)</u> 2/
1) Delivered to Seller via Columbia Gulf Trans- mission Company at Leach, KY.	27,133
2) Delivered to Seller via Tennessee Gas Pipeline Company at Broad Run, WV.	22,942

2. POINT(S) OF DELIVERY TO OR FOR BUYER

<u>Description</u>	<u>MDDO (Dth)</u>
Delivered to Commonwealth Gas Pipeline Corporation via Seller at Bickers Measuring Station, No. 802750, Greene Co., Virginia for redelivery to Buyer's facility at Hopewell, Virginia.	50,075 2/

- 1/ Specify each receipt point where Seller's gathering facilities are utilized.
- 2/ Quantities subject to reduction in accordance with Agreement between Seller and Buyer dated September 8, 1989.

Agreement No. 35267
Control No. 891011-010

SUPPLEMENT NO. 1
TO
TRANSPORTATION SERVICE AGREEMENT
UNDER FTS RATE SCHEDULE

THIS SUPPLEMENTAL AGREEMENT, made and entered into this 8th day of December, 1990, by and between COLUMBIA GAS TRANSMISSION CORPORATION, a Delaware corporation (hereinafter called "Seller"), and ALLIED-SIGNAL INC., a Delaware corporation (hereinafter called "Buyer").

W I T N E S S E T H:

WHEREAS, on November 1, 1989, Seller, Allied-Signal Inc. and Commonwealth Gas Pipeline Corporation entered into a Gas Transportation Agreement numerically designated by Columbia as shown above ("Agreement"); and

WHEREAS, on December 8, 1990, the Federal Energy Regulatory Commission issued an order approving Seller's proposal to acquire by merger the facilities of Commonwealth Gas Pipeline Corporation; and

WHEREAS, the parties hereto desire to amend Section 1 to the Agreement to provide a change to the regulatory authority under which this transportation service is being provided; and

WHEREAS, the parties hereto desire to amend Appendix A to the Agreement to provide for the addition and/or deletion of points of receipt and/or points of delivery;

NOW, THEREFORE, in consideration of the premises and the mutual benefits to be derived therefrom, and in accordance with the terms and conditions of Seller's FERC Gas Tariff, the parties hereby agree as follows:

Effective as of December 8, 1990, Section 1 to the Agreement is amended to provide that henceforth, the transportation service will be provided under Part 284, Subpart (G) of the Commission's Regulations and Appendix A to the Agreement, as previously supplemented or amended, is hereby cancelled and replaced with the Appendix A attached hereto and made a part hereof.

[35267]

SUPPLEMENT NO. 1 TO
TRANSPORTATION SERVICE AGREEMENT (CONT'D)

All other terms and conditions of the Agreement, as it may have been otherwise supplemented or amended, shall remain in full force and effect.

IN WITNESS WHEREOF, this Supplemental Agreement is executed as of the date and year first above written.

COLUMBIA GAS TRANSMISSION CORPORATION

By: 

Vice President

ALLIED-SIGNAL INC

(Buyer)

By: 

Its: Director - Raw Materials Purchases

000058

FORM OF SERVICE AGREEMENT FOR
SERVICE UNDER FTS RATE SCHEDULE (CONT'D)

Appendix A to Service Agreement
between Columbia Gas Transmission Corporation (Seller)
and ALLIED-SIGNAL INC. (Buyer)
dated November 1, 1990

1. POINT(S) OF RECEIPT BY SELLER

<u>Description</u>	<u>Max. Daily Quantity (Dth) 1/</u>
1) Delivered to Seller via Columbia Gulf Transmission Company at Leach, KY.	27,133
2) Delivered to Seller via Tennessee Gas Pipeline Company at Broad Run, WV.	22,942

2. POINT(S) OF DELIVERY TO OR FOR BUYER

<u>Description</u>	<u>MDDO (Dth)</u>
Delivered to Buyer via Seller at Hopewell, Virginia.	50,075 2/

- 1/ Company-use and unaccounted-for quantities shall be added to the quantities shown in the column when Seller retains fuel.
- 2/ Quantities subject to reduction in accordance with Agreement between Seller and Buyer dated September 8, 1989.

000059

ATTACHMENT NO. 3

Agreement No. 32404
Control No. _____

FORM OF SERVICE AGREEMENT FOR
SERVICE UNDER ITS RATE SCHEDULE

THIS AGREEMENT, made and entered into as of the 6th day of February, 1987, by and between COLUMBIA GAS TRANSMISSION CORPORATION, a Delaware corporation (hereinafter called "Seller"), and ALLIED CORPORATION, P. O. Box 2006R, Morristown, NJ 07960, a New York corporation (hereinafter called "Buyer"), and COMMONWEALTH GAS PIPELINE CORPORATION, P. O. Box 2350, Richmond, VA 23218, a Virginia corporation (hereinafter called "Intermediate Transporter" (if any)).

WITNESSETH: That in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Section 1. Service to be Rendered. Seller agrees to both receive the Transportation Quantity hereinafter stated and redeliver (less company-use and unaccounted-for quantities) thermally equivalent quantities of gas on behalf of Buyer on an interruptible basis in accordance with the applicable provisions of Seller's effective ITS Rate Schedule on file with the Federal Energy Regulatory Commission (Commission) and the terms and conditions herein contained. Where Buyer is a local distribution company, an intrastate pipeline, or an interstate pipeline, Buyer avers that it will receive a substantial benefit from this arrangement.

Section 2. Transportation Quantity. Subject to the provisions herein contained, the Transportation Quantity shall be 65,000 Dth per day or such other quantity as approved by Seller. The maximum daily obligation to receive or redeliver gas at each point of receipt or point of delivery shall be as specified in Appendix A.

Section 3. Points of Receipt and Delivery. The points of receipt at which Buyer shall deliver gas or cause gas to be delivered into Seller's system shall be those specified in Appendix A. The points of delivery at which Seller shall redeliver thermally equivalent quantities (less company-use and unaccounted-for quantities) to Buyer or for Buyer's account shall be those specified on Appendix A. Appendix A may be amended from time to time by agreement of Buyer and Seller.

Section 4. Rate and Payment. Unless otherwise agreed to by Seller and Buyer in writing, Buyer shall pay Seller the maximum transportation rate set forth on currently effective Sheet No. 16A2 of Seller's FERC Gas Tariff per Dth of gas received by Seller hereunder. The charge shall be billed and paid for in accordance with the applicable terms set forth in Seller's currently effective FERC Gas Tariff. In addition, Seller shall retain a percentage of gas received for transportation for Buyer for company-use and unaccounted-for requirements as set forth in currently effective Sheet No. 16A2.

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FORM OF SERVICE AGREEMENT FOR
SERVICE UNDER ITS RATE SCHEDULE (CONT'D)

Section 5. Intermediate Transporter. [This provision is applicable only if there is an Intermediate Transporter (i.e., a local distribution company, intrastate pipeline company or interstate pipeline company) between Seller and Buyer on whose behalf gas will be transported pursuant to the Commission's Regulations.] Intermediate Transporter avers that it will receive a substantial benefit from this arrangement. Intermediate Transporter shall coordinate its efforts with Seller and Buyer to provide service in accordance with the provisions of Seller's ITS Rate Schedule. Intermediate Transporter agrees to provide, upon request, information to Seller regarding the actual quantities of transported gas ultimately delivered to or for Buyer. It is understood and agreed that transportation services provided by Intermediate Transporter to Buyer are governed by the terms of a separate gas transportation agreement.

Section 6. General Terms and Conditions. This Agreement in all respects shall be subject to the applicable provisions of Seller's ITS Rate Schedule of its FERC Gas Tariff filed with the Commission and the General Terms and Conditions incorporated therein, as the same may be amended or superseded in accordance with the rules and regulations of the Commission, which are by reference made a part hereof.

Section 7. Regulation. (a) This Agreement is contingent upon the receipt and continuation of all necessary regulatory approvals or authorizations upon terms acceptable to Seller. This Agreement shall be void or expire, as appropriate, if any necessary regulatory approval or authorization is not so obtained or continued. All parties will cooperate to obtain or continue all necessary approvals or authorizations, but no party shall be liable to any other party for failure to obtain or continue such approvals or authorizations.

(b) The transportation service described herein will be provided subject to the provisions of Part 284, Subpart (B) of the Commission's Regulations.

Section 8. Term. This Agreement shall become effective as of July 1, 1986 and shall continue in full force and effect until March 31, 1987, and from month-to-month thereafter unless terminated by either party upon thirty (30) days written notice to the other.

Section 9. Notices. Notices to Seller under this Agreement shall be addressed to it at Post Office Box 1273, Charleston, West Virginia 25325, Attention: Director of Transportation and Exchange; notices to Buyer shall be addressed to it at P. O. Box 2006R, Morristown, NJ 07960, Attn: Mr. J. M. Tyner; and notices to Intermediate Transporter shall be addressed to it at P. O. Box 2350, Richmond, VA 23218, Attn: Mr. Richard Belcher; unless and until changed by any party by written notice. Interruption notices may be by telephone or telegraph and shall be given to Seller's wholesale customer's dispatcher when such customer is either the Buyer or Intermediate Transporter and otherwise directly to Buyer's designated contact.

FORM OF SERVICE AGREEMENT FOR
SERVICE UNDER ITS RATE SCHEDULE (CONT'D)

000062

Section 10. Superseded Agreements. This Agreement supersedes and cancels, as of the effective date hereof, the following contracts: Dated July 1, 1985 (Columbia's contract #30759) and dated May 7, 1986 (Columbia's contract #31609), and dated April 21, 1983 (Columbia's contract #28729) and dated November 1, 1985 (Columbia's transportation provisions of contract #31141).

