

DOMINION RESOURCES, INC.
Advisers Act Sec. 202(a)(11)

July 23, 1985

Evans B. Brasfield, Esq.
Hunton & Williams
707 East Main Street
P.O. Box 1535
Richmond, Virginia 23212

Dear Mr. Brasfield:

This is in response to your letter dated March 20, 1985, in which you request the staff's views regarding the application of Sections 3(a)(4) and 3(a)(31) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 202(a)(11) of the Investment Advisers Act of 1940 ("Advisers Act") to the activities of your client, Dominion Resources, Inc. ("Dominion Resources"). On the basis of your letter and subsequent telephone conversations, I understand the facts to be as follows.

Dominion Resources is a Virginia corporation whose principal asset is all of the outstanding capital stock of Virginia Electric and Power Company ("Utility Company"), a regulated public utility engaged in the generation, transmission, distribution and sale of electric energy in Virginia, northeastern North Carolina and a small portion of West Virginia and the distribution of gas in the Tidewater region of Virginia. The common stock of Dominion Resources and some series of preferred stock of the Utility Company are registered with the Commission under Section 12 of the Exchange Act, and Dominion Resources and Utility Company regularly file the reports required by Section 13 of that Act. By virtue of Section 3(a)(1) of the Public Utility Holding Company Act of 1935, Dominion Resources is an exempt public utility company. Other than Utility Company, Dominion Resources' only first tier subsidiary^{1/} is Dominion Resource Services, Inc. ("Services"), a Virginia corporation which was established to provide corporate, financial and accounting services to Dominion Resources and Utility Company. Prior to May 19, 1983, Utility Company was publicly-held; on that date stockholders of Utility Company became stockholders of Dominion Resources pursuant to a plan of exchange.

You state that Utility Company and, since the corporate reorganization, Dominion Resources as well, have succeeded in structuring and issuing taxable and tax-exempt securities, including commercial paper and industrial development bonds, to meet the financing requirements of Utility Company and Dominion Resources. Because of the intensive capital needs of a public utility, issues of its securities are regularly brought to market. You state that as a result of this activity, the Dominion Resources group has developed a considerable amount of in-house corporate expertise in the structuring and issuance of both taxable and tax-exempt securities transactions.^{2/}

Dominion Resources, either directly or through a subsidiary, now proposes to make this expertise available to a limited number of potential corporate and government issuers.^{3/} After analyzing the financial needs of an issuer, Dominion Resources will recommend or design financing methods and securities to fit the issuer's needs. The securities may be either long-term or short-term, such as commercial paper, or they may be long-term in character but marketable at short-term rates. Dominion Resources may recommend a bond lawyer to the issuer and may also recommend an underwriter or a broker-dealer for the distribution or the marketing of a security in the secondary market. If the nature of the financing so requires, Dominion Resources may also introduce the issuer to a commercial bank (which may already include the issuer as a customer) to act as the initial purchaser of the securities and as a standby purchaser if the securities cannot be readily marketed by the broker-dealer. Dominion Resources will not receive any commissions or other transaction-based compensation in connection with these activities. In addition, Dominion Resources may recommend a commercial bank or other financial institution to provide a letter of credit or other credit support for the securities. Unless it registers as a broker-dealer under the Exchange Act or is exempt from such registration, Dominion Resources will not purchase, sell or solicit purchasers for the securities. The only contact which Dominion Resources will have with any potential purchaser is the possible introduction of the issuer to a commercial bank standby purchaser.

Dominion Resources will not bid on any issues of securities nor will it underwrite, trade or hold funds or securities of the issuer. Representatives of Dominion Resources will be available, as requested by the issuer, for consultation regarding the terms of the financing, preparation of the official statement and other matters leading to the closing, and in such capacity as consultant, may participate in discussions and meetings prior to the closing among the issuer, issuer's counsel, bond counsel, the underwriter or broker-dealer, authority counsel, and any commercial bank standby purchasers. At any meetings prior to and including the closing, Dominion Resources will provide financial advice consistent with its role as a consultant, but will have no authority to represent any of the parties in the negotiations or to bind them to the terms of any agreement. While Dominion Resources might, upon occasion, as part of the consultative, advisory and negotiating process articulate, explain or defend negotiating proposals or positions that have been adopted by its client or that Dominion Resources had recommended for its client's adoption, Dominion Resources would, under all circumstances, act only on behalf of its client and subject to the direction of its client and would not act as an independent middleman generally between the parties.

