

March 6, 2019

VIA ELECTRONIC MAIL ONLY

Ms. Karen Sabasteanski
Virginia Department of Environmental Quality
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Richmond, VA 23218
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Re: Comments on Re-proposed Regulation – CO₂ Trading Program (9 VAC 5-140)

Dear Ms. Sabasteanski:

Old Dominion Electric Cooperative (“ODEC”) and the Virginia, Maryland and Delaware Association of Electric Cooperatives (“Association”) offer the following comments for consideration regarding the Re-proposed Regulation for establishing a CO₂ Trading Program (9 VAC 5-140-6010 through 6440) published in the *Virginia Register* on February 4, 2019 (35 Va. Reg. 1404) (the “Re-Proposal,” the “Rule,” or the “Regulation”).

Introduction

ODEC is a not-for-profit generation and transmission cooperative comprised of eleven member distribution cooperatives (“Member Systems”) serving load in Virginia, Maryland, and Delaware. ODEC serves nine (9) Member Systems in Virginia which serve approximately 1.1 million retail consumers.

ODEC owns a variety of generating resources in Virginia including part ownership of a baseload nuclear plant (North Anna Power Station) and co-ownership of a base-load pulverized coal plant (Clover Power Station). In addition, ODEC is the sole owner and operator of two (2) peaking, simple-cycle natural gas/fuel oil combustion turbine plants (Louisa & Marsh Run Generation Facilities). ODEC owns a natural gas-fired combined cycle plant in Maryland (a current RGGI member state), and therefore has experience operating under RGGI. ODEC has long-term purchase contracts from solar energy resources and a landfill gas-fueled electric generation plant in Virginia. ODEC purchases the balance of its electricity needs on the wholesale market, including renewable energy resources, such as wind.

Founded in 1944, the Association is a not-for-profit trade association owned by the thirteen (13) electric distribution cooperatives in the Commonwealth of Virginia as well as one electric distribution cooperative in each of Maryland and Delaware (the “Member Systems” or the

“Cooperatives”). The Association’s Member Systems serve over 1.5 million residents of the mid-Atlantic—who are the Cooperatives’ members and owners.

The Cooperatives provide electricity to homes, farms, and businesses throughout their certificated territories, with over 90 percent of the meters serving residential member-consumers, with an average of 7 consumers per mile of line. Some of the Association’s Member Cooperatives own generation.

As member-owned electric utilities, the Cooperatives believe that safe, affordable, and reliable power is of the utmost importance to the Commonwealth of Virginia and the nation as a whole. ODEC and the Association are very concerned that any CO₂ regulation will significantly impact the cost of electricity to our member-consumers. A balanced, planned, thoughtful approach is important when tackling such complicated energy policy issues.

Comments

First and foremost, our concerns expressed in the comments we submitted on April 9, 2018) regarding the initially proposed regulation have not been diminished by the analysis provided with the Re-proposal.

In fact, the modeling and other supporting documentation for the Re-proposal continue to highlight the inadequacies of the analysis. We believe this is due in large part to inconsistent or faulty assumptions regarding various market factors.

Additionally, we express our general support for the comments provided by the Virginia Manufacturer’s Association.

In the following sections, ODEC has outlined (i) specific issues regarding the supporting regulatory modeling and analysis and (ii) broader discussions on several of the more troubling aspects of the Re-proposal.

REGULATORY MODELING & ANALYSIS ISSUES

ODEC and the Association believe that the supporting modeling and analysis is based upon a number of very inconsistent assumptions and has not adequately represented the impacts to Virginia as a whole, and more specifically, to our member-consumers:

Issue 1: Modeling clearly shows increase in transmission imports.

The ICF analysis shows an increase in electricity imports to Virginia by as much as four TWh (four million MWh) on an annual basis or approximately 15% of Virginia’s electric usage. Coal units across state lines in non-RGGI states with low utilization are well positioned to ramp up their dispatch to supply these imports, increasing the regional CO₂ emissions by approximately four million tons annually. This would largely cancel the reductions outlined in the Re-proposal. As a result, it is likely that CO₂ emissions would be increased by utilization of more carbon-intensive plants in adjacent states. Ultimately this shift from generation within Virginia to generation from

just outside Virginia's border will impact Virginia and the region as a whole. The region immediately surrounding and including Virginia may not see an actual decrease in carbon emissions as a result of this Regulation. This particular issue of the actual transmission flows requires more study to evaluate what specific generation in adjacent states will be increased and what the overall impact on regional emissions is as a result of the Re-proposal.