COLUMBIA GAS TRANSMISSION CORPORATION

By:

Tom Malta
Vice President

SES

ALLIED CORPORATION

(Buyer)

By:

Its:

William E. Houghton

quit
per
12/10/86

COMMONWEALTH GAS PIPELINE CORPORATION
(Intermediate Transporter)

By:

Its:

Richard B. Beggs
VICE PRESIDENT

[32404]

FORM OF SERVICE AGREEMENT FOR
SERVICE UNDER ITS RATE SCHEDULE (CONT'D)

000063

APPENDIX A

1. POINT(S) OF RECEIPT INTO SELLER

<u>Description</u>	<u>Maximum Daily Quantity</u>
1) Columbia Pool (CPP) (Various)	65,000 Dth/d
2) Delivered to Columbia Gas Transmission Corporation via Texas Gas Transmission at Lebanon, Ohio. The producer is Bishop.	37,000 Dth/d
3) Delivered to Columbia Gas Transmission Corporation via Texas Gas Transmission at Lebanon, Ohio. The producer is Mark Producing.	37,000 Dth/d
4) Delivered to Columbia Gas Transmission Corporation via Texas Gas Transmission at Lebanon, Ohio. The producer is Tenngasco.	37,000 Dth/d
5) Delivered to Columbia Gas Transmission Corporation via Columbia Gulf Transmission Company at Leach, Kentucky. The producers are various.	65,000 Dth/d
6) Delivered to Columbia Gas Transmission Corporation at Meter #62886 - Randolph, #820337 - Sugar Run and #620904 - Wagner. The producer is Alamco.	15,000 Dth/d

2. POINT(S) OF DELIVERY TO OR FOR BUYER

<u>Description</u>	<u>Maximum Daily Quantity ^{1/}</u>
Delivered to Commonwealth Gas Pipeline Corporation via Columbia Gas Transmission Corporation at Bickers Compressor Station for Allied's Chesterfield Plant, Hopewell Plant, and Technical Center.	65,000 Dth/d

^{1/} Company-use and unaccounted-for quantities shall be deducted from the quantities shown in the column.

[32404]

SUPPLEMENT NO. 1
TO
TRANSPORTATION SERVICE AGREEMENT

THIS SUPPLEMENTAL AGREEMENT, made and entered into this 10th day of February, 1987, by and between COLUMBIA GAS TRANSMISSION CORPORATION, a Delaware corporation (hereinafter called "Seller"), and ALLIED CORPORATION, a New York corporation (hereinafter called "Buyer").

W I T N E S S E T H:

WHEREAS, on February 6, 1987, the parties hereto entered into a Gas Transportation Agreement numerically designated by Columbia as shown above ("Agreement"); and

WHEREAS, the parties hereto desire to amend Appendix A to the Agreement to provide for the addition and/or deletion of points of receipt and/or points of delivery;

NOW, THEREFORE, in consideration of the premises and the mutual benefits to be derived therefrom, and in accordance with the terms and conditions of Seller's FERC Gas Tariff, the parties hereby agree as follows:

Effective as of February 10, 1987, Appendix A to the Agreement, as previously supplemented or amended, is hereby cancelled and replaced with the Appendix A attached hereto and made a part hereof.

All other terms and conditions of the Agreement, as it may have been otherwise supplemented or amended, shall remain in full force and effect.

IN WITNESS WHEREOF, this Supplemental Agreement is executed as of the date and year first above-written.

COLUMBIA GAS TRANSMISSION CORPORATION

By: Tom Meltzer

Vice President

ALLIED CORPORATION

BUYER

By: William G. Hays

Its:

[32404]

FORM OF SERVICE AGREEMENT FOR
SERVICE UNDER ITS RATE SCHEDULE (CONT'D)
APPENDIX A

1. POINT(S) OF RECEIPT INTO SELLER

<u>Description</u>	<u>Maximum Daily Quantity</u>
1) Columbia Pool (CPP) (Various)	65,00 Dth/d
2) Delivered to Columbia Gas Transmission Corporation via Texas Gas Transmission at Lebanon, Ohio. The producer is Mark Producing.	37,000 Dth/d
4) Delivered to Columbia Gas Transmission Corporation via Texas Gas Transmission at Lebanon, Ohio. The producer is Tenngasco.	37,000 Dth/d
5) Delivered to Columbia Gas Transmission Corporation via Columbia Gulf Transmission Company at Leach, Kentucky. The producers are various.	65,000 Dth/d
6) Delivered to Columbia Gas Transmission Corporation at Meter #62886 - Randolph, #820337 - Sugar Run and #620904 - Wagner. The producer is Alamco.	15,000 Dth/d
7) At existing points of interconnection between Seller and Tennessee Gas Pipeline.	35,000 Dth/d

2. POINT(S) OF DELIVERY TO OR FOR BUYER

<u>Description</u>	<u>Maximum Daily Quantity</u>
Delivered to Commonwealth Gas Pipeline Corporation via Columbia Gas Transmission Corporation at Bickers Compressor Station for Allied's Chesterfield Plant, Hopewell Plant, and Technical Center.	65,000 Dth/d

1/ Company-use and unaccounted-for quantities shall be deducted from the quantities shown in the column.

Agreement No. 32404
Control No. 870501-023

SUPPLEMENT NO. 2
TO
TRANSPORTATION SERVICE AGREEMENT

THIS SUPPLEMENTAL AGREEMENT, made and entered into this 12th day of June, 1987, by and between COLUMBIA GAS TRANSMISSION CORPORATION, a Delaware corporation (hereinafter called "Seller"), and ALLIED CORPORATION, a New York corporation (hereinafter called "Buyer").

W I T N E S S E T H:

WHEREAS, on February 6, 1987, the parties hereto entered into a Gas Transportation Agreement numerically designated by Columbia as shown above ("Agreement"); and

WHEREAS, the parties hereto desire to amend Appendix A to the Agreement to provide for the addition and/or deletion of points of receipt and/or points of delivery;

NOW, THEREFORE, in consideration of the premises and the mutual benefits to be derived therefrom, and in accordance with the terms and conditions of Seller's FERC Gas Tariff, the parties hereby agree as follows:

Effective as of April + June 5, 1987, Appendix A to the Agreement, as previously supplemented or amended, is hereby cancelled and replaced with the Appendix A attached hereto and made a part hereof.

All other terms and conditions of the Agreement, as it may have been otherwise supplemented or amended, shall remain in full force and effect.

SUPPLEMENT NO. 2 TO
TRANSPORTATION SERVICE AGREEMENT (CONT'D)

000067

IN WITNESS WHEREOF, this Supplemental Agreement is executed as of the
date and year first above written.

COLUMBIA GAS TRANSMISSION CORPORATION

By: *[Signature]*
Vice President *imm*
see

ALLIED CORPORATION

(Buyer)

By: *William E. Houghton*
Its: _____ *ant*
mm
6/3/87

SUPPA

- 2 -

[32404]

000068

SERVICE AGREEMENT FOR
SERVICE UNDER ITS RATE SCHEDULE (CONT'D)

APPENDIX A

POINT(S) OF RECEIPT BY SELLER

<u>Description</u>	<u>Max. Daily Quantity (Dth) 1/</u>
1) Delivered to Seller via Texas Gas Transmission at Lebanon, OH.	37,000
2) Delivered to Seller via Columbia Gulf Transmission Company at Leach, KY.	65,000
3) Delivered to Seller at Meter #62886 - Randolph, #820337 - Sugar Run and #620904 - Wagner. The producer Alamco.	15,000
4) At existing points of interconnection between Seller and Tennessee Gas Pipeline.	35,000
5) Various points of receipt on Seller's pipeline system. (TCO Production and/or SSP-87).	15,000

POINT(S) OF DELIVERY TO OR FOR BUYER

<u>Description</u>	<u>Max. Daily Quantity (Dth)</u>
At existing points with Intermediate Transporter via Seller for ultimate redelivery at Bickers Compressor Station for Allied's Chesterfield Plant, Hopewell Plant, and Technical Center.	65,000

1/ Company-use and unaccounted-for quantities shall be added to the quantities shown in the column.

Agreement No. 32404
Control No. 870501-023

SUPPLEMENT NO. 3
TO
TRANSPORTATION SERVICE AGREEMENT
UNDER ITS RATE SCHEDULE

THIS SUPPLEMENTAL AGREEMENT, made and entered into this 8th day of December, 1990, by and between COLUMBIA GAS TRANSMISSION CORPORATION, a Delaware corporation (hereinafter called "Seller"), and ALLIED-SIGNAL INC, a Delaware corporation (hereinafter called "Buyer").

W I T N E S S E I H:

WHEREAS, on February 6, 1987, Seller, Allied Corporation and Commonwealth Gas Pipeline Corporation entered into a Gas Transportation Agreement numerically designated by Columbia as shown above ("Agreement"); and

WHEREAS, on September 30, 1987, Allied Corporation, a New York corporation was merged into Allied-Signal Inc, a Delaware corporation; and

WHEREAS, on December 8, 1990, the Federal Energy Regulatory Commission issued an order approving Seller's proposal to acquire by merger the facilities of Commonwealth Gas Pipeline Corporation; and

WHEREAS, the parties hereto desire to amend Section 1 to the Agreement to provide a change to the regulatory authority under which this transportation service is being provided; and

WHEREAS, the parties hereto desire to amend Appendix A to the Agreement to provide for the addition and/or deletion of points of receipt and/or points of delivery;

NOW, THEREFORE, in consideration of the premises and the mutual benefits to be derived therefrom, and in accordance with the terms and conditions of Seller's FERC Gas Tariff, the parties hereby agree as follows:

Effective as of December 8, 1990, Section 1 to the Agreement is amended to provide that henceforth, the transportation service will be provided under Part 284, Subpart (G) of the Commission's Regulations and Appendix A to the Agreement, as previously supplemented or amended, is hereby cancelled and replaced with the Appendix A attached hereto and made a part hereof.

000070

SUPPLEMENT NO. 3 TO
TRANSPORTATION SERVICE AGREEMENT (CONT'D)

All other terms and conditions of the Agreement, as it may have been otherwise supplemented or amended, shall remain in full force and effect.

IN WITNESS WHEREOF, this Supplemental Agreement is executed as of the date and year first above written.

