SECTION FIVE: ANTITRUST

Proposed Legislative Language:

SEC. 5  APPLICABILITY OF ANTITRUST LAWS TO TVA.

Notwithstanding any other provision of law, TVA shall be subject to all antitrust laws of the United States, including but not limited to the Sherman Antitrust Act (15 U.S.C. §§ 1 et seq.), the Clayton Act (15 U.S.C. §§ 12 et seq.), and the Federal Trade Commission Act (15 U.S.C. §§ 41 et seq.), and amendments thereto, including all injunctive remedies and criminal penalties applicable thereunder, but neither TVA nor its officers, attorneys, employees, agents, or representatives shall be held liable for civil damages, including treble damages, or for attorneys' fees.

Background:

The broad purpose of the antitrust laws is to deter anticompetitive conduct, to outlaw illegal monopolies, and to provide a vehicle for recovery for economic injury resulting from antitrust violations. Traditionally, electric utilities in the United States were lawful, government-regulated monopolies with clearly defined service territories. There was little competition among electric utilities and, therefore, antitrust violations were not a significant concern in the electric industry. However, with the rise of electricity competition in the 1990s, the importance of antitrust issues in the electric industry has grown exponentially.

Rationale:

Under existing law, TVA is not subject to the federal antitrust laws. If the Tennessee Valley is opened to competition, however, TVA must be required to conform its behavior to the antitrust laws. TVA has enormous market power and it would be a terrible mistake to dismantle the TVA Fence without offering TVA customers and competitors some protection from potential TVA antitrust violations. Therefore, Section 5 clearly provides that TVA is subject to the full body of federal antitrust laws.

Nevertheless, all stakeholders in the Tennessee Valley agree that because TVA is a governmental entity with no shareholders, TVA should not be subject to civil damages liability for antitrust violations. In the event of a large damage award against TVA, any damages payable by TVA would ultimately be borne by ratepayers or by taxpayers. Accordingly, Section 5 exempts TVA from liability for damages and attorneys' fees to the same extent that other governmental entities are exempt from such penalties.
TVA Watch position:

TVA Watch supports subjecting TVA to the full panoply of federal antitrust regulation, including liability for civil damages, treble damages, and attorneys' fees. TVA Watch insists that subjecting TVA to the antitrust laws to the same extent that such laws apply to IOUs is a prerequisite to a "level playing field" in the bulk power market. However, TVA differs from IOUs and traditional public utilities in ways which justify treating TVA differently under the antitrust laws.

If an IOU violates the antitrust laws, any resultant damages award is ultimately borne by the shareholders to whom the IOU's Board is accountable. Because an IOU's decisionmakers are accountable to its investors, it is thought that the investors' financial interest in avoiding damages liability for antitrust violations will deter such violations. However, because publicly-owned electric utilities have no shareholders, publicly owned utilities are generally exempt from damages liability. Subjecting TVA, which has no shareholders, to civil damages liability for antitrust violations will not deter TVA from committing such violations because any damages award would simply be passed through to TVA's ratepayers or to taxpayers (in the form of inability, on the part of TVA, to meet its obligations to the U.S. Treasury). Therefore, the theory behind the availability of monetary relief for violations of the antitrust laws does not apply to TVA with the same force that it applies to IOUs. For these reasons and for the protection of TVA ratepayers, TVA's liability for antitrust violations should be limited to injunctive relief and criminal penalties.
SECTION SIX: TVA REGULATION OF DISTRIBUTORS

Proposed Legislative Language:

SEC. 6 REGULATION OF DISTRIBUTORS THAT PURCHASE ELECTRIC ENERGY FROM TVA.

(a) REPEAL OF TVA REGULATION OF DISTRIBUTORS.-- Notwithstanding any other provision of law or contract, TVA shall not be authorized to regulate, by means of rules, contract provisions, resale rate schedules, contract termination rights, or any other method, any rates, terms, or conditions imposed on the resale or distribution of electric energy by a distributor that purchases electric energy from TVA. Any regulatory authority currently exercised by TVA over any distributor shall be exercised by the governing body of such distributor.

(b) REMOVAL OF PURPA RATEMAKING AUTHORITY.-- Section 3(17) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. § 2602(17)) is amended by striking “, and in the case of an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority”.

Background:

In most states, municipal electric systems are regulated by local governing bodies or by state public service commissions. In contrast, pursuant to the TVA Act, distributors in the Tennessee Valley are regulated by TVA. Section 10 of the TVA Act authorizes TVA to include in its contracts with distributors any rules and regulations or terms and conditions, “including resale rate schedules,” that TVA deems necessary. 16 U.S.C. § 831i. Section 12 of the TVA Act also mandates the inclusion of certain language in all of TVA’s contracts with distributors, including language permitting TVA to void its contract with a particular distributor if TVA finds that such distributor’s rates are discriminatory. See 16 U.S.C. § 831k. In addition, the Public Utility Regulatory Policies Act of 1978 (“PURPA”) explicitly defines TVA as a “State Regulatory Authority.” See 16 U.S.C. § 2602(17).

In practice, TVA regulation of distributors means that TVA controls distributors’ business relationships with their retail customers. For example, it is TVA – not distributors – that determines which industrial and/or commercial customers are eligible for certain bulk rate discounts. Interestingly, the rates TVA charges its own direct-serve retail customers are significantly lower than the rates TVA requires distributors to charge even their largest retail customers.
Rationale:

In a competitive electricity marketplace, regulation of retail distributors by a wholesale supplier simply does not make sense. Therefore, Section 6(a) expressly prohibits TVA from directly or indirectly regulating distributors in the Valley, and Section 6(b) revises PURPA so as to remove TVA from that statute's definition of the term "State regulatory authority." TVA, KUB, and MLGW support legislation terminating TVA regulation of distributors on the date of enactment.

TVPPA position:

TVPPA supports permitting distributors to opt out of regulation by TVA in favor of regulation by their local governing body. Some TVPPA members are concerned that, in the absence of TVA control of their relationships with their customers, funds from their power programs would be diverted to other programs funded by their local governing bodies. Thus, TVPPA generally supports an opt-out approach to TVA regulation of distributors such that distributors that would prefer to be regulated by TVA can avoid, simply by not opting-out of TVA regulation, regulation by their local governing bodies. For reasons of consistency and administrative ease, however, TVA regulation of distributors should simply terminate on the date of enactment of federal electric restructuring legislation.
SECTION SEVEN: TVA POWER SALES

Proposed Legislative Language:

SEC. 7    POWER SALES BY TVA

(a) Nothing in this title shall be construed to modify or alter the existing obligations of TVA under the Tennessee Valley Authority Act (16 U.S.C. § 831 et seq.) to give preference in the sale of power to States, counties, municipalities, and cooperative organizations of citizens or farmers within the Tennessee Valley.