Issue 2: Consignment revenues are all assumed to be passed through to ratepayers.

One of the key assumptions made in the economic analysis is that all revenues from the allowance consignment auctions are returned to ratepayers, thus reducing the projected impact on ratepayers.

This assumption is stated in the presentation on customer bill analysis:

Method



▪ **Analysis:**

- Calculates the *change in* the average monthly electricity bill on a customer class average basis between the Virginia Reference Cases and Policy Scenarios
 - Includes adjustment to the average monthly bill by customer class assuming that revenues from allowance consignment auctions are returned to ratepayers based on each customer class's contribution to total annual consumption
- This assumption is inconsistent with the Re-proposal. The Rule states that the proceeds from the consignment auctions are returned mostly to affected generators with a small carve out for DMME. While ODEC, as a member-owned cooperative, will return its revenues from the consignment auction to its member-ratepayers by virtue of its business and organizational model, some of the affected generation in the state is owned by independent power producers who will keep all proceeds from the consignment auction. Even the regulated, investor-owned utilities may decide not to return all auction revenues to ratepayers, nor can the Rule require this.
 - Further, if legislation granting the state permission to administer the funds instead of returning it to generators is promulgated, then none of the consignment auction revenues will be necessarily automatically returned to ratepayers.

Issue 3: Estimated energy efficiency costs are not reflective of the full cost and the resulting load growth projections are understated.

- The ICF analysis assumed a flat load forecast as a result of the 2018 enactment of the Grid Transformation and Security Act (“GSTA”), which as stated in the Re-proposal presentation on 10/29/18 includes “Significant energy efficiency investments by regulated utilities (close to \$1 billion).”
- The documentation of how much energy efficiency can actually be achieved with this investment has not been studied by ICF, and, was rather, estimated using data that was not appropriate for large scale applications. By forecasting no load growth, the ICF analysis

makes compliance seem easy and cheap, because emissions levels, plant generation needs, CO₂ prices, and firm power prices are all lower when loads are assumed to be low.

- The ICF results are *only* valid for a scenario with this load assumption. Future compliance costs are understated if Virginia's economic expansion and data center expansion outpaces the likely-overstated energy efficiency reductions achieved by the GTSA spending. The recent announcement of Amazon's choice of Virginia for its HQ2 location is key evidence that low- to no-load growth is not *necessarily* going to occur. Virginia, in fact—and especially Northern Virginia—continues to be a high-growth area.

Issue 4: Off-shore wind project implementation assumptions are over-stated.

- The ICF analysis assumes that several off-shore wind projects will come to fruition in Massachusetts, Connecticut, Rhode Island and New Jersey. The off-shore resources are being used in the study to meet incremental demand. These projects are being opposed by the fishing and tourism industries, among others, and may not actually occur. While an assumption like this may seem trivial, if these projects are not constructed the expected generation need to replace these projects would equate to roughly 14% of the overall RGGI allowance cap which would have a significant impact on RGGI allowance prices and ultimately the cost of compliance for Virginia utilities.

These issues related to the modeling of the potential impacts of this Regulation highlight the complex nature of the proposed Regulation and the need to take more time to assess the real impacts of linking to RGGI. We urge that the implementation of the Regulation be postponed until a more thorough evaluation can be performed.

PROGRAMMATIC CONCERNS & IMPACTS

In the following sections, ODEC and the Association provide more specific concerns related to the potential impacts to Cooperatives and to Virginia generation sources. There are a number of programmatic elements which will drive impacts and unintended consequences.

The Impact on Electric Rates and Electric Bills

ODEC and the Association have significant concerns regarding the anticipated impact of this regulation on the electric bills of its ultimate consumers. In the service territories served by ODEC and Association Member Cooperatives, many rural consumers are having trouble paying their bills *today*—not in some unknown future. Even a modest increase in bills will be problematic, and larger increases in costs will turn electricity into a luxury item. We cannot allow that to happen.