Representatives of Dominion Resources will review the documentation associated with the financing, but will not have any responsibility for the preparation of that documentation, nor will Dominion Resources direct or supervise operational aspects of the financing, such as printing, mailings, delivery of securities or preparation of bond registration. The parties to the financing will be responsible for these matters. Fees charged by Dominion Resources for its consultative and coordinating services will be negotiated with the issuer, will be related to the overall size of the financing that the client wishes to arrange, and generally will not be payable unless the financing closes successfully. Dominion Resources' fees will not be based upon successful issuance of securities to the public or be affected by secondary trades thereafter.

After the closing, Dominion Resources will have no further significant involvement with the financing, except that upon occasion, and at the request of the issuer, Dominion Resources may, without compensation and as an accommodation to the issuer from time to time make recommendations about investment of temporarily idle proceeds of an issue or monitor the performance of the issue.

The Division of Investment Management ("IM") has asked us to inform you that, in general, IM does not interpret Section 202(a)(11) of the Investment Advisers Act of 1940 to apply to persons that advise issuers how to structure their financing. Therefore, on the basis of the facts presented in your letter, IM will not recommend any enforcement action to the Commission if, without registering as an investment adviser, Dominion Resources, Inc. or a subsidiary thereof carries on the activities described by you.

On the basis of the facts set forth above, the staff of the Division of Market Regulation would not recommend that the Commission initiate enforcement action under Section 15(a) of the Exchange Act if Dominion Resources does not register with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act. The foregoing is a staff position regarding enforcement action only and should not be understood to express any legal conclusions regarding the applicability of statutory or regulatory provisions of the federal securities laws. This position is based solely on the representations expressed herewith; any different facts or conditions might require a different response.

Sincerely,

Kerry F. Hemond
Attorney
Office of the Chief Counsel

Endnotes

1/ Utility Company has two subsidiaries: Laurel Run Mining Company (a coal mining company) and Dominion Exploration, Inc. (a resource exploration company). Utility Company is seeking regulatory approval to convert Dominion Exploration, Inc. into a first tier subsidiary, and to create a new first tier subsidiary, Virginia Natural Gas, Inc., to carry on Utility Company's gas distribution business. Other subsidiaries may be considered from time to time.

2/ At present, Dominion Resources and Services have officers but no other employees, and their

functions are performed by Utility Company employees pursuant to agreements between Utility Company, Dominion Resources and Services. Dominion Resources is considering the elimination of Services, in which event certain employees may be moved from Utility Company to Dominion Resources and the functions of Dominion Resources would be performed in part by those employees and in part by Utility Company employees pursuant to an agreement between the companies.

3/ If Services is dissolved, Dominion Resources or another subsidiary would make this service available in the manner described herein. See note 2, supra. For convenience, references herein to "Dominion Resources" include Services and other subsidiaries, if a subsidiary is utilized. References herein to the "issuer" mean, in the case of industrial development bonds, the corporate or other entity that is the principal user of the facility being financed and not the industrial development authority that technically issues the bonds. Such references do not express any legal conclusions.

