

RESPONSE OF THE OFFICE OF
PUBLIC UTILITY REGULATION

Our Ref. No. 03-2-OPUR
Juniper Capital L.P.

DIVISION OF INVESTMENT MANAGEMENT

File No. 132-3

Based on the facts and representations in your letter of June 23, 2003, we would not recommend any enforcement action to the Commission under section 2(a)(3) of the Public Utility Holding Company Act of 1935 against Juniper Capital L.P. ("Juniper") if Juniper engages in the Dominion Equipment Lease Transaction and the Mississippi Power Lease Transaction in the manner and under the circumstances described in your letter.

You should note that facts or conditions different from those presented in your letter might require a different conclusion. Further, this response expresses only the Division's position on enforcement action. It does not purport to express any legal conclusion on the questions presented.



David G. LaRoche
Special Counsel

June 23, 2003



OFFICE OF
PUBLIC UTILITY REGULATION

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

June 23, 2003

William J. Madden, Jr., Esquire
Winston & Strawn
1400 L Street, N.W.
Washington, D.C. 20005

Re: Juniper Capital L.P.
File No. 132-3

Dear Mr. Madden:

Enclosed is our response to your letter of June 23, 2003. By incorporating our answer in the enclosed copy of your letter, we avoid having to recite or summarize the facts involved.

Very truly yours,

A handwritten signature in cursive script that reads "David G. LaRoche".

David G. LaRoche
Special Counsel

Enclosure

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June 23, 2003

Mr. David B. Smith
Associate Director
Division of Investment Management
Office of Public Utility Regulation
United States Securities and
Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

**Re: Juniper Capital L.P. — Status under Section 2(a)(3) of
the Public Utility Holding Company Act of 1935**

Dear Mr. Smith:

On behalf of Juniper Capital L.P. we hereby request that the Staff of the Securities and Exchange Commission (the "Commission") concur in our view that, for the reasons set out below, Juniper Capital L.P. is not deemed to be an "electric utility company" as defined in Section 2(a)(3) of the Public Utility Holding Company Act of 1935, as amended (the "Act"), in the circumstances described herein.

I. BACKGROUND

Juniper Capital L.P. ("Juniper" or the "Lessor") is a Delaware limited partnership that was formed on February 24, 2003, and organized for the primary purpose of engaging as a leasing company in the business of leasing various personal property and real property assets to various lessees through a portfolio of lease finance transactions. As part of its leasing business, Juniper will obtain financing for the acquisition of these assets through the equity investments of its partners, and through a series of debt financing arrangements, which will likely include loans from banks and other financial institutions and the issuance by the Lessor of commercial paper, bonds or notes to institutional investors. The general partner of the Lessor, Juniper Capital GP, LLC, is a newly formed Delaware limited liability company, all of the membership interests of which is owned by Juniper Capital Holdings L.P., a Delaware limited partnership. Juniper Capital Holdings L.P., which will also be the limited partner of the Lessor does not own or

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control directly or indirectly five (5) percent or more of the outstanding voting securities of any public utility company.

As a part of its lease finance business, the Lessor plans to acquire from existing finance lessors title to facilities that are used for the generation, transmission or distribution of electric energy, and to lease such facilities to lessees that will be responsible for the use, maintenance and operation thereof (the "Facility Leases"). Those facilities will include facilities which are Qualifying Facilities ("QFs")¹ under the Public Utility Regulatory Policies Act of 1978, facilities which are or which will be leased to exempt wholesale generators ("EWGs") within the meaning of Section 32 of the Act and facilities which will be leased to traditional public utilities. The Lessor also intends to enter into agreements in which a prospective lessee, as agent for the Lessor, will cause the construction of facilities to be used for the generation, transmission or distribution of electric energy. Upon substantial completion thereof, but prior to the operation of such facilities, the prospective lessee will lease the facilities from the Lessor pursuant to a Facility Lease. The Lessor's role during the construction and leasing of all such facilities will be entirely passive. In addition, the Lessor intends to acquire personal property and real property unrelated to the power, utility or energy industry for lease to third parties. Assets subject to the non-energy leases of the Lessor may include office buildings, oil tankers, aircraft and furniture, fixtures and equipment. The Lessor does not anticipate that one group of assets leased to an individual lessee will account for more than 50% of the total assets leased by the Lessor.

