

DISTRICT ENERGY IN FAIRFAX COUNTY: A LEGAL AND REGULATORY ASSESSMENT

Private Sector Energy Task Force

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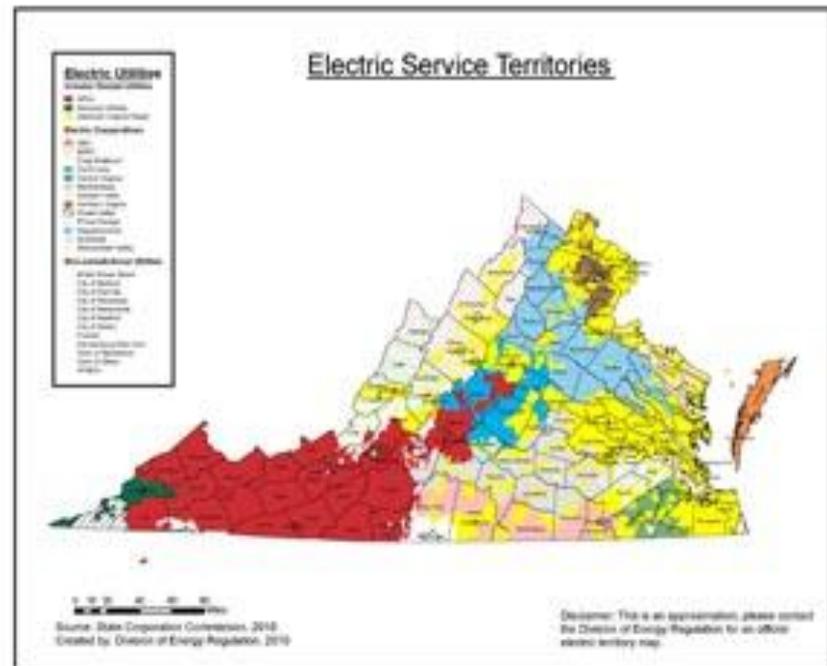
Department of Cable and Consumer Services

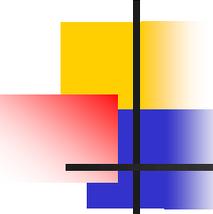
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Energy Utilities in Fairfax County

All areas of County currently served by utilities

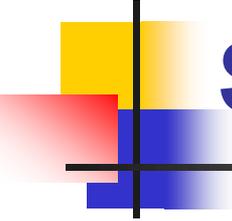
- Electric
 - Dominion Virginia
 - NOVEC
- Natural Gas
 - Washington Gas
 - Columbia Gas





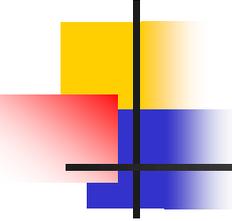
Limited County Authority

- Virginia is a “Dillon Rule” state
 - County has only those powers (1) specifically conferred; (2) necessarily implied; or (3) essential
- No local authority to adopt or amend building codes
 - State Board of Housing and Community Development adopts and amends the Uniform Statewide Building Code
 - Local code officials and inspectors must enforce the USBC as adopted by the Board
- *State regulates provision of energy services*



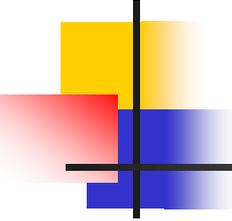
SCC is State Utility Regulator

- Virginia Constitution and Code grant State Corporation Commission broad and extensive powers to regulate and control utilities
 - SCC goal is to ensure the public receives adequate utility services at just and reasonable rates
- The Virginia Supreme Court, which hears appeals of SCC decisions, accepts SCC findings and decisions unless they are contrary to or unsupported by the evidence



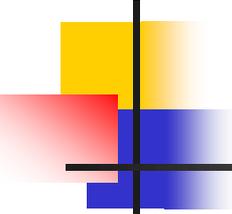
Utilities are Subject to Title 56

- Under Title 56, “public service companies” include gas, pipeline, electric light, heat, power and water supply companies
 - Public utilities are a subset of PSCs
- Several exclusions:
 - Municipal corporations or political subdivisions
 - Landlords' provision of utility service to tenants or residents when purchased from a utility



Municipal Provision of Service?

- Title 21 authorizes creation of a sanitary district to provide services for “use and benefit” of those in the district
 - Permissible services include water supply, heat, light, and power and gas systems
 - District powers include taxation, condemnation, and mandatory participation
- Use for district energy is untested



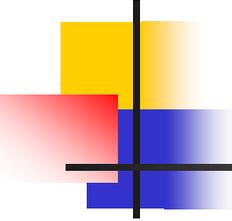
State Law Defines Public Utilities

Chapter 10: Rate and Service Quality

§ 56-232.A.1: those that “own, manage or control any plant or equipment. . . for the production, transmission, delivery, or furnishing of heat, chilled air, chilled water, light, power, or water . . . either directly or indirectly, to or for the public.”