INCOMING LETTER

Hunton & Williams
707 East Main Street
Richmond VA 23212
Telephone 804 788-8200
TWX 710 956-0061

March 20, 1985

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
Washington, D. C. 20549

Office of Chief Counsel
Division of Investment Management
Securities and Exchange Commission
Washington, D. C. 20549

Dear Sirs:

I write on behalf of Dominion Resources, ("Resources") to request that the Staff take a "no-action" position under Sections 3(a)(4) and (31) of the Securities Exchange Act of 1934 and Section 202(a)(11) of the Investment Advisers Act of 1940 on the following facts:

Dominion Resources is a Virginia corporation whose principal asset is all of the outstanding capital stock of Virginia Electric and Power Company ("Utility Company"), a regulated public utility engaged in the generation, transmission, distribution and sale of electric energy in Virginia, northeastern North Carolina and a small portion of West Virginia and the distribution of gas in the Tidewater region of Virginia. The common stock of Dominion Resources and some series of preferred stock of the Utility Company are registered with the Commission under Section 12 of the 1934 Act, and Dominion Resources and Utility Company regularly file the reports required by Section 13 of that Act. Dominion Resources is an exempt public utility holding company under the 1934 Act by virtue of Section 3(a)(1) thereof. Other than Utility Company, Dominion Resources' only first tier subsidiary 1/ is Dominion Resource Services, Inc. ("Services"), a Virginia corporation which was established to provide corporate, financial and accounting services to Dominion Resources and Utility Company. Prior to May 19, 1983, Utility Company was publicly-held; on that date stockholders of Utility Company became stockholders of Dominion Resources pursuant to a plan of exchange.

Utility Company and, since the corporate reorganization, Dominion Resources as well, have been successful in placing taxable and tax-exempt securities, including commercial paper and industrial development bonds, with institutional investors, to meet the financing requirements of Utility Company

and Dominion Resources. Because of the intensive capital needs of a public utility, issues of its securities are regularly brought to market and a considerable amount of in-house corporate expertise in the structuring of both taxable and tax-exempt securities transactions and their placement has been developed within the Dominion Resources group. 2/

Dominion Resources, either directly or through a subsidiary, now proposes to make this expertise available to a limited number of potential corporate and governmental issuers. 3/

After analyzing the financial needs of an issuer, Dominion Resources would recommend or design financing methods and securities to fit the issuer's needs. The securities might be either long-term or short-term, such as commercial paper, or they might be long-term in character but remarketable at short-term rates.

Dominion Resources may recommend a bond lawyer to the issuer and also recommend an underwriter or a broker-dealer for the marketing or remarketing of the security in the secondary market. If the nature of the financing so requires. Dominion Resources might also introduce the issuer to a commercial bank (which may already include the issuer as a customer) to act as the initial purchaser of the securities and as a standby purchaser if the securities cannot be readily remarketed by the broker-dealer. Dominion Resources also might recommend a commercial bank or other financial institution to provide a letter of credit or other credit support for the securities. Unless it registered as a broker-dealer under the 1934 Act or was exempt from such registration, Dominion Resources would not purchase, sell or solicit purchasers for the securities in the public markets; the only contact Dominion Resources would have with any potential purchaser would be the possible introduction of the issuer to a commercial bank standby purchaser.

Dominion Resources will not bid on any issues of securities nor underwrite, trade or hold funds or securities of the issuer. Representatives of Dominion Resources will be available, as requested by the issuer, for consultation regarding the terms of the financing, preparation of the official statement and other matters leading to the closing, and in such capacity as consultant, may participate in discussions and meetings prior to closing among the issuer, issuer's counsel, bond counsel, the underwriter or broker-dealer, authority counsel, and any commercial bank standby purchasers. Dominion Resources will assist in coordinating the efforts of these parties to reach a successful closing. To permit it to fulfill its consultative and coordinating roles in an informed fashion, representatives of Dominion Resources will review the documentation associated with the financing, but will have no responsibility for the preparation of that documentation, nor will Dominion Resource, have any direction or supervision over operational aspects of the financing, such as printing, mailings, delivery of securities, preparation of bond registration and the like. These matters will be the responsibility of the parties to the financing. The fees charged by Dominion Resources for its consultative and coordinating services will be negotiated with the issuer and will generally not be payable unless the financing closes successfully. Unlike underwriting or brokerage commissions, Dominion Resources' fees will not be based upon successful issuance of securities to the public or affected by secondary trades thereafter.