COLUMBIA GAS TRANSMISSION CORPORATION

By:

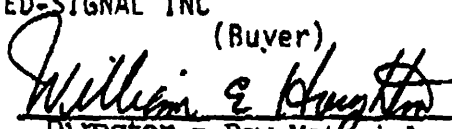

Vice President

ALLIED-SIGNAL INC

(Buyer)

By:

Its:


Director - Raw Materials Purchases

SERVICE AGREEMENT FOR
SERVICE UNDER ITS RATE SCHEDULE (CONT'D)

000071

APPENDIX A

POINT(S) OF RECEIPT BY SELLER

<u>Description</u>	<u>Max. Daily Quantity (Dth) 1/</u>
1) Delivered to Seller via Texas Gas Transmission at Lebanon, OH.	65,000
2) Delivered to Seller via Columbia Gulf Transmission Company at Leach, KY.	65,000
3) Delivered to Seller via Tennessee Gas Pipeline at various existing points of interconnect in PA, OH, WV, KY.	65,000
4) Delivered to Seller via Texas Eastern Transmission Company at various existing interconnect in PA, OH, WV.	65,000

POINT(S) OF DELIVERY TO OR FOR BUYER

<u>Description</u>	<u>Max. Daily Quantity (Dth)</u>
1) Delivered to Buyer via Seller at Hopewell, VA.	65,000
2) Delivered to Commonwealth Services, Inc., via Seller for redelivery to Buyer's Chesterfield Plant, Hopewell Plant and Technical Center, VA.	65,000

1/ Company-use and unaccounted-for quantities shall be added to the quantities shown in the column.

000072

ATTACHMENT NO. 4

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"Partial." That's the only change.

MR. WATTS: Fine, so there won't be any confusion in the record. Thank you.

COMMISSIONER HARWOOD: All right, just strike "Partial." There are no other changes --

MR. WATTS: No other changes.

COMMISSIONER HARWOOD: -- in Pages 1 through 6. All right, I mischaracterized it then as a Partial Stipulation of Facts. What it is is a Stipulation of Facts.

MR. WATTS: Thank you very much.

Columbia is here this morning to respond to a determination by the Division that Columbia should be assessed by the Commission as a public -- excuse me -- as a pipeline distribution company, and specifically -- for property tax purposes, and specifically, to respond to the Rule that was issued on April 23. It's Columbia's position that the Division's determination that Columbia should be assessed by the Commission as a pipeline distribution company is incorrect, and that Columbia should continue to be assessed by the State Tax Department as a pipeline transmission company, which has been

[0045]

1
2 the case since 1984. Accordingly, Columbia
3 requests that the Rule to Show Cause be dismissed.

4 As a preliminary matter, I'd like to
5 point out that Columbia is in no way seeking to
6 avoid whatever obligations it may have under law
7 to file reports and to pay property tax in
8 Virginia, as is required by law, and has filed
9 its 1991 property tax report with the State
10 Tax Department in accordance with Columbia's
11 understanding of the law. We merely have an
12 honest disagreement with the Division over the
13 interpretation of the applicable statutes. In
14 the event that the Commission rules that Columbia
15 should be assessed by the Commission, Columbia
16 will proceed immediately to prepare and to file
17 as quickly as possible the required forms that
18 the Commission uses in order to be in compliance
19 with your decision, reserving, of course,
20 Columbia's right to take whatever legal remedies
21 that it has available to it regarding the
22 Commission's decision, as well as regarding
23 any assessment that might be made by the
24 Commission.

25 Also, just for the record, as indicated

1
2 in my April 12 letter to Judge Harwood, Columbia
3 objects to the Commission's jurisdiction to
4 reclassify as a pipeline transmission --
5 distribution company a company that has since
6 1984 been assessed by the State Tax Department
7 as a pipeline transmission company in view of
8 that treatment in the past of Columbia, and also
9 in view of the status of the State Tax Department
10 as the primary agency responsible for implementing
11 and enforcing the State tax laws.

12 Now, I won't dwell on the factual
13 background for this proceeding which is covered
14 in the Stipulation, but I would like to take a
15 minute to discuss the practical effect of the
16 December 11, 1991 -- 1990 merger of Commonwealth
17 Pipeline into Columbia Transmission and also the
18 nature of Columbia's transportation service for
19 Allied at the Hopewell chemical plant because
20 it seems to be a combination of those two things
21 that has triggered the determination by the
22 Division that we're talking about here today.
23 I'll be referring to this map over here, which is
24 simply a large version of Attachment No. 4 to the
25 Stipulation, which is a map of the former

Commonwealth Pipeline System.

Now, right here is Columbia's main line running through Virginia, and running southeasterly approximately is the former Commonwealth Pipeline transmission system. Now, before the merger, Columbia provided sales for resale and transportation service for Commonwealth Pipeline's distributor customers and also transportation service for the end-users served by those distributor customers. It also provided transportation service for Allied, and I'll talk about that in just a second. But all of the gas that was delivered by Columbia, either sales or transportation, was delivered to Commonwealth Pipeline here at the Bickers Station up in Greene County, which was the only delivery point from Columbia to Commonwealth Pipeline. Commonwealth Pipeline then received the gas and transported it down through its system and delivered it to its customers at its delivery points off of its system. Now, with respect to the transportation service for Allied, it really was divided into two parts. A portion was delivered up here by Columbia Transmission to Commonwealth and redelivered by Commonwealth

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2 Pipeline to Commonwealth Services for redelivery
3 to three locations of Allied, two of them in
4 Chesterfield County, one the Tech Center,
5 the other the Fibers Plant, both of which
6 are down here between Richmond and Petersburg.
7 The third portion was delivered by Commonwealth
8 Services to the Hopewell chemical plant, which is
9 located here in Hopewell. And then the other
10 portion of the transportation gas was delivered
11 to Commonwealth Pipeline, which transported it
12 down and delivered it to the Hopewell plant
13 through Commonwealth Pipeline's own facilities.
14 In other words, there was an interconnection there
15 with the facilities of Allied.

16 So then in December of 1990, the merger
17 took place, and the practical effect of that
18 was to convert the former Commonwealth Pipeline
19 facilities into facilities of Columbia, virtually
20 turning the Commonwealth Pipeline into an
21 extension of -- off of Columbia's main line,
22 and the practical effect was simply to move
23 downstream the delivery points for Columbia's
24 service to the former Commonwealth Pipeline
25 customers from Bickers to the delivery points

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2 that Commonwealth Pipeline had had with those
3 customers. So particularly with respect to the
4 chemical plant of Allied at Hopewell, the only
5 change that was made is that the facility, the
6 pipe that was formerly owned by Commonwealth
7 Pipeline was now owned by Columbia. The other
8 was still owned by Commonwealth Services. So
9 the situation you've got at Hopewell is that the
10 plant is fed by two pipes, one owned by
11 Commonwealth Services, the other owned by --
12 now by Columbia. And the situation is such
13 that Allied could purchase all of its requirements
14 from a producer in Texas, let's say, for the
15 entire plant. Some of it might be delivered
16 through the Commonwealth Pipeline facility --
17 excuse me -- the Columbia facility directly,
18 and some of it might be redelivered through
19 Commonwealth Services, but in all other respects,
20 Columbia's transportation service for Allied
21 was unchanged by the merger.

22 COMMISSIONER SHANNON: How is it being
23 delivered now, Mr. Watts?

24 MR. WATTS: As I described. Depending
25 on the type of service that's being

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2 provided, and the service agreements are covered --
3 included in the Stipulation, it may be delivered
4 directly through the facilities of Commonwealth
5 pipeline -- of Columbia, forgive me. Some old
6 habits die hard -- or through the facilities of
7 Commonwealth Services, depending on physically
8 where it's delivered at the plant.

9 COMMISSIONER SHANNON: It's being
10 delivered currently by both methods?

11 MR. WATTS: That's correct, to the
12 same facility. And the gas could be purchased
13 from the same producer.

14 Now, the issue is whether Columbia
15 should be assessed by the Commisison as a
16 pipeline transmission company merely because
17 its facilities now interconnect with those of
18 Allied at the Hopewell chemical plant, even
19 though Columbia makes no direct sales to Allied,
20 in fact, does not to any end-user in Virginia,
21 and merely transports gas that Allied has
22 purchased before Columbia obtains it. In other
23 words, the gas is already owned by Allied before
24 it is delivered to Columbia for transportation
25 and redelivered. The Staff argues that this

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2 should be the result, because even though
3 Columbia makes no sales to Allied in Virginia,
4 it might do so in the future. According to the
5 Staff, the definition of pipeline distribution
6 company should be applied in this fashion in this
7 proceeding now to Columbia in order to avoid
8 possible difficulty in figuring out in the
9 future whether it could apply to Columbia or
10 some other pipeline in the event sales were
11 made. And I understand this position to be
12 effectively asking you-all for an advisory
13 opinion because these facts aren't before you at
14 this time. No sales have been made. But the Staff
15 seems to be saying, we need for you to rule in
16 this case on what would happen if the sales
17 were made.

18 COMMISSIONER SHANNON: But aren't you
19 delivering transport -- you're transporting gas
20 that Columbia has -- I mean that Allied has
21 bought elsewhere?

22 MR. WATTS: That's correct.

23 COMMISSIONER SHANNON: You're doing
24 that?

25 MR. WATTS: That's correct.

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2 COMMISSIONER SHANNON: Even though
3 you haven't made any sales --

4 MR. WATTS: That's correct.

5 COMMISSIONER SHANNON: I see.

6 MR. WATTS: Now, as pointed out in
7 Columbia's Answer, the Staff's approach, in
8 our view, is directly contradicted
9 by the language of the definitions, as well as
10 by the structure of the statutes. With respect
11 to a particular type of activity, a company is a
12 pipeline distribution company only if it is not
13 a pipeline transmission company. That's what the
14 definition says of pipeline distribution company.
15 You can't look at it in isolation, as the Staff
16 would have you do, you've got to go then see
17 first whether it qualifies as a pipeline
18 transmission company with respect to a given
19 transaction. And Columbia's transportation of
20 gas for Allied satisfies every aspect of the
21 definition of pipeline transmission company,
22 including the fact or the requirement that the
23 gas is "not for sale to an ultimate consumer."
24 That is Allied. On the other hand, Columbia
25 can't be a pipeline distribution company with

[0053]

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2 respect to its transportation service for Allied
3 at the Hopewell plant because Allied is not
4 purchasing the gas from Columbia. Staff says in
5 order to avoid difficulty in figuring out whether
6 a sale has occurred, these definitions should be
7 read such that it is irrelevant whether you're
8 making a sale or transportation, in other words,
9 whether a sale is made. Simply put, our position
10 is that it is the sale that triggers the definition
11 of pipeline distribution company. And I think it
12 can be crystallized in that form. But as explained
13 in our Answer, this interpretation that the
14 Staff would have you make renders the distinction
15 between pipeline transmission company and pipeline
16 distribution company meaningless because if, if
17 they're right, then no transaction could ever
18 qualify as a pipeline transmission company
19 transaction because there would always be a
20 purchaser somewhere in the transaction, yet that
21 definition says that it is not for sale to an
22 ultimate consumer, the gas is not for sale.
23 So you could never have a movement qualify for that
24 definition. And so the very distinction that the
25 General Assembly attempted to create is destroyed.