The Cooperatives have only their ratepayers from which to recover costs; there are no separate stockholders. This fact makes the implementation of this Rule all that much more troubling for the Cooperatives. This program has the potential to produce a multitude of unintended consequences, each of which could, individually, have sizable cost implications. The Cooperatives are particularly concerned about the protection of the end-users of electricity: our consumers.

We would like to reference the letter to Delegate Kilgore from the State Corporation Commission (“SCC”) Staff citing results of their modeling of bill impacts due to the implementation of the re-proposed CO₂ Trading Rule and the SCC Staff’s letter to Delegate Poindexter which followed it. Based upon their analysis, impacts on average for Dominion Energy customers was an average monthly bill increase of \$7 to \$12. The SCC used Dominion’s PLEXOS model, but a number of the assumptions which they listed were similar, if not identical to assumptions made in the ICF modeling runs that were used in the impact projections presented by Analysis Group in support of the Re-proposal. These include:

- Using the price floor for carbon emissions published by RGGI;
- Using a discount rate of 6.31%;
- Modeling DOM zone costs recognizing that that customers pay whether a unit runs or not;
- Assuming that the 5,000 MWs of solar, 30 MWs of battery storage and \$870 million of spending on energy efficiency programs, all of which is mandated under the GTSA, came to fruition; and
- Using the 28 million tons with a 3% reduction through 2030 consistent with the current re-proposal.

The SCC’s concerns should not be taken lightly and, in fact, should have been addressed by DEQ working closely with the SCC. DEQ’s Rule will obligate Virginia to reductions that RGGI desires while not properly addressing the utility regulatory aspects that is one of the foundations of the RGGI organization. The RGGI Board is comprised of two representatives from each state, one from the utility regulatory area and the other from the environmental agency. These two representatives conceptually work in concert to establish balanced reductions for their own participating state with minimal impacts to consumers. It is quite obvious that there is not alignment among the state agencies regarding the potential impacts to consumers from this Re-proposal. Considering this fact alone, DEQ is encouraged, at the very least, to delay implementation and take the time to form a multi-year regulatory working group that closely integrates environmental and utility regulators, and outside experts from across stakeholder groups, to more fully vet the Re-proposal before it is enacted. Finally, we would also like to point out that under the Regulation, there is no established legal requirement to return revenues to ratepayers.

Quite frankly, these numbers greatly concern us and they should concern all Virginians. We would like to point out that the impacts to the Cooperatives’ member-consumers could be significantly different from what the SCC has projected for Dominion Energy customers, and the SCC Staff’s letter to Delegate Poindexter indicates that they have not even begun the process of modeling those impacts. While Dominion Energy supplies the majority of electric consumers in Virginia (5 million customers), our Virginia Cooperatives served by ODEC equate to approximately 1.1 million consumers. There are fewer ratepayers over which to spread any cost increases. Based upon the difference in Dominion Energy as an investor-owned utility (IOU) versus the Cooperatives as not-for-profit member-owned utilities, there could a much wider range of financial impacts that have yet to be fully vetted.

While it has long been accepted in the promulgation of any regulation that there are various models and economic analyses to show the cost impacts of the Rule, the simple fact that this pollutant cannot be controlled with specific and defined commercially-available control equipment, as is the case with other criteria and hazardous air pollutants, makes the Regulation particularly problematic and fraught with the probability of unintended consequences. Additionally, there is no environmental modeling that can be run to show any projected local benefits based upon the anticipated program reductions.

PJM Market and Effects of Leakage

As we have commented in previous stages of this proceeding, regulating CO₂ at the state level is not as effective as a broader, integrated regional or national approach, particularly when the regulation of CO₂ is in a state that is surrounded by states that are not regulating CO₂. There are numerous unintended consequences that may arise from such a market distortion. By putting this additional financial burden on Virginia generation, the effect will be encouraging imports of electricity from other states, potentially requiring the construction of additional transmission infrastructure to maintain reliability. The DEQ's modeling clearly shows these effects with projections of 16% of electricity needs coming from imports in 2020 and rising to 25% by 2030.

If the Re-proposal is to move forward, we also strongly recommend adding a provision for an analysis of trends in imports in Virginia once the program has been implemented. If there is indeed a significant increase in imports, Virginia should have the ability to make programmatic adjustments to scale back the regulatory requirements for in-state generators to deter the import of out-of-state generation. The Air Pollution Control Board should consider any number of "safety valve" measures—for consumer protection from price increases, for reliability of the electricity system, and for imports from out-of-state.