After the closing, Dominion Resources will have no further significant involvement with the financing, except that upon occasion, and at the request of the issuer, Dominion Resources may, without compensation and as an accommodation to the issuer, from time to time make recommendations about investment of temporarily idle proceeds of an issue or monitor the performance of the issue.

Securities Exchange Act of 1934

While §3(a)(4) of the 1934 Act defines "broker" broadly, there is little authority as to whether a financial consultant such as Dominion Resources is a "broker" under the facts set forth above. However, in a no action position taken in 1978, the Staff concluded on facts quite similar to those I have described that the consultant would not be a "broker" as defined under the 1934 Act. Benjamin and Lang, Incorporated (SEC 1978) 1978-79 CCH Fed.Sec.L.Rep. Dec. Para. 81,998. There, a firm sought to discontinue its registration as a broker-dealer by limiting its activities to acting as a financial consultant to municipal securities issuers on a fee basis. The firm would not bid on issues, or underwrite, trade or hold customers' funds or securities. It did propose to analyze the financial operations of the issuer, make suggestions, and recommend methods of financing. It would submit for approval suggested bond retirement schedules and other financial data relating to financing of a proposed project. It would

prepare the official statement (if a public offering were involved) and submit financial data to national bond rating services. It would advise the issuer of procedures for selling bonds by competitive bid and in the open market, suggest dates of sale, supervise the printing of the official statement, the notice of sale and the bid form, direct the mailing and cause notices of sale to be published. It would be present at the bid opening and assist the issuer in determining the lowest interest cost. It would assist in the delivery of securities to the purchaser and prepare the bond registration. With respect to temporarily idle proceeds of a bond issue, the firm would recommend a program of investment, and on a less frequent basis the firm would assist issuers in conducting negotiated sales.

Based on the representations, the Staff concluded that the firm would not be subject to registration as a broker, so long as the firm did not solicit purchasers for a sale of the securities, as opposed to acting as a consultant to the issuer in negotiations with an issuer-selected purchaser, and did not bid "on issues, or underwrite, trade or hold funds or securities of the issuer.

If a broker is also a municipal securities broker under Section 3(a)(31), he must comply with Rule A-13 of the Municipal Securities Rulemaking Board (the "MSRB"). Section 3(a)(31) of the 1934 Act defines "municipal securities broker" with language nearly identical to the definition of broker, the only differences being that a broker effects transactions in non-municipal as well as municipal securities and that a bank is not expressly excluded from the definition of municipal securities broker as it is from broker. (The Staff has previously used a similar analysis for examining the activities of a person with respect to municipal securities as with respect to other securities in determining whether no-action positions are appropriate. Letter to Mr. Jack Rosenfield, Oct. 16, 1981 (available on Lexis).) Since Dominion Resources is not a bank, it could no more be a broker in municipal securities than it could be a broker in general. Benjamin and Lang in fact concerned a financial consultant which advised potential municipal security issuers, although the firm only requested a no-action position under section 3(a)(4). For the same reasons that Dominion Resources would not be a broker under Benjamin and Lang, it would not be a municipal securities broker and need not be subject to the rules and fees of the MSRB.

There was pending, at the time of the Benjamin and Lang no-action letter, a proposed rule exempting certain persons from being deemed brokers, and that proposed rule was re-proposed in 1984 as Rule 3a4-1. The no-action position taken in Benjamin and Lang was not then nor is it now inconsistent with the policies underlying that proposed rule. Similarly, the no-action position sought by Dominion Resources is not inconsistent with those policies. Under proposed Rule 3a4-1, even if Dominion Resources were an "associated person of an issuer" (which is not expected to be the case), Dominion Resources would not be receiving commissions or other compensation based on transactions in securities. (The Staff has made clear in its release accompanying the proposed rule that the rule would not be available to those who were "specifically" retained for the purpose of selling securities to the public and who received commissions or other compensation based upon those transactions.) Moreover, the involvement of Dominion Resources would be limited to whatever assistance it could provide in (a) obtaining a bank to act as standby purchaser (and perhaps as initial purchaser) and (b) efforts to accomplish a sale by the issuer at closing to a broker-dealer or underwriter (which would be a registered broker-dealer). While the activities of Dominion Resources in these proposed transactions may be somewhat broader than those narrow activities defined in paragraph (a)(4)(iii) of proposed Rule 3a4-1, they are no broader than (and, indeed, are narrower than) the activities described in the Benjamin and Lang no-action letter, and no presumption should arise that the activities of Dominion Resources make it a "broker" under the 1934 Act purely because its activities do not fall entirely within the narrow confines of paragraph (a)(4)(iii). See Rule 3a4-1, paragraph (b).