(b) No person or entity shall duplicate the facilities of a distributor for the purpose of serving a retail customer. TVA shall not deliver power to retail customers without the consent of the distributor that would otherwise provide distribution service to such customer, provided that TVA may continue to make those retail sales it was making on the date of enactment, provided that distributors retain all their rights to pursue any legal claims they may have that a retail sale being made by TVA on the date of enactment violated applicable provisions of law or contracts.

Background:

Under existing law and current market conditions, TVA is primarily a wholesaler of power. The vast majority of TVA's power is sold to distributors for resale to retail customers in the Tennessee Valley. However, TVA has a number of direct-serve retail customers, most of which are large end-use industrial customers that consume the power they purchase in the course of their own business operations. In contrast to the distributors, each of which is a non-profit, publicly-owned electric distribution system, most of TVA's direct-serve customers are for-profit entities.

Under the TVA Act, TVA's non-profit customers have "preference" in the TVA power supply. See 16 U.S.C. § 831h. Section 10 of the TVA Act provides that TVA "shall give preference [in the sale of power] to States, counties, municipalities, and cooperative organizations of citizens or farmers, not organized or doing business for profit, but primarily for the purpose of supplying electricity to its own citizens or members." Id. (emphasis added). Thus, the Act authorizes TVA to sell to for-profit entities only such power that is in excess of what is required to meet the needs of distributors. In this way, the TVA Act limits, albeit incompletely and indirectly, TVA's ability to sell power directly to retail customers.

6 See Section 1(a) (defining the term "distributor" within the meaning of the Act).

1708

DOE003-0352

Obtained and made public by the Natural Resources Defense Council, March/April 2002
TVA is further restricted from selling at retail in two other ways as well. First, the “industrial service policies” in TVA’s contracts with distributors expressly limit the extent of TVA’s retail sales inside the Tennessee Valley. Second, the TVA Fence prevents TVA from selling power at retail outside the Valley because it prohibits all TVA power sales outside the Fence. This blanket prohibition includes both retail and wholesale power sales.

Rationale:

TVA should remain, as it is today, primarily a wholesaler of power. TVA’s size, in terms of its generation capacity, is already virtually unparalleled, and at a time when there is growing support for the proposition that the federal government should not be in the power business at all, it would be unwise to permit TVA to expand its power program to include new retail customers. Therefore, TVA should not be permitted to acquire new direct-serve retail customers in the Valley without the consent of the distributor that would otherwise serve the retail customer in question.

Under Section 7, TVA would continue to be primarily a wholesaler of power. Section 7(b) permits TVA to continue to sell power to its existing retail customers but prohibits TVA from selling power to retail customers in a distributor’s service area unless the distributor consents to the sale. Section 7(b) also clarifies that the language grandfathering existing TVA retail customers does not preclude distributors from arguing that particular retail sales violate the industrial service policies (“ISPs”) in their existing TVA contracts. The lawfulness of certain recent TVA retail sales arguably violates the provisions of the ISPs. The clarifying language in Section 7(b) is therefore necessary to preserve distributors’ legal rights to challenge the lawfulness of such sales. Section 7(b) also expressly prohibits the duplication of existing distribution facilities by any “person or entity.” This prohibition is intended to preempt any attempts by TVA to circumvent the purpose of Section 7 by “cherrypicking” prime retail customers through the use of intermediaries.

Section 7(a) preserves the power sales preference afforded to Tennessee Valley distributors under existing law. To insure the reliability of distributors’ service to their own customers, it will be necessary to preserve their existing preference in the TVA power supply, at least during the early years of the transition to competition. During those early years, most distributors probably will not have the option of purchasing one hundred percent of their power from non-TVA sources because other suppliers will be unlikely to have sufficient excess power to meet distributors’ needs. Therefore, preservation of the existing preference is necessary to ensure the adequacy of the power supply available to Tennessee Valley consumers during the transition.
TVA/TVPPA position:

TVA and TVPPA support legislation preserving the distributors' existing power preference. TVA and TVPPA also favor permitting TVA to continue to serve its existing retail customers and retail customers within the service area of a distributor that affirmatively consents to the sale. However, TVA and TVPPA would also permit TVA to compete for retail customers with any distributor that purchases less than 50 percent of its power from TVA. This proposal is grossly anti-competitive and inexplicably punitive. No discernible public policy would be served by a law that penalizes the same customers it is intended to benefit and protect: those exercising their right to choose their own power supplier. In an era of wholesale competition and customer choice, the threat of having to compete with TVA for retail customers should not be a factor in a distributor's choice of wholesale power suppliers. Under the TVA/TVPPA proposal, however, that threat would be clear and present. Because few (if any) distributors could afford to compete with TVA for retail customers, this proposal would essentially guarantee TVA at least a fifty-percent share of the wholesale market in the Tennessee Valley, thereby disadvantaging TVA customers and competitors alike.
SECTION EIGHT: EXISTING CONTRACTS WITH DISTRIBUTORS

Proposed Legislative Language:

SEC. 8 EXISTING WHOLESALE POWER CONTRACTS.

(a) DISTRIBUTOR CONTRACT TERMINATION OR REDUCTION
RIGHT.--- TVA shall allow any distributor that had a contract to purchase
wholesale electric energy from TVA in effect on the date of enactment of this title to
terminate its contract or reduce the quantity of its wholesale power requirements
thereunder by or to either a specific amount of power or a percentage of its
requirements, upon two years' notice, which notice may be given at any time and
from time to time from the date of enactment.

(b) RENEGOTIATION OF CERTAIN WHOLESALE POWER
CONTRACTS.--- If a distributor elects to reduce the quantity of its purchases from
TVA pursuant to subsection (a) of this Section 8 but not to terminate its contract,
such distributor and TVA shall, within one year following the date of such election,
re negociate the remaining terms of their existing contract under which TVA will
continue to provide wholesale power to the distributor, provided that such contract
shall preserve the distributor's right under subsection (a) to elect further reduction(s).
If the distributor and TVA are not able to reach agreement on such remaining terms
of their contract within the one-year period, either the distributor or TVA may
submit the matter to the Commission which shall have jurisdiction to and shall
establish such terms.

Background:

Every distributor has an existing long-term power sales contract with TVA. Perhaps because they were entered into between parties with radically disparate bargaining power at a time when the possibility that TVA's monopoly in the Tennessee Valley might someday come to an end was extremely remote, the terms and conditions of TVA's contracts with individual distributors are remarkably uniform. One of the few individualized aspects of these contracts is the contract term provision. The termination date of each varies in accordance with its effective date, which varies from distributor to distributor depending on precisely when the contract was signed. In general, however, with respect to contract term, there are three types of contracts: (1) the "5 + 5"; (2) the 10-year rolling term; and (3) the 15-year rolling term.