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2 To put it another way -- well, if you look at
3 the definition itself, it says --

4 CHAIRMAN MORRISON: Which one are you
5 looking at?

6 MR. WATTS: I'm sorry, pipeline
7 transmission company. And I won't read it, but
8 at the very end, it says, "when such gas or
9 petroleum is not for sale to an ultimate consumer
10 for purposes of furnishing heat or light."
11 Heat or light is not an issue here. So my
12 point is, if you're not talking about not for
13 sale to an ultimate consumer, that is the purchaser
14 from the transmitting pipeline, then in every
15 transaction, you're going to have a seller and a
16 purchaser and a transporter somewhere in between.
17 Every transaction -- well, let's put it another
18 way: No transaction could qualify for this
19 definition, and the definition simply goes out
20 of existence. But the General Assembly must have
21 intended to create a distinction between these
22 two kinds of transactions, but the Staff's
23 interpretation would effectively destroy that
24 difference. Staff has also said that it will
25 have a problem if sales are made in reclassifying

[0055]

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2 companies one way or the other, depending on
3 whether a sale may be made on a given day or not.
4 My answer to that is that the statute appears
5 to say January 1 is the date at which your
6 property is to be determined. It's as of
7 January 1. It might say that, that that is the
8 day that -- you know, the question would be whether a
9 sale is being made on that day or not. That might
10 be an overly restrictive view of the statute.
11 But I will say that those facts aren't before
12 you today. No sales have been made, are being
13 made. So you're being asked to determine now
14 what's going to happen in the future.

15 CHAIRMAN MORRISON: But you would
16 argue at least -- you say it's a reasonable
17 argument to say that January 1 is the date
18 to determine whether or not there was a sale;
19 if you get by, if you don't sell anything on
20 January 1, the rest of the year, you can sell
21 as much as you want?

22 MR. WATTS: I don't know if that's
23 an appropriate analysis of the statute or not.

24 CHAIRMAN MORRISON: But if a sale
25 ever occurred on January 30th, you would advance

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2 that argument, do you think?

3 MR. WATTS: I'm not sure if I would --
4 whether I would or not, Judge Morrison. I'm
5 simply saying that's what the statute says
6 is the date for determining where the property is --

7 CHAIRMAN MORRISON: Something like where
8 you keep your automobile on January 1st for tax
9 purposes.

10 MR. WATTS: That's what the statute says.
11 2628 says that's what the report --

12 CHAIRMAN MORRISON: They've changed that
13 to principally garaged now.

14 MR. WATTS: Please understand me, I'm
15 trying to respond to the Staff's argument. I'm
16 not making that argument. I'm telling you --

17 CHAIRMAN MORRISON: You agree that
18 that -- the definition of pipeline transmission
19 company is somewhat ambiguous?

20 MR. WATTS: Well --

21 CHAIRMAN MORRISON: Not for sale -- it
22 doesn't say not for sale to the ultimate consumer
23 by the transmission company.

24 MR. WATTS: It certainly doesn't say
25 that in words, but it --

CHAIRMAN MORRISON: You argue that you

[0057]

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2 would never have a pipeline transmission company
3 because the gas would be for sale to the ultimate
4 consumer in every case where you transport gas?

5 MR. WATTS: Sure, that's correct.

6 CHAIRMAN MORRISON: That's every kind
7 of gas that's used in Virginia?

8 MR. WATTS: You could never have a
9 pipeline transmission company under that
10 interpretation.

11 CHAIRMAN MORRISON: But that -- don't
12 you assume that you insert the words "not for
13 sale by the transmission company to the ultimate
14 consumer"? You sell to Columbia, and that
15 gas in turn is sold to a person to heat a home --

16 MR. WATTS: True, it's being sold to --

17 CHAIRMAN MORRISON: It is a sale, it is
18 a sale by Columbia.

19 MR. WATTS: No, sir, it's not being
20 sold. It's being sold to a distributor, which in
21 turn resells it to that homeowner.

22 CHAIRMAN MORRISON: All right, excuse
23 me.

24 MR. WATTS: And that's a crucial
25 distinction here. We're not talking about sales

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2 for resale. We're not talking about direct
3 sales. The Staff is saying simply by being
4 interconnected with Allied at the Hopewell
5 facility, it triggers a different tax status,
6 and I'm saying that that tortures the distinction
7 that the General Assembly intended to create.
8 In fact, it obliterates it.

9 In response to your question, Judge
10 Morrison, I have here House Document 16, which is
11 the -- from the 1984 session of the General
12 Assembly. Your name is in it somewhere. It is
13 the recodification of Title 58.1.

14 CHAIRMAN MORRISON: That was my bill.
15 As a matter of fact, it's the biggest bill
16 that's ever been introduced into the General
17 Assembly since 1940.

18 MR. WATTS: Well, here it is.

19 CHAIRMAN MORRISON: Do you know what it
20 was in 1940?

21 MR. WATTS: What was that?

22 CHAIRMAN MORRISON: The whole Code.

23 MR. WATTS: In direct answer --

24 CHAIRMAN MORRISON: They told me that
25 one had the record.

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2 MR. WATTS: In direct answer to your
3 question, let me quote from Page 270 of it,
4 where it says, "Defining pipeline transmission
5 and pipeline distribution companies, agency
6 responsibility for assessments thereon is
7 clarified."

8 CHAIRMAN MORRISON: Well, I guess I
9 shouldn't be too critical of the remaining
10 ambiguity that may be there.

11 MR. WATTS: I'm not saying the
12 statute couldn't be improved, I'm saying that
13 if you read it the way the Staff wants you to
14 read it, you have taken one of the definitions
15 completely out of the Code altogether as a
16 practical matter and destroyed the distinction.

17 CHAIRMAN MORRISON: Mr. O'Bryan helped
18 the Code Commission, and I would have thought
19 he would have made it so abundantly clear that
20 we wouldn't have to have an argument to that.

21 MR. WATTS: My argument is not a
22 personal comment on Mr. O'Bryan's ability.

23 CHAIRMAN MORRISON: No, it's my
24 personal comment.

25 MR. WATTS: Let me also say I think it is

[0060]

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2 helpful to look at the structure of the gross
3 receipts tax because if you look at the structure
4 of those statutes, it is absolutely clear that
5 the term "pipeline distribution company"
6 contemplates retail sales, and that the term
7 "pipeline transmission company" contemplates
8 not -- no retail sales.

9 COMMISSIONER SHANNON: Now, here
10 you're not talking about gross receipts and
11 special tax; are you? This is only the assessment
12 of the property for local?

13 MR. WATTS: That's correct. But in order
14 to try to understand what these statutes mean,
15 I think it's helpful to look at the structure
16 of the gross receipts tax. If you'll look at
17 2626, it says that every corporation doing the
18 business of furnishing heat, light, so forth,
19 except a pipeline transmission company, is to be
20 subject to the gross receipts tax. And then if
21 you'll go over and look at 2627.1, you see that
22 pipeline distribution companies are to be taxed
23 on gross receipts on sales in Virginia, and you
24 see that pipeline transmission companies pay the
25 income tax in lieu of the franchise tax, and

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2 there's an offset from that income with respect
3 to any sales that they may make. But that is
4 clearly an exception to the fact that they would
5 be paying the income tax.

6 COMMISSIONER SHANNON: Well, how do you
7 explain, looking at 2627.1, look down here at D --

8 MR. WATTS: Yes, sir.

9 COMMISSIONER SHANNON: It says,
10 "When a company qualifies as both a pipeline
11 transmission and a pipeline distribution company --
12 the General Assembly recognized that there is
13 a relationship there -- it shall for property
14 tax valuation purposes be considered a pipeline
15 distribution company."

16 MR. WATTS: That's true. That's
17 absolutely true.

18 COMMISSIONER SHANNON: Why was that
19 put in the Code, Mr. Watts?

20 MR. WATTS: I have no idea why they
21 made a distinction there between property taxes --

22 COMMISSIONER SHANNON: You didn't
23 have anything to do with putting it in there?

24 MR. WATTS: I did not. I would tell you
25 if I did, Judge Shannon, but I didn't.

[0062]

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2 COMMISSIONER SHANNON: You know this
3 better than anybody, I'm sure.

4 MR. WATTS: The point is -- let me
5 take this just a step further, if I can. If
6 you'll look over at 2628, which is the annual
7 report section, you see that in Paragraph C,
8 pipeline distribution companies are required
9 to report to the Corporation Commission two
10 things: their property, real and tangible
11 personal property, and also their gross receipts.
12 If you'll look at Paragraph C, which applies
13 only to pipeline transmission companies, they
14 are required to file only a report of their
15 property. There is no requirement that they
16 file a report with respect to their gross
17 receipts. So I submit to you that that's
18 another indication that it is the sale that
19 triggers the definition of pipeline distribution
20 company as opposed to pipeline transmission
21 company.