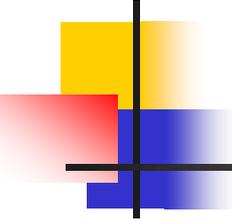
Chapter 10.1: Facilities

§ 56-265.1(b): any company that “owns or operates facilities . . . for the generation, transmission or distribution of electric energy for sale, for the production, storage, transmission, or distribution, . . . of natural or manufactured gas or geothermal resources for sale for heat, light or power, or for the furnishing of telephone service, sewerage facilities or water.”



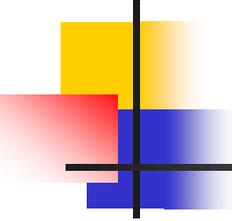
Exclusive Territories

- “Regulatory Compact” includes exclusive service territories
 - Utility agrees to serve all customers in its service area; in exchange, state restricts competition
- Chapter 10.1: “Certificate of Convenience and Necessity” required to provide service
 - SCC may not grant a certificate in utility’s territory unless applicant demonstrates that the incumbent utility is providing inadequate service



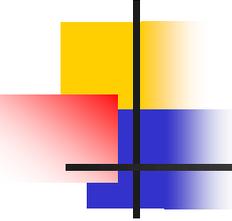
Monopoly as Property Right

- Virginia recognizes exclusivity as a valuable property right entitled to judicial protection
- SCC safeguards the integrity of certificated territories when resolving service-area disputes
 - “We intend to ensure that our decisions enforce the Code’s requirement of strong protection for the exclusive service territories of utilities in Virginia.”
Prince George Electric Cooperative, Case No. PUE-1996-00295



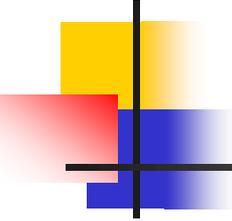
Regulation and Innovation

- *Monopoly franchise:* Exclusive service territories eliminate competitive threats that can spur innovation and enhance customer responsiveness
- *Rate regulation:* Regulated utilities do not want to jeopardize cost recovery, and so tend to focus on tried-and-true investments and strategies
- *Public interest:* Regulatory focus on “just and reasonable rates” can minimize or exclude other considerations



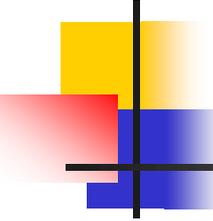
Chapter 10.1 Exclusions

- Generating and distributing electric energy exclusively for own consumption
- Furnishing geothermal resources or water to less than 50 customers
- Under certain circumstances, using a central plant to provide electric service, together with heating and cooling services, to tenants and lessees



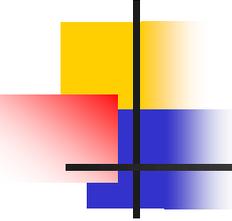
Central Plant Exclusion

- Applies only if:
 - Building or buildings located on a single tract of land undivided by a publicly-maintained road when the central plant was installed; AND
 - Owner does not charge separately or by meter for electric energy used by any tenant, except as part of a rental charge
- Regulation triggered if service provided to \geq 100 customers



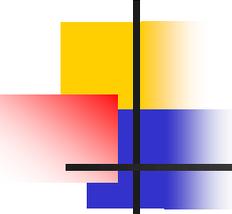
Campus Environments

- Property owner providing utility service for its own consumption not a utility
 - Service not provided “for the public”
- Property owner providing utility service for consumption of tenants or lessees not a utility when service:
 - Purchased from a regulated utility or licensed competitive provider, or
 - Self-provisioned and central plant exclusion applies



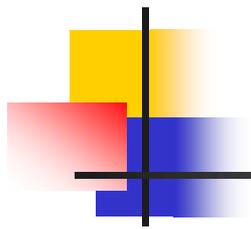
Multi-Owner/Property Sites

- Electric or natural gas service
 - Potential entrant unlikely to establish that the incumbent utilities are providing inadequate service
- Combined heat and power or co-generation
 - Regulatory barriers to retail sale of electricity, even if technically feasible
- Niches may exist for other energy services
 - Domestic hot water
 - Heating and/or cooling



Heating / Cooling

- Presumably no exclusive-territory issue
 - Only one incumbent A/C utility in the County (RELAC), with very limited service area
- Service provider subject to public utility regulation, except:
 - Chilled water A/C cooperative serving residences in less than one square mile area
 - Provision of geothermal resources to < 50 customers
- VDOT regulations allow access to and occupancy of public rights-of-way



QUESTIONS?