Most of TVA's contracts with distributors fall into the "5 + 5" category. Distributors with a 5 + 5 agreement can terminate their contracts on five years' notice but cannot give notice during the first five years of the contract term. Thus, a 5 + 5 agreement signed in 1997 will continue in effect through at least 2007 and
will continue in effect indefinitely unless or until the distributor elects its option to terminate the agreement.

A substantial minority of distributors, including KUB and MLGW, have a long-term TVA contract with a ten-year rolling term. These contracts were typically entered into in the early 1980s and are terminable only on ten years' notice. Since none of the distributors has given notice under one of these agreements, all of these contracts will remain in effect (absent an Act of Congress) through at least 2010. Only a few existing distributor contracts have a 15-year rolling term. These agreements are similar to those with a ten-year rolling term but are terminable only on fifteen years' notice.

Due to the unusually long notice of termination provisions contained therein, distributors' existing contracts with TVA are a formidable obstacle to the prompt implementation of electricity competition in the Tennessee Valley.

Rationale:

Section 8 guarantees that distributors who so choose will be able to begin purchasing power from other suppliers within two years of enactment (or sooner in the event of a negotiated arrangement with TVA). Section 8(a) expressly gives distributors the right to terminate their existing contracts, or to reduce purchases thereunder by a specific quantity or percentage, on two years' notice.

Absent modification of the existing contracts, no distributor would be able to begin purchasing power from other suppliers immediately upon enactment. Due to pre-existing contractual obligations, unless Congress modifies the existing distributor contracts (or TVA voluntarily agrees to shorten the contract terms), the benefits of wholesale electricity competition will not be realized in the Tennessee Valley for at least seven years. To accelerate the process of opening the Valley to competition, some have proposed that Congress require TVA to renegotiate its existing contracts with distributors. The right to renegotiate without the right to terminate, however, is no right at all.

Distributors lack the bargaining power necessary to bring TVA to the bargaining table in a serious manner. The exceedingly long notice provisions and the perpetual nature of the current contracts give TVA too much bargaining power. TVA is the largest electric utility in the United States, and in the current monopolistic environment, even MLGW, TVA's largest customer, can bring little pressure to bear on TVA to obtain meaningful concessions during the course of renegotiations. Distributors such as KUB and MLGW have, in fact, been engaged in contract renegotiations with TVA for four long years, with few, if any, results.
Some have argued that giving distributors a statutory right to terminate their contracts early would violate the sanctity of private contracts. However, congressional modification of the term of the existing contracts would not constitute unconstitutional interference with private contracts because one of the parties to the contracts in question is itself an agency of the federal government. Surely the federal government has the power to modify its own contracts where the other parties to the contracts in question do not object to the modification. In fact, where Congress is able, through a permissible contract modification that is wholly consistent with the public as well as private interests, to further the policies of the federal government, Congress should do so.

Only a right of contract termination exercisable in the short term will give distributors the bargaining power they need to successfully renegotiate their contracts with TVA. Therefore, Section 8 provides that distributors may, on two years’ notice to TVA: (1) terminate their existing contracts; or (2) reduce purchases thereunder for the purpose of purchasing power from other suppliers. Section 8(b) recognizes that the contracts of distributors electing the second option may require adjustments to contractual provisions other than the contract quantity provision. Under Section 8(b), TVA has one year within which to renegotiate its contracts with distributors electing to purchase a portion of their power from sources other than TVA. In the event that TVA and distributors electing to reduce contract purchases are unable to reach agreement within the one-year period, disputes will be submitted to FERC for final resolution.

**TVA/TVPPA position:**

TVA and TVPPA have agreed to termination of existing contracts on three years’ notice, but only after a mandatory one-year contract renegotiations period. Their position properly recognizes the need to shorten the notice of termination period in distributors’ existing TVA contracts. However, a three-year notice of termination period is neither necessary to protect TVA nor sufficient to serve the purpose of the shortened notice period. First, a three-year notice period is simply not sufficiently short to induce TVA to make the renegotiations period productive, especially if distributors are permitted to give notice only after a one-year waiting period. Second, given the fluidity of today’s wholesale market, TVA would not need three years to re-market the power no longer purchased by departing distributors. No single distributor accounts for much more than 10% of TVA’s total load, and none of the distributors is expected to leave the TVA system altogether. Thus, two years should be more than sufficient for TVA to find another buyer or buyers for the small amount of power made available as a result of distributors’ choosing to purchase a portion of their requirements from another supplier.
SECTION NINE: TVA STRANDED COSTS

Proposed Legislative Language:

SEC. 9 RECOVERY OF STRANDED COSTS.

TVA may recover any wholesale stranded costs that may arise from the exercise of rights by a distributor pursuant to Section 8 of this title to the extent authorized by the Commission based on application of the same rules and principles the Commission applies to wholesale stranded cost recovery by other electric utilities within its jurisdiction, provided that TVA shall not be authorized to recover from any distributor any wholesale stranded costs related to loss of sales or revenues by TVA, or its expectation of continuing to sell electric energy, for any period after September 30, 2007. Any stranded cost recovery charge authorized by the Commission to be assessed by TVA shall be unbundled from the otherwise applicable rates and charges to such customer and separately stated on the bill of such customer. TVA shall not recover wholesale stranded costs from any customer through any other rate, charge, or mechanism.

Background:

FERC Order No. 888 was designed "to remove impediments to competition in the wholesale bulk power marketplace and to bring more efficient, lower cost power to the Nation's electricity consumers." Order No. 888 at 31,634. In Order No. 888, FERC: (1) required all public utilities that own or operate interstate transmission facilities to file open access non-discriminatory transmission tariffs; and (2) authorized public utilities and transmitting utilities to seek recovery of legitimate, prudent, and verifiable costs "stranded" as a result of the transition to wholesale competition in the electric industry. Id. at 31,636.

FERC recognized that its open access rule would give utilities' historical wholesale requirements customers "greatly enhanced opportunities to reach new suppliers." Id. at 31,785. During the course of the Order No. 888 rulemaking proceedings, FERC noted that the electric industry had invested billions of dollars in assets and contracts that might become uneconomic as a result of the transition to a competitive wholesale power market. See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, FERC Stats. & Regs. ¶ 32,514 at 33,101 (Notice of Proposed Rulemaking). FERC observed that such costs could potentially become "stranded" unless utilities were given an opportunity to recover them from the departing customers or from other customers. Id. FERC acknowledged that there had always been some risk that utilities might lose customers. FERC also recognized, however, that that risk had been greatly increased by "significant statutory, regulatory, technological, and structural changes, including [Order No. 888], that utilities may not have reasonably foreseen.
at the time their investments were made." Id. On the basis of these findings, FERC concluded that "equity requires that utilities have an opportunity to recover legitimate and verifiable stranded costs associated with the development of competitive wholesale [electric] markets." Id.