22 And then finally, I just would like
23 to mention with respect to the terminology
24 of distribution versus transmission, this
25 terminology has been examined recently by the

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2 Federal Courts in specifically the National
3 Steel bypass litigation. I'm not telling you
4 you're bound by the definitions that are
5 presented there. I do want to bring them to
6 your attention, however, and I've got copies
7 of these cases. But specifically, the Court,
8 both the D. C. Circuit and the 6th Circuit,
9 have held that the term "local distribution,"
10 as least as used in gas -- at least as used
11 in the Natural Gas Act, applies only to
12 transportation. It does not apply to sale.
13 In order words -- I'm sorry, I have that
14 backwards. It applies only to sale, and doesn't
15 apply to transportation. So that's been held
16 at least as a matter of federal law construing
17 the Natural Gas Act. I've got copies of those.
18 I can hand them to you now, or --

19 COMMISSIONER HARWOOD: Yeah, please
20 hand those up. We'd like to have them.

21 MR. WATTS: In those cases, a steel
22 company in Michigan sought to have direct
23 service from Panhandle, and -- with respect
24 to gas that was being purchased in Oklahoma,
25 in other words, title transferred in Oklahoma,

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2 and the Michigan Commission was upset about
3 that, and argued long and hard against it
4 so that MichCon, which was the gas distributor --
5 and I'm not commenting on the merits of bypass,
6 believe me, that's not what I'm trying to do
7 in referring to these cases. But there were
8 two things that were significant in these
9 decisions. The first was the Court held that
10 because the title had transferred to the gas
11 in Oklahoma that the Michigan Commission had
12 no regulatory jurisdiction over it. The second
13 conclusion that was reached was that local
14 distribution, which is specifically exempt
15 from federal regulation under the Natural Gas
16 Act, applied to retail sales and did not cover
17 transportation. Transportation in interstate
18 commerce is a matter for federal regulation
19 under the Natural Gas Act according to the
20 6th Circuit and the D. C. Circuit. So I just
21 wanted you to have those because I thought
22 it would be helpful to you.

23 COMMISSIONER SHANNON: There's no
24 gross receipts assessed on transportation
25 charges?

[0065]

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2 MR. WATTS: No, sir. The gross
3 receipts tax is only on -- for pipeline
4 distribution companies, which as I read the
5 Code are considered to be heat, light or power
6 companies, and transmission companies are not.
7 My own view is that's because you regulate
8 heat, light and power companies, you don't
9 regulate interstate transmission companies
10 because of the federal preemption. To me, it
11 all, it comes together in a fairly clear
12 structure and is a way to understand what
13 the General Assembly meant in 2600 when it
14 defined pipeline transmission company and
15 pipeline distribution company.

16 Those are the remarks I have in
17 opening, and I'll be happy to try to respond
18 to anything that Mr. Smith says.

19 COMMISSIONER SHANNON: What about --
20 the Staff makes the argument that rather than look
21 at the elements of the delivery arrangement,
22 that is the transportation arrangement, that
23 it's the end-use that you should look to,
24 which would certainly make it more effective
25 to administer.

[0066]

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2 MR. WATTS: I just don't read the
3 definitions or the statutory structure as
4 being keyed to end use of the gas. I read it
5 as sale versus transportation. And what I
6 understand the Staff to be saying is that,
7 that if you read it as sale, it's too difficult
8 to administer, and I would say two things.
9 The first is that that issue is not before
10 you because there have been no sales. In the
11 event there were sales in the future, you may
12 have to face that issue. But that issue is not
13 here. And the facts in this case simply don't
14 support an analysis based on a supposition
15 about what might happen in the future. And
16 I'm not going to tell you that this statute
17 couldn't be improved. And I don't know that
18 we'll all not end up before the General Assembly
19 next session trying to straighten this out,
20 because I don't think any of us wants to be
21 fighting these fights going on in the future.
22 But on the facts before you in this proceeding,
23 there simply is not a basis on which to conclude
24 what the Staff would have you do, which is,
25 frankly, as I understand it, to ask you for an

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2 advisory opinion about something that might
3 happen in the future.

4 Thanks very much.

5 COMMISSIONER HARWOOD: Thank you,
6 Mr. Watts.

7 Mr. Smith.

8 MR. SMITH: Thank you, Your Honor.

9 I must preface my comments by reminding
10 the Commission that Mrs. Bridewell and her
11 husband are on a well-deserved vacation crusing
12 in the Caribbean, I think, and Mrs. Ellenberg
13 is representing the Commission at a meeting
14 before the National Association of Regulatory
15 Utility Attorneys in Seattle. As you well know,
16 both are far more -- far better versed in gas
17 than I. So I have to look at this as my friend,
18 Mr. O'Bryan's student and as a pragmatist.

19 I think first, let's talk about what
20 this case is not about. The Staff is certainly
21 not suggesting that Columbia needs some
22 jurisdiction from this Commission to engage
23 in the activities in which it's involved in.
24 Mr. Watts has brought to your attention some
25 of the cases in this area. There's no suggestion

[0068]

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2 that, that Columbia has to come back here to
3 get authority to make -- to engage in this
4 business with Allied. This is not a commerce,
5 a federal commerce clause question, or federal
6 due process clause question. We're not trying
7 to reach for some property someplace at the
8 Great Lakes or someplace in Texas, we're talking
9 about the property that's right here in Virginia.
10 Clearly, this is a question that can be disposed
11 of under State law, which authority does Columbia
12 file its report with? There's no implication
13 of any federal interest in this, no federal
14 taxes interest, no commerce clause, none of
15 that's here.

16 I think Mr. Watts has suggested some
17 question about jurisdiction. In 1984, when the --
18 excuse me -- in 1983, when the Legislature moved
19 the railroads and the pipelines from this
20 Commission to the Tax Department, there's some
21 language in the legislation which was not
22 codified which provided that the Department of
23 Transportation -- or Tax Department, excuse me,
24 would henceforth be the authority for making
25 determinations on rolling stock tax as to the

[0069]

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2 railroads and would succeed to the Commission
3 making those interpretations. There is no
4 comparable language on gas. There's nothing
5 to suggest that the General Assembly in any
6 way at all didn't feel that the Commission was
7 quite capable of interpreting the statute.
8 As you are well aware, you are sitting in this
9 case in the capacity of circuit court judges.
10 The Tax Commissioner has no comparable authority.
11 He cannot render on -- he cannot render a
12 decision on a statutory interpretation or other-
13 wise find as this Commission can. There's
14 no question but that you have jurisdiction.

15 Moving on to a couple of more points --

16 COMMISSIONER SHANNON: Let me interrupt
17 you, if I may. Mr. Watts has said that we've
18 been asked to make an advisory opinion in this
19 case. Do you want to comment on that?

20 MR. SMITH: Yes. As we have -- as the
21 Commission has agreed, and as Mr. Watts has
22 suggested, the language is somewhat difficult
23 to use in these two classifications. Now, let
24 me suggest to you the reading of the statute
25 that the Staff proposes, and a reading which we

[0070]

1 think is consistent with the language. Let's
2 start with the gas at the end. The individual turns
3 on his stove, turns on his heating unit, the
4 industrial company fires up its boilers, brick-
5 making, whatever, whatever activity you want,
6 the gas is there being used by the ultimate
7 user. All right, the question is going back,
8 where does the gas come from? The Staff sees
9 it can come from basically, in Virginia, three,
10 three sources. The easiest source, it comes
11 from municipal gas distribution, the City of
12 Richmond, for example. No question, no juris-
13 diction in any form, no taxing authority. It's
14 a municipal system, clearly excluded from your
15 purview in all intents. The other possibility is
16 it comes from one of the locally certificated
17 gas distribution companies, Columbia's affiliate,
18 sister corporation, Services, VNG, Roanoke Gas,
19 any of the gas companies that regularly come
20 before the Commission for certification, it
21 can come from one of those companies. The
22 regulatory structure, tax structure is clearly
23 established. And in at least one instance we
24 know of, and perhaps a number more, it could
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2 come from a pipeline distribution company, a
3 company that is not involved in local distribution
4 certificated by this Commission, but it still
5 brings gas directly to an end-user. In this
6 case, we're talking about the Allied Chemical
7 Plant, the Allied Signal Plant in Hopewell, which
8 is used in chemical processes. I think, as we
9 understand, some of it's used for feedstock, for
10 producing some product, and some of it's used
11 for heating the boilers and that sort of thing.
12 So we have these three choices. The gas is
13 purchased from someone. But if you pivot your
14 analysis on purchases, we're going to be back
15 doing this every year, and we may be doing it
16 for more than one company. Mr. Watts has
17 alluded to the body of federal law which is
18 allowing the pipelines to, in effect, bypass
19 the local distribution companies, or even our
20 own statute, our own statutes are far more
21 permissive for this now than they were a few
22 years ago. In 1990, the General Assembly enacted
23 amendments to 13.1-627, and companion amendments
24 to section -- to the Utility Facilities Act,
25 which now permit presumably a pipeline to serve

up to ten customers directly off the pipeline if they're outside of a local certificated company's service territory. The Federal Energy Regulatory Commission has certificated as qualifying facilities at least two projects which apparently, based on the FERC's order, plan to do exactly this. These QFs will be constructed literally right over the pipeline, and presumably they're going to take gas right out of the pipeline for, on one hand, for operating greenhouses, and for producing electricity. So we have a situation where we have one company this year, but it's quite likely we may have all of the gas, all of the gas pipelines that operate through Virginia pursuant to Federal law and the proper Federal authority. I'm not suggesting at all that any of these things are not proper under Federal law. They're engaging in the businesses that they're authorized to do. But they may be serving directly. The Staff suggests, and the question is before you right now, in fact, the question was here last year, as I'll get to in a moment, that the fact to concentrate on, the end-use of the gas and where

[0073]

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2 that gas gets to the end-user. Obviously, the
3 gas was purchased someplace at some stage of the
4 transaction. It may have been purchased, sold,
5 purchased, sold, who knows how many times. But
6 look to what the end-user is doing with the gas.
7 He's got three sources: municipal system, a
8 certificated regulated local distribution company,
9 or one of these gas pipeline distribution companies.
10 Now, we're not suggesting at all that a company
11 couldn't be engaged in both activities. As we
12 said in our statement, it's the Staff's belief
13 that old Commonwealth Pipeline was probably,
14 was both a pipeline transmission company and a
15 pipeline distribution company during the last
16 several years of its operations. To the extent
17 that it provided service to the City of Richmond
18 and to VNG and to Services, it was functioning
19 as a pipeline transmission company. But to the
20 extent that it was directly connected and
21 providing service to Allied at Hopewell, it was
22 functioning as a pipeline distribution company.
23 In the last year of its operation, the old
24 Pipeline, old Commonwealth Pipeline discontinued
25 its sales functions, merchant function. They

[0074]

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2 applied to the Commission, and those tariff
3 provisions were withdrawn. We cited the cases
4 in our Memorandum. Although it had ceased doing
5 that activity, it still was taxed the following
6 tax year as a pipeline distribution company.
7 They filed a report with Mr. O'Bryan, assessments
8 were made and reported, and the usual procedure.
9 Now, Mr. Watts has raised a question about that,
10 and he cited the City of Alexandria case, RF&P
11 case. I think he cited the wrong case. That
12 case is really simply a matter of jurisdiction,
13 whether the Circuit Courts or the Commission
14 can provide a remedy to a taxpayer is a
15 jurisdictional case. But he's on the right
16 track. I think the better cases would be
17 Commonwealth v. Richmond - Petersburg Bus
18 Line, a 1963 case, and the unreported case of
19 Winn Bus Line v. SCC, a 1989 case. Now, both of
20 these cases -- let me give you the citation
21 for the Commonwealth v. Richmond-Petersburg
22 Bus Line. It's 204 Va. 606. Both of these
23 cases arose out of the classification and
24 taxation of motor carriers. The earlier case
25 involved the now-repealed gross receipts tax.