All of Juniper's lease transactions will be net leases under which the lessee will be responsible for the use of the leased facility or equipment, including the cost of operation, maintenance, taxes, insurance and any loss or destruction of the leased facilities or equipment. The lessee will be responsible for the periodic payment of rent, which is an obligation that would continue notwithstanding the loss, destruction or failure to perform of the leased facilities or equipment. The lease payments or rent will not include any amounts based on the revenues of the lessee or the leased assets. The lessee will indemnify Juniper from liabilities arising out of the use, maintenance and operation of the leased facilities or equipment. Thus, Juniper will be a passive lessor that will neither influence the operation of the leased facilities or equipment nor participate in any revenues arising out of sales of electricity from the operation of the facilities or equipment.

Juniper is by this letter seeking concurrence from the Staff that: (i) its ownership as a passive lessor of a 1,180 megawatt gas-fired generating facility known as the Fairless Hills Project to be leased by Juniper to Dominion Equipment III, Inc. ("Dominion Equipment") which, in turn, will sublease it to Fairless Energy, LLC ("Fairless"), an affiliate of Dominion

¹ Since QFs, by virtue of regulations issued by the Federal Energy Regulatory Commission (18 C.F.R. § 292.602(b)), are not electric utility companies as defined in Section 2(a)(3) of the Act, Juniper is not seeking a no-action letter with respect to its anticipated acquisition of passive lessor interests in such facilities.

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Equipment, will not cause it to be deemed to be an "electric utility company" under Section 2(a)(3) of the Act in the circumstances described herein (the "Dominion Equipment Lease Transaction"); and (ii) its ownership as a passive lessor of a 1,064 megawatt gas-fired generating facility (the "Generation Facility") to be leased by Juniper to Mississippi Power Company ("MPC"), will not cause it to be deemed an "electric utility company" under Section 2(a)(3) of the Act in the circumstances described herein (the "Mississippi Power Lease Transaction").

Juniper is not seeking and acknowledges that it is not receiving any assurance or relief from the Staff with respect to any transactions other than the Dominion Equipment Lease Transaction and the Mississippi Power Lease Transaction. Prior to engaging in any other lease transaction which may raise issues as to the jurisdiction of the Commission under the Act, Juniper will seek and obtain additional assurance and relief from the Staff or the approval of the Commission with respect to such lease transaction.

II. THE DOMINION EQUIPMENT LEASE TRANSACTION.

Dominion Equipment is a Delaware corporation and an indirect wholly-owned subsidiary of Dominion Resources, Inc., a Virginia corporation which is a registered holding company under the Act. The facility to be leased is currently under construction and will consist of a 1,180 megawatt four (4) unit gas-fired combined-cycle electrical generating facility (the "Fairless Hills Project" or "Project") to be located in Bucks County, Pennsylvania. The Project will be financed under a net lease arrangement where Juniper will hold legal title to the Project and a leasehold interest in the site upon which the Project will be located. Upon completion of construction, Juniper will lease the Project to Dominion Equipment and Dominion Equipment will, in turn, sublease the Project to its affiliate, Fairless. Fairless will operate the Project and sell electricity at wholesale from the Project. The Project will be an "eligible facility" and both Fairless and Dominion Equipment will be Exempt Wholesale Generators ("EWGs") within the meaning of Section 32 of the Act.

Fairless will have total control over the use and operation of the Project and be responsible for all costs associated therewith. Juniper will, as a passive lessor, only be entitled to receive the rents provided for in the lease and will receive no amounts directly or indirectly based on the revenues produced by the use and operation of the Project.