In Order Number 888, FERC set forth the following formula for calculating the stranded cost obligation ("SCO") of a departing generation customer: 

\[
SCO = (\text{Revenue Stream Estimate} - \text{Competitive Market Value Estimate}) \times \text{Length of Obligation.}
\]

See Order No. 888 at 31,839. In addition to setting forth the applicable formula, FERC also defined each of the formula's components and made both its application and the collection of stranded costs subject to a number of conditions. See Order No. 888 at 31,839-40; Order No. 888-A at 30,425. Each of the variables discussed is discussed in more detail below, but calculation of a departing customer's stranded cost obligation under Order No. 888 is essentially a two-step process.

The first step entails determining the average annual stranded cost occasioned by a particular customer's departure, a value which is represented by (RSE - CMVE) in the calculus. Average annual stranded cost is arrived at by subtracting the average annual competitive market value of the power no longer taken by the departing customer (CMVE) from the average annual revenues that the customer would have paid had it remained a generation customer of the utility (RSE). See Order No. 888 at 31,839. The second step involves multiplying the average annual stranded cost by "L," which represents the length of the period over which the utility could reasonably have expected to continue to serve the departing customer had the contract not been subject to early termination pursuant to Order No. 888 (the "reasonable expectation period"). See Order No. 888-A at 30,425 n.737.

**Revenue Stream Estimate (RSE)**

The revenue stream estimate is the approximate amount of generation-related revenues that a utility could have expected to receive from the departing customer on an annual basis. "Generation-related revenues" are the portion of the customer's rates attributable to the selling utility's generation costs. Order No. 888 required public utilities to "unbundle" their rates so as to state the generation, transmission, and other components thereof separately. Under Order No. 888, the value of RSE is equal to the average annual revenues from the departing generation customer over the three years prior to the customer's departure, less the average transmission-related revenues that the utility would have received from that customer over the same three-year period. See Order No. 888 at 31,839. However, if the customer's rates or contract demand amounts changed during the three-year period prior to the termination of the existing requirements contract, then RSE is calculated using the most recent twelve-month period of customer revenue. See Order No. 888 at 31,840.
**Competitive Market Value Estimate (CMVE)**

CMVE can be determined in two ways, and the customer has the option of choosing which method of calculation is used. See Order No. 888 at 31,839. One option involves the utility estimating, through performance of a market analysis, the average annual revenues it can expect to receive during the reasonable expectation period (represented by “L” in the calculus) by selling the released capacity and energy. Id. The second option consists of using the average annual cost to the customer, as set forth in the customer’s contract with a new supplier, of replacement capacity and associated energy. Id. This second option is only available to a customer whose contract with a new supplier either runs concurrent with “L” or contains rates that do not fluctuate over the duration of the contract. See Order No. 888 at 31,840. In addition, Order No. 888 requires a customer electing Option Two to demonstrate that the new contract is for service equivalent to the released capacity and to identify the rates to be paid for the replacement service. Id.

**Length of Obligation (L)**

Length of Obligation, or “L,” refers to the period of time the utility could reasonably have expected to continue to serve the departing customer. See Order No. 888 at 31,839. In Order No. 888, FERC rejected a “one-size-fits-all approach” and declined to establish absolute limits or presumptions regarding what period of time qualifies as “reasonable.” See Order No. 888 at 31,839. However, the fact that a customer had a contractual obligation to incur costs for a definite time period would be strong evidence that a utility had a reasonable expectation of continuing to serve that customer for the contractual period. See Order No. 888-A at 30,435.

**Conditions**

As noted above, in Order No. 888, FERC made both application of the formula and collection of stranded costs subject to various conditions. See Order No. 888 at 31,840. For example, Order No. 888 establishes a “cap” on stranded cost recovery. Id. The quantity RSE minus CMVE cannot exceed the average annual contribution to “fixed power supply costs,” which FERC defines as “RSE less variable costs,” that would have been made by the departing customer but for its departure. Id.

In addition, in Orders Nos. 888 and 888-A, FERC declined to adopt a prescribed method or term for repayment of stranded costs, instead determining that while these issues should be resolved through negotiations between the parties, the method and term of repayment are “ultimately left to the customer’s discretion.” Id. (listing various payment options, including “a lump-sum payment, an amortization of a lump-sum payment over a reasonable period of time, or a surcharge on the customer’s transmission rate”); see also Order No. 888-A at 30,435.
(noting that “the period of reasonable expectation, L, is unrelated to the repayment period”).

The departing customer may also, at its sole discretion, choose to market or broker the released capacity and associated energy, and may elect to remain a requirements customer for the duration of L.\footnote{Under Order No. 888, utilities are not entitled to recover stranded costs from customers who continue as customers for the duration of L.} To ensure that customers have the necessary information when deciding whether to market or broker released capacity, Order No. 888 requires utilities requesting stranded cost recovery to indicate the amount of released capacity and associated energy used in their calculations of lost revenues.

The formula discussed above is the embodiment of FERC's determination that stranded cost recovery should approximate, as closely as possible without sacrificing efficiency, the revenues lost by a utility when it loses a particular generation customer as a result of the transition to competition. In Order Number 888, FERC declared the formula it adopted therein to be “the fairest and most efficient way to balance the competing interests of those involved.” Order No. 888 at 31,839; see also Order No. 888-A at 30,425 (characterizing the revenues lost approach as the “fairest and most efficient way to make this determination during the transition to a competitive wholesale bulk power market”). FERC further indicated that the SCO formula was intended to balance a number of competing interests and to satisfy several FERC “goals,” including the following:

1. ensuring full recovery of legitimate, prudent and verifiable stranded costs;
2. requiring the utility to mitigate stranded costs;
3. providing certainty for departing generation customers; and
4. creating incentives for the parties to renegotiate their existing requirements contracts or otherwise settle stranded cost claims without resort to litigation.

\textit{See} Order No. 888 at 31,840.