Dominion Resources would be acting strictly as a financial consultant and coordinator to issuers and would not (without registration as a broker-dealer under the 1934 Act or an exemption from such registration) engage in selling securities on behalf of issuers to the public (or anyone else). The only activity of Dominion Resources which could be considered to be remotely related to selling securities is the introduction of the issuer to a commercial bank standby purchaser, but in this capacity Dominion Resources would be bringing the issuer and the standby bank together, and would not be selling securities to the public or to the standby purchaser. In any case, Dominion Resources would not receive any commission or other compensation based upon sales of securities to the public or to the standby purchaser.

Investment Advisers Act of 1940

While §202(a)(11) of the 1940 Act defines investment adviser broadly, we have found no authority for the proposition that a person who consults with an issuer about structuring and selling the issuer's own securities, as opposed to providing advice about purchasing or selling securities of another, is intended to be covered. Indeed, Professor Loss says in his recent book, Fundamentals of Securities Regulation (1983), at p. 735:

"Quite clearly the definition [of investment adviser] does not cover a person who merely advises issuers with respect to the value of their own securities generally."

So far as any recommendations that Dominion Resources might make to the issuer about investment of temporarily idle proceeds of an issue, that would be done without compensation and as an recommendation to the issuer, and would be, consequently, an activity that fell outside the definition of "investment adviser" in Section 202(a)(11) of the 1940 Act.

No Action Position Requested

We ask the Staff to concur in our opinion that if Dominion Resources or a subsidiary carries on the activities described above, it will not be deemed a "broker" or a "municipal securities broker" as those terms are defined under the 1934 Act or an "investment adviser" as that term is defined in the 1940 Act. If the Staff should be inclined to decline to take a no-action position, or if additional facts are necessary before a position can be formulated, I ask that I be contacted and a conference arranged or those facts supplied before any adverse position is taken.

The number of copies required by, and the other procedure. outlined in Release No. 33-6269 (Dec. 5, 1980) are being furnished and complied with in this request.

Very truly yours,

/s/Evans B. Brasfield
Evans B. Brasfield

77:34/657

Endnotes

1/ Utility Company has two subsidiaries: Laurel Run Mining Company (a coal mining company) and Dominion Exploration, Inc. (a resource exploration company). Utility Company is seeking regulatory approval to convert Dominion Exploration, Inc. into a first tier subsidiary, and to create a new first tier subsidiary, Virginia Natural Gas, Inc., to carry on Utility Company's gas distribution business. Other subsidiaries may be considered from time to time.

2/ At present Dominion Resources and Services have officers but no employees, and their functions are performed by Utility Company employees pursuant to agreements between Utility Company, Dominion Resources and Services. Dominion Resources is considering the elimination of Services, in which event certain employees may be moved from Utility Company to Dominion Resources and the functions of Dominion Resources would be performed in part by those employees and in part by Utility Company employees pursuant to an agreement between the companies.

3/ If Services is dissolved, this service would be made available by Dominion Resources (or perhaps some other subsidiary) in the manner described herein. See Note 2. References herein to "Dominion Resources" include Services and other subsidiaries, if a subsidiary is utilized. References herein to the "issuer" mean, in the case of industrial development bonds, the corporate or other entity that is the principal user of the facility being financing and not the industrial development authority that technically issues the bonds.