Juniper, by virtue of the fact that it will lease other non-utility assets under separate lease arrangements, will not be engaged exclusively in the business of owning and/or operating "eligible facilities." As a result, it will not be eligible for EWG status under Section 32 of the Act -- a status which would mean that it would not be an "electric utility company" under Section 2(a)(3) of the Act. Nonetheless, it is our view that Juniper will substantially comply with the requirements and policy objectives of Rule 7(d) and will not and should not be considered an "electric utility company." In addition, although Juniper will in the case of these "eligible facilities" own facilities used for the generation, transmission and sale of electric energy, no

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public policy would be served by treating Juniper as an "electric utility company" under the Act inasmuch as lease transactions with EWGs fail to give rise to the concerns addressed by the Act.

A. Analysis Of Rule 7(d) With Respect To Dominion Equipment Lease Transaction.

In 1973, during an era when the electric utility industry was focused on construction of large, new generation facilities, the Commission adopted Rule 7(d), which created a safe harbor for owners/lessors in certain lease transactions by recognizing that the passive owners of leased facilities need not be treated as "owners" under Section 2(a)(3) of the Act. The requirements of Rule 7(d), however, were fashioned to address lease transactions where the lessee was a traditional state-regulated public utility. As discussed in the following paragraphs Juniper will, in the case of the Dominion Equipment lease, own electric facilities within the meaning of Rule 7(d)(1). While Juniper will not be able to fully comply with all the strict requirements of the subsequent paragraphs of that Rule, Juniper's lease transaction with Dominion Equipment will be entirely consistent with the intent of the Rule and the objectives for which the Rule was established. The deregulation of retail and wholesale electric markets, together with the expansive use of EWGs in the energy industry, often prevents compliance with the strict requirements of the Rule 7(d). Nevertheless, the policies and intent of the Act remain satisfied through the competitive forces that have led to such deregulation. In the case of lessees that are EWGs, there appears to be no public policy purpose that would be served in regulating a passive lessor such as Juniper when the lessee, Dominion, the entity which exercises exclusive dominion and control over the leased facilities, will itself be exempt from regulation under the Act. As a result, Juniper should not, by virtue of its lease with Dominion Equipment, be deemed to be an "electric utility company" within the meaning of Section 2(a)(3) of the Act.

Section 2(a)(3) of the Act provides that "an electric utility company" is any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.² Juniper, as a passive lessor of the 1,180 megawatt Fairless Hill Project, will own facilities used for the generation and transmission of electric energy for sale. Since Juniper will not be exclusively engaged in the business of owning and/or operating "eligible facilities," it will not qualify as an EWG under Section 32 of the Act. Juniper's lease with Dominion Equipment will however substantially and materially comply with all the requirements of the Commission's Rule 7(d) and will be in full compliance with the purposes and objectives of that Rule.³

² 15 U.S.C. § 79(a)(3).

³ Rule 7(d) provides, in pertinent part, that a company will not be deemed to be an electric utility company or a gas utility company under the Act even though it owns facilities specified in Sections 2(a)(3) and 2(a)(4) when such company owns the facility as a company, as a trustee, or as holder of a beneficial interest under a trust, or as a purchaser or assignee of any of the foregoing; and

Paragraph 1(i)

The Project will be owned by Juniper and leased to Dominion Equipment under a net lease as required by Paragraph (1)(a) of Rule 7(d), but will not be leased directly to a public utility company. Dominion Equipment will be an EWG under Section 32 of the Act and, therefore, will neither be an electric utility company within the meaning of Section 2(a)(3) of the Act nor a public utility company within the meaning of Section 2(a)(5) of the Act. The Project will, however, be used to produce energy and the sale of power at wholesale by the sublessee, Fairless, will be subject to the regulation of the FERC. In this regard, Fairless has secured market-based rate authority from the FERC. We note that in similar net lease situations the Staff has concurred in no-action letters that a lease to an EWG will satisfy the purposes and objectives