In addition, FERC elected to adopt a formula that employs present values, rather than a forward-looking approach, with a view toward efficiency and administrative ease. \textit{See} Order No. 888-A at 30,428 (“[W]e believe that the use of present revenues as the basis for calculating stranded cost appropriately balances precision and efficiency for what is fundamentally a transition period policy.”). In FERC's opinion, the use of present revenues in the calculus is superior to other methods because the use of present revenues: (1) eliminates disputes over estimates...
of future revenues, thereby providing certainty to the calculation; and (2) eliminates the need for a detailed listing and litigation of includable costs. See Order No 888-A at 30,427. In support of its decision to rely on present revenues in calculating stranded costs, FERC noted that a formula in which RSE is based on estimates of future revenues would "engender countless disputes . . . with little, if any, added accuracy." Id. FERC further observed that the use of present values is preferable to estimates of future revenues because the fact that the rates which produce present revenues have been approved by regulators indicates that the costs included in such rates are "prudent, legitimate and verifiable." Id.

Rationale:

Recognizing that some of TVA's costs may become stranded as a result of the implementation of wholesale electricity competition in the Tennessee Valley, Section 9 gives TVA the right to recover any stranded costs caused by a distributor's election to terminate its contract early or to reduce purchases thereunder. Section 9 further directs FERC to use the Order No. 888 methodology (i.e., "the same rules and principles the Commission applies to wholesale stranded cost recovery by other electric utilities within its jurisdiction") for TVA's stranded costs. In addition, because TVA has privately agreed not to attempt to recover stranded costs from distributors after September 30, 2007 (the end of TVA's Ten-Year Business Plan), Section 9 makes it clear that TVA may not recover stranded costs for any period beyond that date. In other words, TVA has no reasonable expectation of recovering such costs beyond September 30, 2007.

TVA/TVPPA position:

TVA and TVPPA have proposed legislative language relating to TVA's entitlement to recover "stranded costs." TVA and TVPPA also agree that TVA may not recover stranded costs beyond September 30, 2007. Unlike KUB and MLGW, however, TVA and TVPPA do not support use of the Order No. 888 methodology for calculating TVA's stranded costs. Instead, TVA and TVPPA support giving TVA a broad, amorphous right to recover "all of the TVA power system investments made as of the effective date . . . which may become economically stranded and unrecoverable as a result of TVA's serving less than all requirements of all distributors and retail loads served directly by TVA in the TVA service area through September 30, 2007, due to wholesale and retail competition or to contract renegotiation or early contract termination." See TVA/TVPPA Joint Draft, TVA Power System Provisions at § 004 (Sept. 20, 1999). This language fails to clearly define the concept of stranded costs, and the TVA/TVPPA proposal conspicuously avoids prescribing the proper methodology for calculating TVA's stranded costs.

The TVA/TVPPA proposal seemingly but opaque gives FERC ultimate jurisdiction to determine TVA's stranded costs; the proposal makes reference to "an order of the Commission." Id. at § 004(c). However, the TVA/TVPPA proposal is
not at all consistent with FERC's existing stranded costs rules and policies. For example, the TVA/TVPPA proposal directs TVA to "complete [stranded costs] negotiations with distributors [within six months of enactment] and make a good faith attempt to reach agreement for recovery by TVA and distributors for their respective costs for investments which may be economically stranded and unrecoverable as a result of wholesale or retail competition" in the TVA service area." Id. at § 004(d). The proposal further provides that "TVA and distributors shall submit jointly, if they disagree, then submit separately, an initial stranded investment recovery plan to the Commission for review and make [sic] a determination to either approve, reject, or modify the plan and issue an order setting forth the approved plan." As a threshold matter, it is unrealistic to expect that 160 parties (TVA and the 159 distributors) will be able to reach a negotiated agreement regarding stranded costs in a mere six months; FERC stranded cost proceedings between two parties can last several years. More importantly, however, the TVA/TVPPA proposal's very suggestion of a joint, aggregate plan for systemwide stranded cost recovery is patently inconsistent with Order No. 888's customer-specific "direct assignment approach" to wholesale stranded cost recovery.

In Order No. 888, FERC explained its reasons for opting to assign stranded costs directly to departing customers, as opposed to employing a more broad-based approach. See Order No. 888 at 31,795-803. In Order No. 888, the Commission observed that its final stranded costs rule reflected the Commission's judgment that "it is appropriate that the departing generation customer, and not the remaining generation or transmission customers (or shareholders), bear its fair share of the legitimate and prudent obligations that the utility undertook on that customer's behalf." Id. at 31,798. The Commission further observed that it had "carefully weighed" the arguments in favor of a direct assignment approach against the arguments supporting "a more broad-based approach, such as spreading stranded costs," and that it had concluded that "for both legal and policy reasons," direct assignment was the preferable approach. Id.

Among the reasons supporting the Commission's decision to incorporate a direct assignment approach to stranded costs into its final rule was the fact that such an approach is consistent with "the well-established principle of cost causation, namely, that the party who has caused a cost to be incurred should pay it." Id. The Commission noted that a broad-based approach would violate the cost causation principle "by shifting costs to customers . . . that had no responsibility for standing the costs in the first place." Id. Another of the Commission's reasons for preferring a direct assignment approach was that direct assignment, in the Commission's view, would yield a more accurate determination of a utility's stranded costs than a

---

8 Of course, the issue of retail stranded costs is an issue best left to resolution by individual states in the Tennessee Valley.
"one-time, up-front estimate of stranded costs." Id. The Commission specifically rejected an "up-front" broad-based transmission surcharge on the grounds that such an approach "would charge customers for costs before the costs are incurred (i.e., before customers have even decided to leave the utility's generation system) and could charge for costs that may never be incurred (e.g., some customers may decide to stay on the utility's system as requirements customers)." Id. Finally, the Commission noted that adopting a direct assignment approach would avoid creating an incentive that utilities might otherwise have, under a broad-based stranded cost regime, "to try to recover the costs of all of its uneconomic assets whether or not they were prudently incurred." Id. at 31,799.

The direct assignment approach specifically sought to avoid cost-shifting among customers, yet TVA/TVPPA's proposed stranded costs language expressly authorizes cost-shifting among customers. See TVA/TVPPA Joint Proposal at § 4(d). Specifically, the TVA/TVPPA proposal provides that "in the event that any stranded investment recovery charge assessed by TVA . . . is not collectable as a result of . . . bankruptcy . . . or other inability to recover such charges after good faith efforts to do so, the total amount of the uncollected sum plus the amounts of charges which would otherwise have been charged to said customer . . . shall be reallocated among, charged to, and recovered from all customers of TVA and distributors in the same proportion as the total stranded investment recovery charges assessed by TVA are to be charged to said customers." This provision is patently inconsistent with Order No. 888 in that it would require TVA customers to do more than pay their fair share of stranded costs; in fact, it could be construed as requiring TVA customers to shoulder the burden of TVA's debt alone. Some of the responsibility for preparing TVA for the competitive era, however, must lie with TVA. Order No. 888 does not permit investor-owned utilities simply to apportion their debt among their customers on a pro rata basis. Instead, as explained above, it authorizes public utilities to recover, on a case-by-case basis, from individual customers taking advantage of competitive market opportunities, the costs actually stranded as a result of a particular customer's departure. In fairness, TVA deserves no more than this.