The additional burden of this program could result in premature retirement of coal facilities or significantly reduced utilization of existing coal resources. These Virginia power generation resources were designed, built, and permitted in strict compliance with federal and state regulations to meet the long-term electricity needs for ratepayers. The implementation of this Regulation may reduce the remaining useful life of these assets which are still being paid for by all consumers, and certainly are still being paid for by the ODEC Member Systems' member-consumers. At the very least, if Virginia is going to implement this program, Virginia needs to develop a mechanism to compensate consumer-funded, prematurely-retiring coal generation. One possible mechanism would be to carve-out allocations for retired consumer-funded generation for a significant number of years after their retirement. This type of solution would also remove a barrier to the closure of consumer-funded coal generation, by providing allocated allowance revenue to offset the stranded costs paid for by consumers. Other mechanisms could also be considered, and make more sense, but those would likely require legislation to implement.

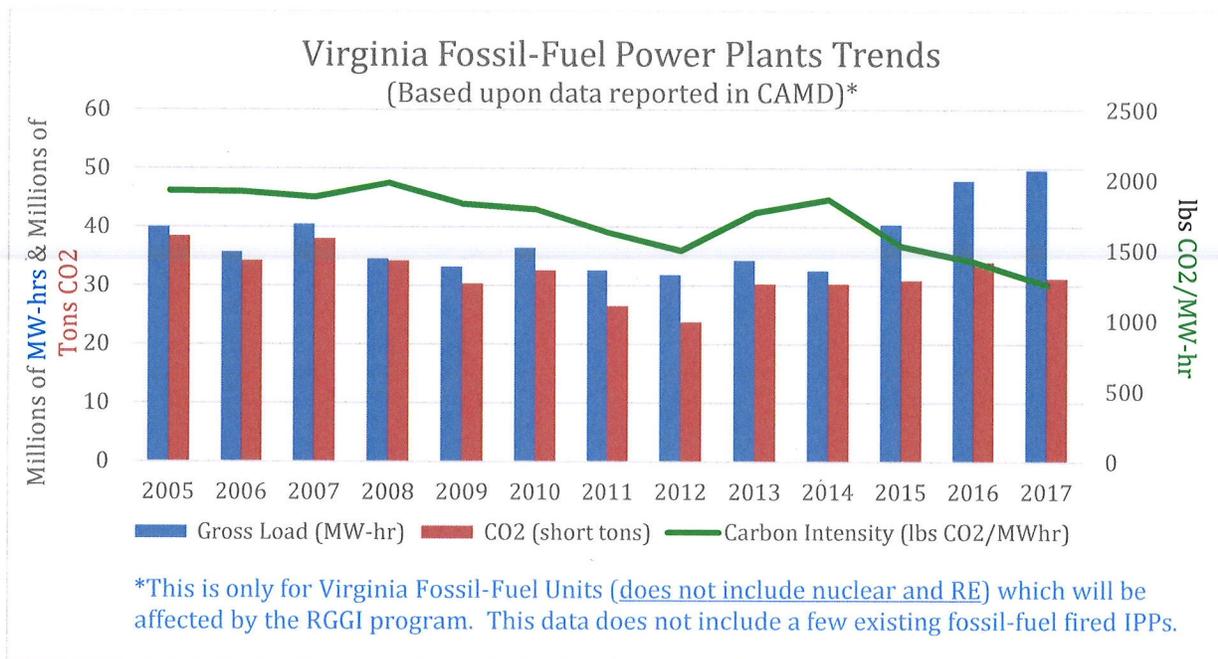
Those renewable generation resources owned directly by Cooperatives should continue to be counted as renewable resources and excluded from the Regulation. This includes not only solar PV projects, of course, but also the carbon-neutral wood waste biomass plant in Halifax County serving member-consumers of Northern Virginia Electric Cooperative.

Beyond increasing imports using current transmission infrastructure, recent changes in PJM’s market efficiency process will promote construction of new transmission from outside Virginia into the Dominion zone. State participation in RGGI coupled with PJM’s market efficiency process set the stage for economically encouraging increased use of existing coal facilities and construction of new gas facilities just outside Virginia’s border to incrementally meet Virginia’s energy needs in the future. As noted above, this could very well result in no net reduction in regional CO₂ emissions despite the increased cost to Virginia rate payers.