(1)(i) such facility is leased under a net lease directly to a public utility company either as a sole lessee or joint lessee with one or more other public utility companies, and such facility is or is to be employed by the lessee in its operations as a public utility company; and

(1)(ii) such company is otherwise primarily engaged in one or more businesses other than the business of a public-utility company, or is a company all of whose equity interest is owned by one or more companies so engaged, either directly or through subsidiary companies; and

(1)(iii) the terms of the lease have been expressly authorized or approved by a regulatory authority having jurisdiction over the rates and service of the public-utility company which leases the facility; and

(1)(iv) the lease of the facility extends for an initial term of not less than 15 years, except for termination of the lease upon events therein set forth, unless the owner shall state in the initial certificate filed pursuant to paragraph (d)(5) that a shorter term specified in the lease is not less than two-thirds of the expected useful life of the facility; and

(1)(v) the rent reserved under the lease shall not include any amount based, directly or indirectly, on revenues or income of the public-utility company, or any part thereof.

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of paragraph (1)(i) and will not cause the lessor/owner to become an electric utility company within the meaning of Section 2(a)(3) of the Act.⁴

Paragraph 1(ii)

Juniper will satisfy the requirement of paragraph (1)(ii) of Rule 7(d) because it will be actively engaged in a business other than the business of a public utility company. It will be primarily engaged in the business of leasing real property and equipment to various lessees for use in such lessees' businesses.⁵ Juniper will not make any sales of electricity. Juniper anticipates its net investment in assets leased to "public utility companies" will be less than one half of its total leasing portfolio. Moreover, Juniper may also be involved in several additional businesses, including, without limitation, managing and administering financial assets for third parties and acquiring equity and debt securities in commercial paper conduits. Juniper will, as previously noted, be primarily engaged in a business (a leasing business) other than the business of a public utility company and will accordingly comply with the requirements of paragraph (1)(ii) of Rule 7(d).

Paragraph 1(iii)

Paragraph (1)(iii) of Rule 7(d) requires the terms of the lease to have been authorized or approved by a regulatory authority. The terms of Juniper's lease agreement with Dominion Equipment will not be approved by any regulatory authority having jurisdiction over the rates and service of the lessee of the Project. Where states allow entities to lease facilities without regulatory approval of such leases, those states would appear to have determined that competition has eliminated the need for such regulatory approval. Such is the situation involved in this instance, as the State of Pennsylvania has chosen to deregulate much of the electric utility industry located in that state. As a result, the requirements of paragraph (1)(iii) of Rule 7(d) should be deemed to have been satisfied.

In view of these considerations, the Commission staff has issued no action letters with respect to Rule 7(d) compliance where regulatory approval of the terms of a lease was not required by particular states.⁶ Juniper's lease with Dominion Equipment will nonetheless require

⁴ See No-Act letter, *Indeck-Olean L.P.*, WSB File No. 0819200206 (May 24, 1999); No-Act letter, *Catalyst Old River Hydroelectric Limited Partnership*, WSB File No. 041993009 (Mar. 26, 1993).

⁵ See No-Act letter, *WP Funding, Limited Partnership*, WSB File No. 062193007 (June 15, 1993); No-Act letter, *JMG Funding, Limited Partnership*, WSB File No. 010995026 (Nov. 21, 1994); No-Act letter, *Energy Services Credit Corp.*, WSB File No. 0710200007 (July 11, 2000).

⁶ See, e.g., *GE Capital Corp.*, 1996 SEC No-Act. LEXIS 624 (Jun. 21, 1996).

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the lessee to covenant that it will comply with the applicable registration, licensing and legal requirements for operating the facility in the jurisdiction (Pennsylvania) in which the leased facility will be located. Similarly, the lease will include a covenant from Dominion Equipment that it will comply with the applicable state and federal requirements for any sales of electricity made using the leased equipment or that it will cause its sublessee, Fairless, to so comply.