As illustrated by the foregoing, the TVA/TVPPA proposal represents a complete departure from the stranded cost recovery rules and procedures established by FERC in Order No. 888. FERC has already struggled mightily with this subject as to all public utilities under its jurisdiction. During the course of the Order No. 888 rulemaking proceeding, which lasted several years, FERC received literally tens of thousands of pages of commentary from all segments of the industry, consumers, and state and federal agencies. There is no sound reason for departing from the Order No. 888 mechanism for stranded cost recovery as to TVA and to do so would likely entail further contentious administrative and court proceedings and ground rules for TVA that are incompatible with other utility systems and competitive electric markets generally.
TVA argues that application of the Order No. 888 methodology to TVA's stranded costs is not appropriate. In particular, TVA argues that Order No. 888 was developed to address the stranded costs of utilities with a mix of retail and wholesale customers and that the Order No. 888 formula is therefore ill-suited for application to TVA, which is primarily a wholesaler of power. On the contrary, however, when detailing the benefits of its approach to stranded costs in Order No. 888, FERC noted that one of the strengths of the Order No. 888 stranded costs approach was its adaptability. See Order No. 888, FERC Statutes and Regulations ¶ 31,036 at 31,799 (noting that FERC's direct assignment approach to wholesale stranded costs "can be readily applied to both wholesale and retail-turned-wholesale departing customers" and "can be adapted for retail customers" as well). Notably, despite TVA's criticism of the FERC formula, TVA has not proposed an alternative formula for calculating its stranded costs.
WASHINGTON, D.C. — U.S. Senator Mitch McConnell (R-KY) today introduced a bill designed to “shine the light” on Tennessee Valley Authority’s (TVA) power rates. “The Tennessee Valley Customer Protection Act,” will provide TVA ratepayers with a clear picture of TVA’s rates and for the first time make the agency accountable for its charges and costs.

“We all grew up thinking if you had TVA power, you were lucky,” said McConnell. “Unfortunately, the nearly 212,000 Kentucky families in over 30 counties who receive power from TVA are finding out that’s not the case.”

Despite operating as a monopoly, TVA has racked up $26 billion in debt and provides power at rates higher than that of regulated utilities in Kentucky. Since 1988, power rates of Kentucky’s other regulated utilities have steadily fallen, while TVA has maintained the same level until 1997, when TVA raised its rates by 7 percent.

“TVA would like Kentuckians to believe that membership has its privileges,” said McConnell. “However, over the next five years, TVA’s Kentucky ratepayers will pay a whopping $255 million more for their power than if they were served by Kentucky Utilities, which is federally regulated.”

“TVA is currently $26 billion in debt,” said McConnell. “As a self-regulated monopoly, TVA has not been accountable to its captive ratepayers. As a result, TVA has accumulated a mountain of debt that has forced TVA rates upward. TVA should be accountable to the people they serve, and my bill will provide the relief to those who are forced to pay TVA’s uncompetitive rates.”

The bill will require TVA to fully disclose and justify all rates, charges and costs as “just and necessary” as required under the Federal Power Act — just as Kentucky’s other regulated utilities must do.

-more-

TVA would also become a “public utility” subject to the authority of the Federal Energy Regulatory Commission (FERC). This would result in TVA customers enjoying the same independent regulatory protections as customers of other large utilities. For instance, TVA customers could challenge rates, rather than be forced to accept rates set by the TVA board.

Finally, it would protect the TVA ratepayers from financing TVA’s international forays. So the ratepayer will no longer be charged for trips that are not consistent with TVA’s mission.

TVA, the nation’s largest power producer, provides power to all of Tennessee and parts of six other states covering over 80,000 square miles and serving eight million consumers. In Kentucky, there are over 211,000 households served by TVA in over 30 counties.

-30-


DOE003-0367

Obtained and made public by the Natural Resources Defense Council, March/April 2002
Restructure TVA:
Why the Tennessee Valley Authority
Must Be Reformed

by Richard Munson

The Tennessee Valley Authority is a political creation facing its most serious challenge. The nation’s largest electric utility suffers an enormous debt, mismanagement, and falling political support at the very time that lawmakers are restructuring the nation’s electric utility industry and transforming the way consumers buy electricity. Sixty-five years after it was created, this giant federal agency can no longer justify its existence.

TVA has accumulated a whopping $29 billion debt, largely because of its inaccurate predictions of future electricity demand, its failure to control the costs of constructing nuclear power plants, and its unwillingness to impose rate increases in order to meet those costs. Other signs of mismanagement were revealed in a recent report from TVA’s own Inspector General (IG), who criticized the agency’s six-figure bonuses and secret retirement funds for top executives, non-competitive consulting contracts to cronies of those officials, and expensive building leases with well-connected developers.

The IG’s report highlights perhaps TVA’s most serious problem — its unaccountability. This federal institution is run by a board of three individuals appointed to staggered nine-year terms by the president, often as a favor to political supporters from the region. Board members are not answerable to the voters. Their decisions are not reviewed by state regulators or federal agencies, and until recently, Congress provided little oversight. TVA also enjoys a monopoly in its service territory, so it’s not accountable even to market forces. As one critic charged, “Three good ol’ boys, with no adult supervision, have been given total control of a $6-billion corporation, and they’ve made a mess of it.”

TVA has been propped up by enormous taxpayer subsidies — which can no longer be justified or countenanced. The giant utility is exempt from hundreds of federal and state laws and regulations, it pays no federal or state taxes, and it obtains low-cost loans. These benefits raise an obvious question: Why should 242 million Americans be forced to subsidize the electricity rates of the 5 percent of Americans who happen to live in the Tennessee Valley?

There’s little doubt that TVA has become a burden to the nation’s taxpayers. What’s becoming increasingly apparent is that the status quo also harms the very Tennessee Valley residents that TVA is supposed to serve. Some of the region’s politicians, of course, continue to defend the agency and its subsidies, but TVA’s functions could be provided more effectively and less expensively by other corporations or agencies.

Subsidies

1 officials often repeat a mantra about their power operations being supported solely by electricity sales, but in this era when subsidies are suspect the giant utility remains the beneficiary of enormous taxpayer largess. It pays no taxes, enjoys access to low-cost capital, and avoids scores of federal laws and state regulations. Perhaps Wendell Willkie,
former presidential candidate and private utility executive, gave the most succinct description of TVA's relationship to federal taxpayers: "The Tennessee River flows through seven states and drains the nation."