The issue of leakage is a very complex issue for which states continue to grapple. As an example, New York Independent System Operator (NYISO) is considering introducing carbon pricing, in part, as a means of reducing leakage. The fact that New York is its own Regional Transmission Organization (RTO) does make that exercise less burdensome. However, Virginia, as part of the PJM RTO, may very well have to grapple with this issue, and spend significant resources in the future to control leakage. NYISO’s actions point to two important facts. The first fact is that leakage is not just a theoretical modeling concern, but is a real problem that is already happening in existing RGGI states. The second fact is that despite RGGI’s requirements to consider leakage and to make adjustments to address it, RGGI clearly has not done so to NYISO’s satisfaction and cannot be relied up on to correct the problem for Virginia. For this reason, we feel that the propose Re-Regulation should include Virginia-specific rules to reduce or eliminate leakage.

Initial Virginia CO₂ Budget

ODEC and the Association would like to point out that, based upon information from a variety of data sources, Virginia has seen an overall downward trend in carbon intensity of its generation, as evidenced by the following graph.



Virginia already has one of the lowest carbon intensities among the PJM states, which also includes RGGI states that have been involved in the program since its inception. It is not appropriate to reduce the starting budget to 28 million tons given the past trends and the progress that has already been made in the absence of any Rule.

Should Virginia move forward with implementation of this Rule, we believe that the current trends support the initial budget higher than the re-proposed 28 million tons. While the trend has been declining over the years, since 2014, there has been a great deal of investment in new clean combined cycle generation which would be subject to this program. Virginia should be allowed to enter the RGGI program with a budget that is fair to Virginia given the current generation resources. The aspect of the program bank adjustments being applied to Virginia as we are just entering the RGGI market puts a greater burden on Virginia sources than is warranted, as we have outlined in greater detail in the subsequent section.

Additionally, as is highlighted within the VMA comments, there are significant concerns regarding the extent of the industrial exemption that is provided in the Re-proposal. The DEQ has stated that their assumptions in the modeling are that no industrials would be considered affected units. If that is truly the case, then the language which provides for that exemption should be very clear. Otherwise, the budget would need to be re-evaluated simply to account for any potentially affected industrials.

Timing and Implementation Schedule

ODEC understands that there is a strong desire by the Administration to start participation in the RGGI Program, and that negotiations have been centered around Virginia entering in 2020. However, beginning in 2020, the last year of a three-year control period, puts additional strain on generators for procurement of allowances. Virginia generators will not have any time to determine changes in the overall market. Normally, generators would have three years to be able to optimize their allowance procurement strategy before the final “true-up.” In the case of Virginia, all the generators will have only one year to ensure they procure enough allowances to cover the emissions for that initial participation year. To alleviate this burden, assuming the Regulation goes forward, we would propose that the start of implementation of the CO₂ Trading Program not commence until January 1, 2021, which is the start of the next control period.

Additionally, given that the Virginia generators would be just now entering the RGGI-linked program, the banking adjustments that have been calculated by RGGI and are being proposed to be applied to subsequent years, should not be applied to the Virginia budget. These banking adjustments are based on participants *outside* of Virginia banking more allowances than anticipated, and not the actions of any generators in Virginia. Such an adjustment should only be applied to existing RGGI participants. Alternatively, if Virginia does not wish to diverge from the bank adjustment process, as we have indicated in the previous section, we believe that the initial budget of 28 million tons, should be increased to the originally-proposed amounts of either 33 or 34 million tons. Doing this would ensure that applying the banking adjustments will not put unwarranted burden on Virginia’s sources.

Also, as we have stated in previous filings, ODEC and the Association feel that there should be consideration given to reliability and resiliency safety valves. Such mechanisms would recognize that over-reliance on intermittent generation or a single fuel such as natural gas which is not easily storable, may negatively impact reliability and resilience. Analyses should be performed to assure that resiliency is maintained and that critical generation resources are not retired because of the impacts of this Regulation. In the case where retirement of critical resources is likely, adjustments to the allowance allocations should be contemplated.