Paragraph 1(iv)

Paragraph (1)(iv) of Rule 7(d) requires the initial lease term to extend for 15 years or two-thirds of the useful life of the facility. This paragraph of the rule reflects, in part, a concern with whether the owner/lessor would be able to exercise undue control over the utility business of the lessee, perhaps by its ability to decline to renew short term leases of electric facilities.⁷ The initial term of Juniper's lease with Dominion Equipment expires in 2014, which means its initial term is less than 15 years and less than two-thirds of the estimated useful life of the Project. However, the lessee will have the right at that time to renew the lease for such additional term as is consistent with Juniper's ability to extend or refinance its financing. The lessee's options at that time would include: (i) purchasing the leased assets at the acquisition cost as defined in the lease; (ii) renewing the lease for an additional term; or (iii) causing the lessor to sell the leased assets to an unaffiliated third party purchaser.

In view of the competitive nature of the leasing and financing market, this shorter initial lease term will not permit Juniper to exercise control over the business of Dominion Equipment or of its sublessee, Fairless. Juniper is but one source of financing in an increasingly competitive market for lease financing transactions and Dominion Equipment will have several lease finance options at the end of the initial lease term. Moreover, the Staff has in the past issued several no action letters with respect to Rule 7(d) where the initial terms of the proposed leases were expected to be shorter than 15 years.⁸

Paragraph 1(v)

Paragraph (1)(v) of Rule 7(d) requires that the rent received under the lease shall not include any amount based, directly or indirectly, on revenues or income of the public utility company, or any part thereof. The rent to be received by Juniper under its lease with Dominion Equipment will not be based, directly or indirectly, on any such income. The lease, as previously noted, will be with an EWG and not with a public utility company, but we believe this difference

⁷ "Notice of Proposed Rule 7(d) under the Public Utility Holding Company Act of 1935 to Exclude from the definition of Ownership in Sections 2(a)(3) and 2(a)(4) the Interest of Certain Kinds of Lessors under Long-Term Lease of Utility Facilities" SEC Release No. 17843, 1973 LEXIS 2220 at *33-34 (Jan. 9, 1973).

⁸ See, e.g., *GE Capital Corp.*, 1996 SEC No-Act. Lexis 624 (June 21, 1996); *Energy Services Credit Corporation*, 2000 SEC No-Act. (July 11, 2000).

should be immaterial for the purposes intended to be served by this paragraph (1)(v) of Rule 7(d).

III. THE MISSISSIPPI POWER LEASE TRANSACTION.

Mississippi Power Company ("MPC"), a traditional electric utility providing retail and wholesale electric service generally in the southeastern portion of Mississippi, has its principal business office at Gulfport, Mississippi. It currently operates two gas-fired combined cycle units 3 and 4 ("Generating Facilities") at its Victor J. Daniel Electric Generating Plant in Jackson County, Mississippi. The two units have a combined rated capacity of 1,064 megawatts. MPC has been operating these Generating Facilities for approximately two years under a net lease agreement with Escatawpa Funding, Limited Partnership, a Delaware limited partnership ("Escatawpa"), a special purpose entity established for the sole purpose of holding title to the Generating Facilities and leasing them to MPC. The Mississippi Public Service Commission ("MPSC") authorized MPC to enter into the lease with Escatawpa in an order issued on February 19, 1999 in Docket No. 97-UA-496. Escatawpa is an EWG by virtue of the fact that it is engaged solely in the business of owning the Generating Facilities and leasing them to MPC. Escatawpa was determined to be an EWG by the Federal Energy Regulatory Commission in an order issued on May 11, 2001. *Escatawpa Funding, L.P.*, 95 FERC ¶ 61,192.