1 The Winn Bus Line case involved the rolling
2 stock tax and special regulatory revenue tax.
3 In both instances, the Commission, through
4 perhaps error, confusion, change of circumstances,
5 determined that a taxpayer was misclassified,
6 and the appropriate changes were made. The
7 taxpayer was afforded some relief. Both the
8 cases along those lines, in both instances, a
9 motor carrier was classified -- or sought
10 classification for a tax which was not appropriate.
11 The point is, I fully agree with Mr. Watts that
12 it's certainly appropriate for you to reexamine
13 these classifications and to -- every classifica-
14 tion gives rise to a separate cause of action.
15 But I would suggest that it is of relevance in
16 this case. We had an entity that was providing
17 the same service that Columbia is now providing.
18 They were functioning as a pipeline transmission
19 company for several entities. They were
20 functioning as a pipeline distribution company
21 for Allied. I leave it to you as to what weight
22 to assign to that, but I certainly think it's
23 a relevant consideration.
24

25 In conclusion, it is the Staff's view

[0076]

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2 that this is far from advisory. The situation
3 we have right now today was addressed perhaps
4 in some respects, and perhaps it was wrongly
5 addressed in 1990. It's already been addressed
6 once. It's before you again. It's far from
7 advisory. We're suggesting to you to look, to
8 apply simple pragmatic, mechanistic tests to
9 classify these two companies -- it's certainly
10 within your jurisdictional authority to do so --
11 to look at the end-user, where that gas came
12 from. He has three choices. Right now, there
13 appears to be only one pipeline distribution
14 company in Virginia, Columbia. It's certainly
15 difficult to predict what the future holds for
16 us. We do think it's important that this case
17 be resolved as soon as possible so that there
18 may be some certainty and understanding within
19 the industry when they contemplate engaging --
20 when other pipelines contemplate engaging in
21 transactions as to what their tax classification
22 would be. It's far from an advisory, illusory
23 case. We have it right here today. We're
24 suggesting a simple test to apply to classify
25 the two companies, one that should be readily

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2 understandable to the companies and reasonably
3 easily administered.

4 Most of this proceeding, most of
5 Mr. Watts' presentation, the Stipulation, are
6 all going into these things about sales and
7 where the transactions take place, and all of
8 this, and if the Commission wishes, we can
9 certainly pursue this, but it will become
10 probably, possibly an annual event involving
11 perhaps three-four-five companies as we go
12 along.

13 Thank you.

14 COMMISSIONER HARWOOD: Thank you,
15 Mr. Smith.

16 CHAIRMAN MORRISON: Could I ask
17 Mr. Smith --

18 MR. SMITH: Yes, sir.

19 CHAIRMAN MORRISON: To sum up your
20 position, the Staff position, you look at the
21 end-user, and if the end-user turns on gas for
22 heat or light, as the statute says, then whoever
23 delivered it to him has got to be under the
24 jurisdiction of the Commission for purposes of
25 tax assessment?

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MR. SMITH: Yes, sir, unless --

CHAIRMAN MORRISON: Is that a simple way to put it?

MR. SMITH: Unless it happens to be a municipal system, for example, the City of Richmond.

CHAIRMAN MORRISON: I mean any certificated or non-certificated, I guess, what we're saying in this case?

MR. SMITH: Yes, sir, I believe the law is simply --

CHAIRMAN MORRISON: In other words, any taxpayer, either gross receipts or property tax, or whatever. A municipal system, of course, would not be.

MR. SMITH: Yes, sir.

CHAIRMAN MORRISON: We're interested in assessing taxes. Obviously, we wouldn't be concerned about that for the municipal systems. And we simply look at the -- what company delivered it to the end consumer, whether industrial or residential, and that delivery man, if I may call it that, is subject to our jurisdiction for assessment purposes,

[0079]

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2 Mr. O'Bryan's assessment?

3 MR. SMITH: Yes, sir, we think that's
4 a simple test. We think it's within the wording
5 of the statute.

6 CHAIRMAN MORRISON: So you would say
7 the word "purchaser" is not connected to the
8 pipeline distribution company, or the word
9 "sale" is not connected to the pipeline
10 transmission company? In other words, that
11 company didn't have to make the sale itself,
12 it simply transported it?

13 MR. SMITH: Yes, sir, I think that's
14 the situation.

15 CHAIRMAN MORRISON: I mean you can't
16 say that that transmission company has got to be
17 the seller, because that's the argument Mr. Watts
18 is making. The sale didn't occur by the transmission
19 company's delivering the gas. That was the point --
20 that was my point in saying that it's a little
21 ambiguous, because it said not for sale by
22 the pipeline transmission company, and I think
23 it nails it down. It clearly is without our juris-
24 diction. Are you following me? Not for sale
25 to an ultimate consumer is within the definition

[0080]

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2 of pipeline transmission company.

3 MR. SMITH: Yes, sir, I think that's
4 the position we're taking, that the distinction
5 seems to be -- for example, with using Columbia,
6 we fully agree that it's a pipeline transmission
7 company for any extent that we're looking to its
8 relationship with the -- with Services, with
9 VNG, and the City of Richmond. It just transmits
10 that gas to --

11 CHAIRMAN MORRISON: You're saying the
12 gas had to be sold by somebody, even though it was
13 sold by a producer in another state, that was
14 for sale for purposes of coming within the
15 definition of pipeline distribution company?

16 MR. SMITH: Yes, sir. We think that
17 that definition does no more violence to the
18 statute than the clause Mr. Watts wants to
19 answer -- add, which would be a purchaser who
20 receives gas from a distributor that is also
21 the same pipeline distribution company, or
22 something along those lines. We concede that
23 there may very well be some ambiguity. We're
24 suggesting that the test we're proposing is
25 within the wording of the statute.

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2 CHAIRMAN MORRISON: All right, thank
3 you.

4 COMMISSIONER HARWOOD: Thank you.

5 Mr. Watts?

6 MR. WATTS: Yes, sir, I'll be quite
7 brief. Thank you.

8 As I had argued in my letter to you-all
9 of May 16th, I do feel that the assessment of
10 Commonwealth Pipeline for 1990 is irrelevant
11 to this case. That was another company with
12 property that is only a part of what was --
13 is included within the Columbia property that's
14 in question for this year, and was a different tax
15 year. And while the RF&P case, the City of
16 Alexandria case that I cited did have to do with
17 jurisdiction, it clearly came down in the
18 language that I cited to you as saying that
19 each year is a separate question, and the fact
20 that, for example, in that case, the Commission
21 had made determinations, or determinations had
22 been made by the Supreme Court with respect to
23 1976, '77 and '78. The Court was saying, you
24 can't go and apply that to 1975 automatically,
25 because that case wasn't -- that property wasn't

[0032]

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2 before us in that case. Specifically, the
3 attack was made on the 1975 statewide assessment,
4 and specifically in Henrico, and as I recall,
5 the County of Arlington, and the decisions have
6 been made by the Supreme Court with respect to
7 1976, '77 and '78 for property that was in the
8 City of Alexandria. So we're talking about
9 different property, different years. And the
10 Court said those are different. And all I'm
11 saying is that the way that Commonwealth Pipeline
12 was assessed in 1990 with respect to its
13 property during that tax year is not relevant
14 to how Columbia, which is -- was a different
15 company, has different property, and different
16 locations, with respect to this year. You're
17 obviously going to give it whatever weight
18 you want to give it. I'm simply saying
19 that based on what I understand the Supreme
20 Court to have said in the City of Alexandria
21 case, that's just not appropriate. The cases
22 that Mr. Smith referred to are, of course, not
23 property tax cases, and the City of Alexandria
24 case was.

25 I do not know which QFs Mr. Smith

[0083]

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2 is referring to, and I certainly don't know
3 everything that's going on in the gas business
4 in Virginia, but I don't know of any impending
5 bypass opportunities out there that are ongoing
6 right now. If there are, then those will have
7 to be dealt with under the Facilities Act and
8 under the Federal law, but I'm not aware of
9 any boiling away.

10 And getting back to the, to really
11 the kernal here, I think you have hit on it,
12 Judge Morrison, we're talking about is it
13 direct sales or simply interconnection. And
14 if, in fact, the definitions are to some
15 extent ambiguous, then we have to figure out
16 a way to interpret them, and that's, of course,
17 your job. I seek to advise you about how we
18 think you ought to do that. And I can't see
19 how you could take facts that aren't before you
20 now, that is no sales being made, and construe
21 the language of the statutes in a way that would --

22 CHAIRMAN MORRISON: Mr. Watts, I don't
23 think we would do that.

24 MR. WATTS: All right.

25 CHAIRMAN MORRISON: I don't think

[0084]

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2 Mr. Smith was saying that. He simply said, to
3 put it in the simplest terms, the guy who
4 turns on the stove at home had to buy the gas
5 from somebody.

6 MR. WATTS: That's right.

7 CHAIRMAN MORRISON: All right, and if
8 he's buying from a certificated distribution company,
9 no problem, but if that gas was sold by
10 somebody, even though in the course of getting
11 it to the stove, it was transported, that's
12 enough of a sale to come within the parameters
13 of the statute.