According to the study by Putnam, Hayes & Bartlett, a respected consulting firm hired by investor-owned utilities, TVA's tax and cost-of-capital subsidies in 1993 totaled a whopping $1.2 billion. Included in that figure, TVA avoids more than $570 million annually in federal and state income taxes that would be paid by a comparable-sized private utility. It also escapes more than $450 million annually in state and local ad valorem and other taxes. TVA counters that it contributes more than its share of local taxes through its 5-percent "payments in lieu of taxes," but shareholder-owned utilities pay state and local taxes that amount to 8.3 percent of operating revenues, plus federal taxes that equal 4 percent of operating revenues. In short, for every dollar of revenue collected, TVA pays only 5 cents while investor-owned utilities pay some 12.3 cents in taxes.

Other benefits are substantial but not quantifiable. Unlike other power companies, for instance, TVA avoids ratemaking oversight by the Federal Energy Regulatory Commission and state public utility commissions. It is free from the financial oversight of the Securities and Exchange Commission. It is exempt from federal and state antitrust laws. It doesn't have to worry about strikes by its employees. It benefits from government purchasing programs. It doesn't have to comply with numerous environmental regulations.

TVA is literally above the law. It is exempt from at least 137 federal statutes, ranging from workplace safety and hydroelectric licensing. It is immune from civil liability for its wrongful acts, yet it enjoys far-reaching federal eminent domain authority. TVA also claims immunity from an array of state legislation and regulations, including at least 165 in Alabama alone.

TVA's bond rating is a particularly odd -- but very generous -- benefit. Despite having a massive debt of $29 billion (and a "creative" net worth after subtracting unproductive assets), TVA enjoys a AAA bond rating, the highest available. No shareholder-owned utility, despite much better balance sheets, has such a rating. Even though federal legislation specifically declares that taxpayers do not guarantee TVA bonds, the rating agencies assume such backing is implied. According to Moody's Investors Service, "Although TVA's debt is not an obligation of the U.S. government, the company's status as an agency and the fact that the government explicitly is TVA's only shareholder, indicates strong 'implied support' (that) would afford assistance in times of difficulty. This implied support provides important bondholder protection. TVA's extensive nuclear risk, average competitive position, and high level of debt would make it unlikely to maintain its current (AAA) status." TVA's chairman, in fact, promotes the agency's bonds as having "an obvious, implied" guarantee from the federal government. (It should be noted that if the government did guarantee TVA bonds, taxpayers would be left holding the bag if the agency defaulted on any portion of its multi-billion-dollar debt.)

Several analysts suggest that TVA's large debt and low cash flow should cause its bonds to be rated as junk. TVA's artificially high credit rating, therefore, allows the giant utility to issue large levels of debt at low cost. According to the Department of Energy, if TVA were to lose its AAA rating, its annual interest cost could increase by some $270 million. This indirect federal subsidy would be even higher if TVA bonds were rated as junk, or below investment grade.

TVA officials like to suggest that the utility can compete in a deregulated electricity market. But the more important question is whether TVA, armed with its subsidies and other competitive advantages, should be allowed to compete.

Changing Justifications

TVA has always been a creature of politics. It was established in 1933 only after a lengthy legislative battle. Debates had flared late in the 19th Century, as Americans settled the West and sought economic development, over what to do with the nation's rivers and whether dams should be privately or publicly owned. The most heated controversy focused on a site near the town of Sheffield in northern Alabama, where the Tennessee River becomes shallow and falls rapidly. As
World War I began, President Woodrow Wilson decided to build a dam at this prime hydroelectric site in order to power the nation's small munitions factories. This Muscle Shoals facility, said Wilson, would help make munitions during the war and fertilizer during peacetime. By the 1918 armistice, the federal government had spent millions of dollars on the 100-foot-high, 5.2-mile-long dam, but it remained only half complete.

The political climate changed dramatically in 1920 as Warren Harding's smashing victory launched a decade of open and unashamed support for capitalism. The new president offered the nitrate plant and dam to the highest bidder. Henry Ford offered to purchase the Muscle Shoals facilities, but he abandoned the project amid complaints from both public power advocates and the private utilities. Alabama Power Company subsequently advanced the highest bid, but the power company met formidable opposition from Senator George Norris, a Republican from Nebraska who believed that America's electricity development must be under public control, public operation, and public ownership. Blocking Norris's public power advocacy was President Herbert Hoover, who had directed the Northeastern Super Power Committee which cleared the way for investor-owned power companies throughout New England to interconnect their lines and pool their power. Like utility executives, Hoover supported "strict regulation" but opposed public ownership, and he vetoed Norris's bill to keep the Wilson Dam in the government's hands.

The stock market crash and economic depression tilted the political dynamics again. Franklin Roosevelt, who claimed the nation was confronting a menace of "highly centralized industrial control," stopped immediately after his 1932 election at Muscle Shoals, where he talked with Senator Norris about the Tennessee Valley's plight. Poverty engulfed the region, recurrent floods had washed away valuable topsoil, and lumber companies had clearcut the thin forests. Residents enjoyed only half the national average income, and just 2 percent of the farmers utilized electricity. According to Norris, the best promise for economic revitalization were the region's abundant hydroelectric sites.

Only one month into his presidency, FDR proposed legislation to create a Tennessee Valley Authority that would be a corporation clothed with the power of Government but possessed with the flexibility and initiative of a private enterprise. It would be, according to FDR, a cornerstone of his New Deal and "the widest experiment ever conducted by a Government," but 19 shareholder-owned utilities called it an "unconstitutional competitor with private businesses." The power companies sued, but the Supreme Court in 1936, which just one month before had ruled that the New Deal's Agricultural Adjustment Act and the National Recovery Act were unconstitutional, upheld TVA and the government's right to sell power from its dams. A headline in the Knoxville paper declared: "TVA Wins Complete Victory."

The victors, however, continued arguing about TVA's mission. Of the original three-member board, the chairman saw TVA as a model for regional economic development, another member felt the agency should avoid development activities and simply provide low-cost power to southern commercial farmers, while the third director saw TVA as a model by which to beat back private power companies. FDR finally had to intercede and fire the social-planning chairman. By 1941, TVA had become the nation's largest producer of electricity.