Juniper has reached an agreement in principle to acquire all of Escatawpa's right, title and interest in and to the Generating Facilities. MPC, subject to the approval of the MPSC (a joint application for such approval, filed by MPC, Escatawpa and Juniper, is now pending in Docket No. 03-UA-0360), intends to enter into an amended and restated lease agreement with Juniper and other documents by and among MPC, Escatawpa, Juniper and other parties to the transaction.

The term of the original lease will not be changed. The initial term of this lease is for 10 years, subject to the right of MPC to a ten year optional renewal term.

A. Reasons For Transfer of the Lease From Escatawpa to Juniper.

The benefits of the current operating lease between MPC (as lessee) and Escatawpa (as lessor) are and have been directly related to the accounting treatment afforded MPC under prior interpretations of operating leases by the Financial Accounting Standards Board ("FASB"). In 2002, FASB commenced a re-evaluation of the accounting rules relating to consolidation, including consolidation of special-purpose entities such as Escatawpa. In January 2003, FASB issued a ruling on this matter -- Interpretation No. 46 ("FIN 46"). This interpretation would require MPC to consolidate Escatawpa on MPC's financial statements by reflecting Escatawpa's assets and liabilities on MPC's balance sheet. Under FIN 46, MPC would be regarded as the "primary beneficiary" of Escatawpa and MPC would be required to consolidate the assets and liabilities of Escatawpa on MPC's books. If MPC were required to

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reflect such a consolidation on its books, the benefits inuring to MPC's retail customers from the lease financing would be lost.

In order to retain the current favorable accounting (operating lease treatment) and ratemaking treatment approved by the MPSC for the original lease (and thereby retain as much of the cost savings as possible for its retail customers), MPC will have to restructure the lease to conform to the new requirements of FIN 46 not later than June 30, 2003. By completing this transaction by June 30, 2003, Juniper and MPC will have accomplished that objective.⁹

B. Analysis Of Rule 7(d) With Respect To Lease To Mississippi Power Company.

As previously noted, Section 2(a)(3) of the Act provides that "an electric utility company" is any company that owns or operates facilities used for the generation, transmission or distribution of electric energy for sale. Juniper will, as a lessor of these Generating Facilities, own facilities used for the generation and transmission of electric energy for sale. Since Juniper will not be exclusively engaged in the business of owning and/or operating "eligible facilities," as required for EWG status under Section 32 of the Act, it will, unlike the predecessor lessor of the Generating Facilities (Escatawpa), not qualify as an EWG. Juniper's lease, however, will comply with all the requirements of the Commission's Rule 7(d) with the exception of paragraphs (1)(iii) and (1)(iv), with which there will be substantial compliance.

The Generating Facilities will be leased under a net lease directly to a public utility company and such facilities will be employed by the lessee in its operations as a public utility company. Juniper, as previously noted, will be primarily engaged in a business (a leasing business) other than the business of a public utility company and the rent received under the lease of the Generating Facilities shall not include any amount based, directly or indirectly, on the revenues or income of the public utility company lessee, or any part thereof.

Thus, the proposed Juniper lease with MPC will comply with paragraphs (1)(i), (1)(ii) and (1)(v) of Rule 7(d).

Paragraph 1(iii)

By order dated February 19, 1999, the MPSC authorized MPC to convey the certificate authorizing the construction of the Generating Facilities to Escatawpa and, upon completion of that construction, to lease the Generating Facilities back from Escatawpa pursuant to a lease agreement for a term of 10 years with an option to renew the lease for an additional 10 years. Such order was issued following a thorough investigation by the MPSC and its staff of the proposed transaction and included an opportunity to inquire about and review the principal terms

⁹ This discussion of the proposed accounting treatment is for informational purposes only and Juniper is not by this letter seeking any Staff concurrence with respect to the proposed accounting treatment of this or any other transaction.

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of the proposed lease and, in fact, numerous data requests directly related to the lease arrangements were made by the staff.

