

99-070

**PUBLIC SERVICE COMPANIES: VIRGINIA ELECTRIC UTILITY
RESTRUCTURING ACT.**

Act's definition of "person" may encompass real estate investment trusts formed as legal entities for purpose of allowing public investment in stock issued by entities. Each entity specified in definition is "person" for purposes of Act.

The Honorable William C. Mims
Member, Senate of Virginia
August 31, 1999

You ask whether "person," as defined in § 56-576 of the *Code of Virginia*, a portion of the Virginia Electric Utility Restructuring Act¹ (the "Act"), encompasses real estate investment trusts formed as legal entities for the express purpose of allowing the public to invest in stock issued by the entities.

Section 56-576 contains definitions of specific terms used in the Act.. The term "person" is defined as "any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any municipality."²

You advise that there are conflicting views regarding apparent limitations imposed on the entities preceding the phrase "or other private legal entity" in the Act's definition of "person." You also ask whether the entities listed would be considered a "person" in view of the "private legal entity" specification in the Act's definition.

You indicate that an interpretation of the Act's definition of "person" is crucial to enable the property management sector of the Virginia real estate industry to continue the unrestricted practice of supplying electric energy to managed buildings and to allow the industry to participate fully in the restructuring of electric utilities in the Commonwealth.

The Supreme Court of Virginia has held that, "[w]hile in the construction of statutes the constant endeavor of the courts is to ascertain and give effect to the intention of the legislature, that intention must be gathered from the words used, unless a literal construction would involve a manifest absurdity."³ "[T]he plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction."⁴ Statutes should not be construed to frustrate their purpose.⁵

To conclude that the phrase "or other private legal entity" imposes a limitation upon the entities preceding the phrase would, in my opinion, frustrate the purpose of the Act. The central purpose of the Act is to eventually permit all retail electricity customers in the Commonwealth to purchase electric energy from the provider of their choice.⁶ Transmission and distribution of electric energy will remain regulated services, with transmission regulated principally by the Federal Energy Regulatory Commission and distribution by the State Corporation Commission.⁷ Additionally, by the year 2001, electric utilities are required to join or establish regional transmission entities to manage and control their

transmission assets.⁸ The apparent intent of the phrase "or other private legal entity" is to distinguish privately owned and operated entities from "the Commonwealth or any municipality."⁹

This is a matter of first impression. A plain reading of the Act's definition of "person" does not imply that the General Assembly intended the phrase "or other private legal entity" to impose a limitation on the preceding entities, which clearly are private entities that may be formed to accomplish the purposes of the Act. The phrase "or other private legal entity," therefore, is not a limitation on such private entities but, rather, is intended to expand the definition of "person" to include all possible private legal entities that may be formed to supply electric energy to retail customers in the Commonwealth.

Therefore, it is my opinion that the term "person" in § 56-576 may encompass real estate investment trusts formed as legal entities for the express purpose of allowing the public to invest in stock issued by the entities. It is also my opinion that each entity specified in the definition is a "person" for purposes of the Act.

¹Sections 56-576 to 56-595.

²Section 56-576.

³Watkins v. Hall, 161 Va. 924, 930, 172 S.E. 445, 447 (1934).

⁴Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

⁵See 1982-1983 Op. Va. Att'y Gen. 309, 311 (illogical result frustrates purpose of statute).

⁶See § 56-577(A)(2).

⁷See §§ 56-578, 56-580.

⁸See §§ 56-577(A)(1), 56-579(A).

⁹Section 56-576 (defining "person").