Private power companies never accepted TVA's "victory," and they attracted powerful allies. President Dwight Eisenhower, for instance, wanted to sell TVA, referring to the agency as a prime example of what he called "creeping socialism." Eisenhower in 1954 proposed that private utilities supply power to the federally-funded "Atomic City" in Oak Ridge, Tennessee, and other nuclear facilities in Paducah, Kentucky, which at the time consumed 60 percent of TVA's entire output. Private utility presidents Edgar Dixon and Eugene Yates organized a consortium of power companies to build a plant in West Memphis, Arkansas, that would sell electricity to these government installations. The Dixon-Yates plan, however, became a scandal when opponents uncovered that a Bureau of Budget official who drafted the plan was also an executive of First Boston Corporation, a financial backer of the deal. Eisenhower made the mistake of denying any connection between his staffer and the deal's beneficiaries, but TVA's allies in 1959 exploited the mistake and forced the president to retract his denial and to cancel the Dixon-Yates contract.

TVA may have survived the Dixon-Yates challenge, but it faced severe financial constraints because of Eisenhower's unwillingness to approve federal appropriations. Billing itself as a key component of the nation's defense infrastructure,
the agency sought -- and obtained -- more political and economic freedom through 1959 amendments to the TVA Act. Rather than rely on annual appropriations for its capital, the federal institution now could sell bonds on TVA's credit alone. Yet to assuage fears that TVA would continue to expand its territory, lawmakers put a "fence" around the agency beyond which TVA could not sell electricity.

Profile of TVA

TVA serves some 7 million people, mostly in Tennessee, but also parts of Mississippi (supplying approximately 30 percent of the state's electricity), Alabama (20 percent), Kentucky (10 percent), North Carolina (5 percent), Virginia (3 percent), and Georgia (1 percent). It provides power to 159 municipal and cooperative distributors (85 percent of TVA's total), 53 industries (mostly aluminum firms) with large or unusual loads (8 percent), and ten federal agencies (6 percent). TVA in 1997 produced nearly 152 billion kilowatt-hours of electricity. With headquarters in Knoxville, Tennessee, it employs some 14,000 individuals.

Although only half the population of Tennessee lives in the Tennessee River watershed -- the state also being drained by the Cumberland and Mississippi river systems -- almost the entire state receives TVA power.

The president appoints three TVA directors, who are confirmed by the Senate and serve staggered nine-year terms. That Board of Directors has sole authority for determining the rates that TVA and its distributors charge for power. TVA is not subject to oversight by state public utility commissions or the Federal Energy Regulatory Commission.

Although TVA was formed to build dams and tame the river, only 11 percent of its installed capacity comes from 114 hydropower units. The bulk, some 65 percent, is provided by 59 coal-fired power plants. Another 24 percent comes from nuclear reactors. The small remainder is derived from gas turbines.

TVA values its property, plant, and equipment at $29.3 billion. Its debt totals $29.8 billion, and it has deferred assets of $6.3 billion. TVA's combined 1998 electricity sales are $6.3 billion.

Success or Hype?

TVA officials and their supporters hold that FDR's giant experiment cleared the rivers, replenished the soil, rebuilt the forests, delivered cheap electricity, and brought new life and hope to the depressed Tennessee Valley. David Lilienthal's Democracy on the March and the TVA staff's TVA: The First Twenty Years boast of enormous progress resulting from TVA. No doubt the agency's payroll -- which averaged 13,000 workers in its early years -- boosted the region's economy, but the long-term benefits of TVA's investments are less clear. According to William Chandler, author of The Myth of TVA and a researcher with Battelle National Laboratory, those investments performed poorly when compared to development in adjacent regions. Chandler, for instance, concluded:

1727

DOE003-0371

Obtained and made public by the Natural Resources Defense Council, March/April 2002
• Per-capita income growth in surrounding, non-TVA areas equaled or exceeded that in the TVA region, despite they're being equal at the beginning of the TVA experiment.
• Manufacturing employment grew more slowly in the TVA area than in surrounding non-TVA areas.
• Rural electrification progressed more slowly in the Tennessee Valley region than in comparable surrounding areas.
• The installation of piped running water in households and the utilization of home electric appliances proceeded less rapidly than in non-TVA states.

In its defense of appropriations for TVA's non-power programs, the Clinton administration repeats the myth that "TVA is a tremendous success," citing statistics that per-capita income increased ten-fold in the TVA service territory, well above the national average. Yet such statistics are misleading, in large part because the Tennessee Valley started from such a low base in the 1930s that any gain looks substantial in percentage terms. When comparing instead the growth in per-capita income between Tennessee, where TVA supplies virtually all the power, to neighboring states that also suffered economic hardship in the 1930s, TVA's "success" is less clear. In fact, per-capita income increased more substantially in non-TVA Georgia, Kentucky, and Virginia than it did in Tennessee.

TVA customers for many years certainly benefited from electricity rates that were about half the national average. Such benefits, however, were made possible by substantial (if unwitting) subsidies from taxpayers across the country and by TVA's failure to pay for cleaning up its own pollution.

Environmental Steward or Threat?

One of TVA's original missions was to manage the region's natural resources, but the agency long has invoked the ire of environmentalists. TVA, for instance, was the leading promoter of destructive coal strip-mining, ruining vast tracts of land and debilitating Appalachia's underground coal industry. Its reclamation efforts were minimal and only marginally effective. Aubrey Wagner, who directed the agency for almost two and one-half decades, voiced an attitude that sent chills up the spines of conservationists: "Strip mining, while it is going on, looks like the devil," Wagner declared, "but...if you look at what these mountains were doing before this stripping, they were just growing trees that were not even being harvested."

TVA still remains the nation's worst violator of the Clean Air Act. The agency, in fact, is the largest emitter among eastern utilities of nitrogen oxide (NOx), which causes smog. It is the third largest emitter of sulfur dioxide (SO2) and carbon dioxide (CO2), which has been identified as the leading cause of global warming.

TVA's nuclear program has been so plagued with safety and economic problems that consumer activist Ralph Nader in 1998 declared: "The TVA is by any measure the worst nuclear project in the country, has the most expensive set of nuclear reactors, has a debt of $29 billion, has the poorest safety record with TVA reactors spending more time on the Nuclear Regulatory Commission's watch list than any other utility."

Like many private utilities, TVA from the mid 1960s through the mid 1980s continually overestimated the future demand for electricity. Unlike most other companies, however, TVA went whole hog for nuclear power to meet that projected demand. The agency in the mid 1970s announced plans to build 17 reactors at seven sites. It completed only six, and one of those was shut down in 1985.

The now-closed reactor, Browns Ferry Unit #1, experienced one of the nation's worst nuclear power accidents. For several hours on March 22, 1975, TVA's reactor burned perilously out of control as a result both of workers negligently trying to identify air leaks with a candle and of numerous safety features failing. Employees subsequently stated that a major release of radiation was avoided only "by sheer luck."