14 MR. WATTS: Not a sale, he's saying
15 simple interconnection.

16 CHAIRMAN MORRISON: Interconnection
17 is enough. I'm not -- I don't -- I just don't
18 think we're being asked to decide the case on
19 any facts other than what we have in the
20 Stipulation.

21 MR. WATTS: I understand the Staff to
22 be saying you should interpret it their way
23 because there will be problems in the event
24 there are sales made in the future.

25 CHAIRMAN MORRISON: He is talking about

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some other companies.

MR. WATTS: That's my point, we're talking about the facts here.

CHAIRMAN MORRISON: You're saying that you've got to harmonize it with the whole scheme of that tax law here and also harmonize with --

MR. WATTS: To the extent that it is ambiguous, we have to look somewhere to figure out how to do it, and if you take the Staff's interpretation, it destroys the definition of pipeline transmission company, it simply goes out of the Code altogether, which can't be what the General Assembly intended. And second of all, in order to figure out what they mean by pipeline distribution company and pipeline transmission company, a good place to look is the gross receipts tax, which is not before you here today, but the structure of that -- and it's absolutely clear from the structure of those statutes that pipeline transmission company means something other than a sale, and that pipeline distribution company means sale. And if it weren't true, then pipeline transmission companies would be required to file reports on gross receipts,

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2 and they're not.

3 CHAIRMAN MORRISON: That's the harmony
4 I'm speaking of.

5 MR. WATTS: That's correct. Well, to me,
6 those are guidance -- that's guidance for how
7 to look at the use of those terms elsewhere
8 in the Code. And so, I ask you to construe
9 the statute in a way that makes sense, and to
10 worry at some point in the future about a
11 situation that may or may not arise, and not
12 to torture the statutes in order to solve
13 now something that may never happen.

14 COMMISSIONER HARWOOD: You would
15 agree with Mr. Smith that I think, leaving
16 aside the January 1st issue, which is interesting --

17 MR. WATTS: Well, I raise that only
18 in response --

19 CHAIRMAN MORRISON: -- Commonwealth
20 Pipeline made a sale, owned the gas and made a
21 sale at Hopewell to Allied, then you've fallen
22 under the definition, as he suggests? I mean
23 I look at you and I see sale, and I look at him
24 and I say end-use. And I think that's about
25 as close as you may come to it. But you're

[0087]

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2 saying that there's no sale, Allied or anybody
3 else went out and bought the gas down in
4 Texas, and you're merely the highway that
5 carried it and delivered it to them, and
6 there was no sale, and therefore, you do
7 not distribute, you transmit. No sale by you.
8 you.

9 COMMISSIONER HARWOOD: That's right,
10 by you.

11 MR. WATTS: Well, first of all, let
12 me digress for a second. I'll come back to your
13 question. But to deal with what Mr. Smith says
14 about pipeline distribution company, there's
15 nothing in that section, in that definition
16 that refers to end-use. It just doesn't say
17 that. It talks about a purchaser for purposes
18 of furnishing heat or light. You'd have to read
19 in there that they're purchasing heat or light
20 for ultimate consumption by that purchaser.
21 It really doesn't say that. That concept is in
22 pipeline transmission company, but it says not
23 for sale to the ultimate consumer. And to me,
24 that language, while it may be not as clear
25 as it ought to be, is pretty daggone clear.

[0088]

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2 But to respond to your question, without being
3 held to what your -- to effectively an advisory
4 opinion that you're asking me to provide here,
5 because these facts aren't in front of you --

6 CHAIRMAN MORRISON: Well, you can
7 give one, we can't.

8 COMMISSIONER HARWOOD: The Fifth
9 Amendment will protect you against self-
10 incrimination, too.

11 MR. WATTS: I appreciate that. I
12 appreciate that. But to answer the question,
13 that could be -- except that if the sale is
14 made, if the title transfers other than in
15 Virginia, I think there's some real questions
16 about, about how that should be considered
17 under your statutes. The gross receipts tax
18 is applicable, for example, to -- only to sales
19 in Virginia.

20 COMMISSIONER HARWOOD: I didn't mean
21 to do that. You "sell it" in the common
22 definition at Hopewell to Allied.

23 MR. WATTS: If title transfers
24 in Virginia --

25 COMMISSIONER HARWOOD: You buy it

[0089]

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2 somewhere, you bring it down, and you sell it
3 to them right at Hopewell.

4 MR. WATTS: That's true. And without
5 getting into January 1 or some other date,
6 that's true, but the statute simply refers to
7 January 1, and that's the only reason I brought
8 it up, because that's the only guidance that we
9 do have. And I think we all would agree that if
10 taxpayers and people can structure a transaction
11 within the law, you know, that's what people do
12 every day.

13 COMMISSIONER HARWOOD: To avoid paying
14 taxes is the American way; to evade them is
15 illegal.

16 MR. WATTS: That's true, that's true,
17 and that's a useful distinction. And I really
18 don't want to get us stuck on the January 1
19 thing, because that's a difficult thing, and it
20 hasn't happened, and nobody knows that it will
21 come up ever.

22 CHAIRMAN MORRISON: Let me ask you
23 something that's maybe off the point. It just
24 occurred to me. You know, the gas, the gas
25 priorities that we just recently promulgated --

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MR. WATTS: Yes, sir.

CHAIRMAN MORRISON: -- in the event
of a gas emergency.

MR. WATTS: Right.

CHAIRMAN MORRISON: And you're
familiar with those, of course. Is there any
way that that might, because of the banking,
the so-called banking, can you imagine a
situation where that might place your client
in a position of having to sell, in other words
banking -- gas is banked, that is, as the
industry would say, they confiscate it, they
take the gas, and then you get it back? I don't
think, I don't think that's going to enter into
this sort of thing, but I just wondered if the
scenario that you picture could result in a
gas emergency which would cause you to sell
the gas, although that really wasn't what you
intended?

MR. WATTS: I think to me it might
best be construed as a bailment, and for
some consideration.

CHAIRMAN MORRISON: It's a borrowing.

MR. WATTS: Because you're going to

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2 get it back. The real problem candidly would
3 be more from the other direction, because it
4 is possible, I suppose somebody could say
5 that an end-user -- you know, if that were a
6 sale, in fact, then maybe the customer selling
7 that gas to the pipeline might be selling it
8 within the utility concept. And I don't think
9 any of us wants that to be the result.

10 CHAIRMAN MORRISON: No, I just
11 wondered if it was a technical sale.

12 MR. WATTS: I think the way out of
13 that is to consider it to be a loaning, or
14 a bailment of the gas.

15 COMMISSIONER HARWOOD: Thank both of
16 you.

17 MR. WATTS: Thank you very much.

18 COMMISSIONER HARWOOD: It's been
19 extremely helpful and extremely interesting,
20 and it's obviously a construction of the
21 statute. And we will give it our full effort,
22 and try to advise you-all promptly to make
23 your plans. And I'm quite sincere when I say
24 we appreciate the Memoranda and the oral argument.

25 MR. WATTS: If you want additional

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Memoranda, I don't want to slow you down, but --

COMMISSIONER HARWOOD: I think your positions are abundantly clear.

MR. WATTS: All right.

COMMISSIONER HARWOOD: We appreciate it, you-all. Thank you. And we'll close the matter.

And Mr. Smith, would you take the responsibility of just assuring that the Document Control Center has Mr. Watts' letter to me and my reply, or anything else in there. I think I sent them all to Document Control, so they would be in the, in the file.

MR. WATTS: I believe my correspondence has either been filed directly with Document Control with copies to you, or copied to Document Control, but Mr. Smith is -- would be the person to do that.

CHAIRMAN MORRISON: The April 12th letter, is that --

MR. WATTS: Well, there was an earlier letter which was the request for review and a reversal of the Division determination.

COMMISSIONER HARWOOD: I think I wrote you back that it was a judicial determination

[0093]

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

1991 AUG -6 PM 4: 25

AT RICHMOND, AUGUST 6 1991

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

v.

CASE NO. PST910001

COLUMBIA GAS TRANSMISSION
CORPORATION,
Defendant

FINAL ORDER

This matter was heard by the Commission on May 20, 1991, pursuant to a Rule to Show Cause issued against Columbia Gas Transmission Corporation ("Columbia") on April 23, 1991, regarding Columbia's failure to file, when due, the annual report required by Virginia Code § 58.1-2628(B).

Counsel appearing were Stephen H. Watts, II, Esq., for Columbia, and Wayne N. Smith, Esq., for the Commission's staff. In the Rule, the Commission had found that its decision on this matter could affect operations of the Department of Taxation. It therefore invited the Tax Commissioner and the Attorney General to participate in the case. No appearance was made by these parties, however.

Columbia and the staff filed a thorough stipulation of facts with the Commission which obviated the necessity for taking evidence in the case. The significant facts are clear. Columbia, an interstate natural gas transmission company doing business in Virginia, merged in December of 1990 with

Commonwealth Gas Pipeline Corporation ("Commonwealth") an intrastate company, leaving Columbia as the survivor. Part of the service Commonwealth had previously provided in Virginia, and which was assumed by Columbia as a result of the merger, was gas transportation service to the Allied Signal, Inc. plant ("Allied") in Hopewell, Virginia. Pipeline facilities are directly connected to Allied at that point, through which gas purchased by Allied from suppliers other than Commonwealth, now Columbia, is transported to the plant. Prior to November 1, 1989, Commonwealth had sold Allied gas and transported gas which Allied had purchased from other suppliers. On that date, however, Commonwealth ceased making sales of gas, but continued to transport gas for Allied.¹

Columbia did not file the report required under Virginia Code § 58.1-2628 by its due date of April 15, 1991, because it believes it should be classified as a "pipeline transmission company" under the Code. If correct, it is required to file its report of property with the Department of Taxation rather than the Commission, which it did, and the Department is charged with assessing the value of that property for local government taxing purposes.

The Public Service Taxation division of this Commission contends, on the other hand, that Columbia is actually a

1. Prior to the merger, Commonwealth was considered a pipeline distribution company, under the definitions discussed below, and filed its required annual reports with the Commission, concluding with the one due April 15, 1990. The Commission assessed Commonwealth's property in the years preceeding the merger.

"pipeline distribution company" under the Code, which means it is this Commission's duty to assess the company's property. Thus, the ultimate issue here is merely which state agency should make the property evaluation.