By virtue of a joint petition filed on May 11, 2003 by MPC and Escatawpa, the MPSC is being asked to approve the sale and transfer of Escatawpa's interest in the Generating Facilities to Juniper and to authorize MPC and Juniper to enter into and execute such agreements and amendments as are necessary to accomplish the purpose of restructuring the original lease to remain as an operating lease. As was the case with the proposed original lease, the MPSC and its Staff will have an opportunity to inquire about and review the principal terms of the proposed restructured lease. Juniper will not enter into this transaction with MPC unless and until the MPSC issues an appropriate order approving the joint petition that was filed on May 11, 2003.

While neither the 1999 MPSC order nor the order currently requested from the MPSC constituted or will constitute express approval of the terms of either the original lease or the proposed restructured lease, the MPSC was aware of and had the opportunity to review the terms of those leases and may be deemed to approve of the substance of each of those leases. We believe in these circumstances that compliance with paragraph (1)(iii) of Rule 7(d) has been substantial and has ensured that the objectives of Rule 7(d) have been met.

Paragraph 1(iv)

The remaining term of the original ten year lease to be assumed by Juniper will be approximately eight years, less than the 15 years required by paragraph (1)(iv) of Rule 7(d). As previously noted, this paragraph reflects, in part, a concern with whether the owner/lessor would be able to exercise undue control over the utility business of the lessee, perhaps by its ability to decline to renew short term leases of electric facilities. In this case however, while the remaining initial term of the lease to be assumed by Juniper will only be eight years, the lease will be renewable, at the sole option of the lessee, for another 10 years and the duration of the initial lease term and the renewal rights of the lessee were terms of the lease agreement of which the MPSC was expressly advised in the application filed by MPC.

Accordingly, we believe the duration of the lease to MPC is in substantial compliance with paragraph (1)(iv) of Rule 7(d) and that none of the concerns reflected in that paragraph are present in this lease finance transaction.

IV. CONCLUSION

The Commission Staff has, on a number of occasions, concurred with the conclusion that, when a lease transaction broadly satisfies the policies embodied in Rule 7(d) and an exemption would conform with the policies and intent of the Act, a no-action position may be taken even though the particular facts and circumstances of the lease transaction vary from the

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strict requirements of the rule.¹⁰ We believe this same analysis should apply to the proposed Facility Leases with both Dominion Equipment and MPC.

For the foregoing reasons, it is our belief that by entering into the proposed Dominion Equipment Lease Transaction and the proposed Mississippi Power Lease Transaction, as described above, Juniper will not become an "electric utility company" within the meaning of Section 2(a)(3) of the Act.

Accordingly, we respectfully request that the Staff issue a no-action letter (i) confirming that Juniper will not, as a result of engaging in the Dominion Equipment Lease Transaction and the Mississippi Power Lease Transaction, be deemed an electric utility company within the meaning of Section 2(a)(3) of the Act and (ii) stating that it will not recommend any enforcement action to the Commission under the Act against Juniper for engaging in the Dominion Equipment Lease Transaction and the Mississippi Power Lease Transaction. In making this request, Juniper reconfirms its prior representation that prior to engaging in any other lease transaction which may raise issues as to the jurisdiction of the Commission under the Act, Juniper will seek and obtain additional assurances and relief from the Staff or the approval of the Commission with respect to such lease transaction.

If you have any questions, please do not hesitate to contact Alan S. Hoffman at 212-294-2643 or William J. Madden, Jr. at 202-371-5715. We would greatly appreciate an opportunity for a conference in advance of the adoption by the Staff of any position contrary to the views expressed herein.

Respectfully submitted,



William J. Madden, Jr.

¹⁰ See, e.g., *City of Gainesville*, 1998 SEC No-Act LEXIS 1039 (Nov. 30, 1998) noting non-compliance with paragraphs (1)(A) and (1)(C); *GE Capital Corp.*, 1996 SEC No-Act LEXIS 327 at 11 n7 (Jan. 11, 1996) (citing a number of no-action letters where the terms of the lease transaction varied from the technical requirements of Rule 7(d)).