Allocation of CO₂ Allowances

Despite our serious concerns with the potential impacts of this Regulation, if the Regulation were to be implemented, we would like to include our general support for the provision establishing that 95% of the budget will be allocated to the generators. Particularly for the Cooperatives, revenues from the consigned allocations will subsequently go back directly to our member-consumers. This is a critical means to reduce the net cost impact on electric consumers. Setting a price on CO₂ emissions as this program does, is enough incentive for all sectors to seek ways to reduce emissions. Even when allocated allowances, utilities will still be incented to pursue low- or non-emitting resources and energy efficiency measures. Not having allowances granted to such sources and forcing electric ratepayers to foot the bill for CO₂ emissions will invariably be a significant cost impact and can be at least somewhat mitigated by allocated allowances to generators as proposed.

As stated previously, any utility with a wholesale power contract could be adversely affected by the implementation of a system where their consumers end up paying for the costs of CO₂ emissions and receive nothing in return. This could be resolved by flowing auction revenues through applicable FERC ratemaking mechanisms using FERC Form 1 data. However, this difference, and the complexity of DEQ involving itself in a mechanism of wholesale ratemaking, should merely serve to reiterate our mutual concerns regarding the complexity and unintended consequences of the Regulation.

We would like to provide further comment on the conditional allocation methodology. We recommend allocation based on emissions, not megawatts generated. Incumbent utilities have made significant investments under the existing regulatory compact to provide power economically and reliably to meet retail loads. Because of these significant investments, there should be an appreciation for the value associated with these investments in electric generating plants. The conditional allocations being allocated on an emissions basis will serve to provide a "glide path" for the existing resources to continue to operate within their remaining useful life, rather than having significant stranded resources which will directly impact our consumers and what they pay for electricity. Coal generators would still be incented to operate as efficiently as they can since the allowance price will set the cost of each ton of CO₂ emitted irrespective of who is given the allowances.

Program Review and Extension Past 2030

RGGI is a consensus organization, and the RGGI Model Rule already provides a structure for participating states to make adjustments and plan for the future. No one can know what the

state of the electric utility industry will be in 2030. ODEC strongly disagrees with the provision proposed in 9 VAC 5-140-6190 C, which obligates Virginia, in the absence of any adjustment, to an arbitrary reduction value for 2031-2040. Requiring an 840,000 ton per year reduction as a hard-and-fast amount is both inconsistent with the intent of Executive Directive 11 (ED-11) and the reasonable standard for program review already established by RGGI. If Virginia is participating in RGGI because it is a well-established multi-state trading program, why should the Board feel the need to diverge from the standard practice under the Model Rule?

Additionally, based upon the comments submitted by RGGI dated February 21, 2019, RGGI states had some consternation with Virginia diverging from the Model Rule, stating that:

“the RGGI states strongly urge Virginia to adopt a consistent budget trajectory to the other participating states.... In the event that Virginia, or any participating state, wishes to effect changes in the region’s long-term cap trajectory, the appropriate vehicle is the periodic RGGI program review process. Through this process, the participating states consider an appropriate trajectory for continued emissions reduction and arrive at a consensus decision supported by discussion, analysis, and stakeholder engagement.”

The last sentence of this section of the Regulation is arbitrary, adds no real value to the program, and should be removed.

Conclusion

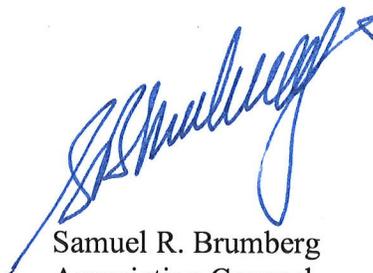
In conclusion, ODEC and the Association would like to urge caution and stress the complexity of this issue. Virginia should be extremely cautious in promulgating environmental regulations that will significantly change energy policy in Virginia without accomplishing the goal of reducing CO₂ emissions in a meaningful and significant way. While we all agree that protection of the environment is extremely important, and that efforts to mitigate and remediate the effects of global climate change should be undertaken, we are concerned that Virginia may be embarking down a path that ultimately leads to higher electric bills, little environmental benefit, and a complex compliance regime that is a net negative for the Commonwealth.

Thank you for your consideration of our comments.

Sincerely,



Peter F. Gallini
Vice President, Power Supply



Samuel R. Brumberg
Association Counsel