With the comprehensive stipulation of facts developed by the parties, that question is one of law, and it is indeed a close one, given the Code provisions on the subject. Chapter 26 of Title 58.1 of the Code deals with the subject of taxation of public service corporations. Section 58.1-2600 defines a number of terms used throughout the Chapter, among which are the following:

"Pipeline distribution company" means a corporation, other than a pipeline transmission company, which transmits, by means of a pipeline, natural gas, manufactured gas or crude petroleum and the products or by-products thereof to a purchaser for purposes of furnishing heat or light.

"Pipeline transmission company" means a corporation authorized to transmit natural gas, manufactured gas or crude petroleum and the products or by-products thereof in the public service by means of a pipeline or pipelines from one point to another when such gas or petroleum is not for sale to an ultimate consumer for purposes of furnishing heat or light.

Columbia contends, first, that it is a "pipeline transmission company" under these definitions, and, as such, it cannot be a "pipeline distribution company," because the very definition of a distribution company requires that it be a corporation "other than a pipeline transmission company...." Columbia believes that these two definitions are therefore mutually exclusive. Secondly, it argues that it is also not a

distribution company because it does not transmit gas to "a purchaser." Of course, it acknowledges that it transmits gas to Allied for the purposes of furnishing heat or light, but says that Allied is not a "purchaser" of the gas from Columbia, since it has bought this gas from other upstream suppliers, and is merely hiring Columbia to transport its property to its plant.

Examining the above definitions in isolation, it becomes difficult not to grant the merits of the company's first argument, that is, that a transmission company cannot be a distribution company because of the apparent exclusivity of the two terms as thus defined.

However, Virginia Code § 58.1-2627.1, later in the chapter, confronts us with a provision which casts considerable doubt on the above tentative conclusion. First, that Code section states, as noted earlier, that a transmission company's property is to be reported to and assessed by the Department of Taxation, while that of a distribution company is to be handled by this Commission. Then, Code § 58.1-2627.1(D) provides:

When a company qualifies as both a pipeline transmission company and a pipeline distribution company, it shall for property tax valuation purposes be considered a pipeline distribution company.

This provision seems to stand in stark contrast to the mutual exclusivity argument suggested by the two definitions from Code § 58.1-2600. That is, if a distribution company must be something "other than a pipeline transmission company" under § 58.1-2600, how can it qualify as both, as envisioned by § 58.1-2627.1(D)?

When engaged in statutory interpretation, we must give effect to all relevant provisions if possible, and we believe the only way to resolve this apparent conflict is to focus on the phrase in the latter section which provides that, if a company has such a dual nature, it shall "for property tax valuation purposes" be considered a distribution company. Thus, it appears that the general definitions found in Code § 58.1-2600 should control throughout the chapter, except with regard to the specific subject of property tax valuation. In that discrete instance, we believe the law intends that the two definitions not be mutually exclusive, so that a particular company could be found to have the characteristics of both a distribution and a transmission company. If so, then for property tax valuation purposes only (as opposed to gross receipts or special tax liability for example), such a company is to be considered solely a distribution company.

The next inquiry is whether Columbia meets either or both definitions. First, is it a pipeline transmission company? Clearly it is. The stipulation shows it is engaged in transmitting natural gas through pipelines under many situations where such gas "is not for sale to an ultimate consumer for purposes of furnishing heat or light."

A more difficult question is whether Columbia also qualifies as a distribution company, ignoring, as we have explained we must for property tax valuation purposes, the phrase in that definition reading "other than a pipeline transmission company." That is, does Columbia transmit gas by means of a pipeline "to a

purchaser for purposes of furnishing heat or light?"

Columbia, of course, argues that the word "purchaser" implies that a purchase of gas must be made from the distribution company, and that no such situation presently exists here.² We find it instructive, however, to note the difference in terminology chosen by the legislature in the concluding clauses of each of the two definitions. That is, a transmission company transmits gas which "is not for sale to an ultimate consumer," while a distribution company transmits gas "to a purchaser." Had the intention been only to establish diametrically opposed conditions, a distribution company could have been said to be a company which transmits gas which "is for sale to an ultimate consumer." Since this language was not used, we agree with the staff that the word "purchaser" does not necessarily imply a gas sales customer of the distribution company. We believe that that term was intended merely to indicate the entity which will use the gas to produce heat or light, that is, an "end-user." Such an entity does not resell the gas, does not transport it onward to a different point, but in fact consumes it for its own purposes. That is clearly the case for Allied here.

In conclusion, we find that Columbia, under the facts of this case, qualifies as both a pipeline distribution company and a pipeline transmission company. Virginia Code § 58.1-2627.1(D)

2. It is possible, as acknowledged in the stipulation, that Columbia may reinstitute actual sales service at some point in the future.

therefore mandates that, for property tax valuation purposes, it is to be considered a pipeline distribution company. Thus, it is with this Commission which its annual report should have been filed under Virginia Code § 58.1-2628(B), and it was due by April 15, 1991.

Virginia Code § 58.1-2610 fixes a penalty of \$100 per day for the late filing of such a report. It also provides, however, that the penalty may be waived for good cause. We find that, in this situation, the state of the law was such that Columbia could have reasonably concluded that its reporting obligation was to the Tax Commissioner rather than to this Commission. We therefore will waive the penalty in this case, but will direct that the company file its delinquent report promptly.

IT IS, THEREFORE, ORDERED:

(1) That Columbia Gas Transmission Corporation file the annual report of its real and tangible personal property owned on January 1, 1991, with the Commission, as required by Virginia Code § 58.1-2628, on or before October 7, 1991.

(2) Failure to file such report by such date will subject Columbia to the penalty provided in Virginia Code § 58.1-2610 for each day of delinquency after that date.

(3) That there being nothing further to be done herein, this matter is hereby dismissed.

ATTESTED COPIES of this order shall be sent to Columbia Gas Transmission Corporation, Stephen H. Watts, II, Esquire, McGuire, Woods, Battle & Boothe, One James Center, Richmond, Virginia 23219; The Honorable Mary Sue Terry, Attorney General of

Virginia, Supreme Court Building, 101 North Eighth Street, Richmond, Virginia 23219; The Honorable William Forst, Tax Commissioner, Department of Taxation, P.O. Box 6-L, Richmond, Virginia 23282; Wayne N. Smith, Esquire, Office of General Counsel; and A. Lee O'Bryan, Director, Division of Public Service Taxation.

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2 of the statute and not an administrative.

3 MR. SMITH: Those documents have been
4 filed, copied, numbered, and are associated
5 with this case.

6 COMMISSIONER HARWOOD: Good. Fine.
7 I did my homework.

8 We'll conclude with that. Thank you all.
9 We have some other cases, motor carrier.

10 MR. WATTS: Thank you for hearing us
11 this morning.

12 COMMISSIONER HARWOOD: Thank you very
13 much.

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15 NOTE: The hearing was concluded and
16 adjourned at 11:04 a.m., May 20, 1991.

17 * * * * *

VIRGINIA:

BEFORE THE STATE CORPORATION COMMISSION

COMMONWEALTH OF VIRGINIA, <u>ex rel.</u>)
)
STATE CORPORATION COMMISSION)
)
v.)
)
COLUMBIA GAS TRANSMISSION CORPORATION,)
Defendant.)

NOTICE OF APPEAL

Please take notice that the Defendant, Columbia Gas Transmission Corporation, intends to appeal the Final Order, dated August 6, 1991, in Case No. PST910001.

Respectfully submitted,

COLUMBIA GAS TRANSMISSION CORPORATION

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Counsel

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and Assistant Secretary
Columbia Gas Transmission Corporation
P.O. Box 1273
Charleston, West Virginia 25324
(304) 357-2000

Dated: August 15, 1991

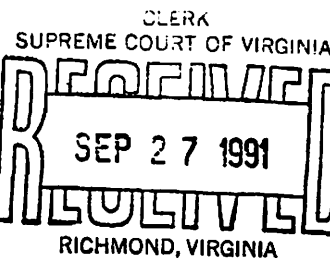
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Notice of Appeal was delivered or mailed to Wayne N. Smith, Esquire, State Corporation Commission, Jefferson Building, Richmond, Virginia 23219; The Honorable Mary Sue Terry, Attorney General of Virginia, Supreme Court Building, 101 North 8th Street, Richmond, Virginia 23219; and The Honorable William Forst, Tax Commissioner, Department of Taxation, P.O. Box 6-L, Richmond, Virginia 23282, this 15 day of August, 1991.



Stephen H. Watts, II

SUPREME COURT OF VIRGINIA



COLUMBIA GAS TRANSMISSION)
CORPORATION,)
 Appellant)
))
v.)
))
STATE CORPORATION COMMISSION,)
 Appellee)
))
)

Record No. 911456
(SCC Case No. PST910001)

ASSIGNMENT OF ERROR

Columbia Gas Transmission Corporation ("Columbia"),
Appellant, assigns error to the Final Order issued by the State
Corporation Commission (the "Commission") on August 6, 1991 in
Case No. PST910001 as follows:

In holding that Columbia is a "pipeline distribution
company" for property taxation purposes, the Commission
misconstrued Va. Code §§ 58.1-2600 and 58.1-2627.1. Under those
sections, as applied to the stipulated facts, Columbia is not a
"pipeline distribution company," but rather is a "pipeline
transmission company" only, for property taxation purposes.

Respectfully submitted,

COLUMBIA GAS TRANSMISSION CORPORATION

By Stephen H. Watts II
Of Counsel

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H. L. Snyder, Assistant General Counsel and
Assistant Secretary
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P.O. Box 1273
Charleston, West Virginia 25324
(304) 357-2705

coltaxapp.err

CERTIFICATE OF SERVICE

I hereby certify that I have mailed or hand-delivered a copy of the foregoing document to the following, this 27th day of September, 1991:

Wayne N. Smith, Associate General Counsel
State Corporation Commission
Jefferson Building, 3rd Floor
Bank and Governor Streets
P.O. Box 1197
Richmond, Virginia 23209-1197

Hon. Mary Sue Terry
Attorney General
Office of the Attorney General
101 N. Eighth Street
Richmond, Virginia 23219



Stephen H. Watts, II