

# VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

## CHAPTER 262

*An Act to amend and reenact § 56-580 of the Code of Virginia, relating to electrical generating facility certificates.*

[H 59]

Approved March 31, 2004

**Be it enacted by the General Assembly of Virginia:**

**1. That § 56-580 of the Code of Virginia is amended and reenacted as follows:**

§ 56-580. Transmission and distribution of electric energy.

A. The Commission shall continue to regulate pursuant to this title the distribution of retail electric energy to retail customers in the Commonwealth and, to the extent not prohibited by federal law, the transmission of electric energy in the Commonwealth.

B. The Commission shall continue to regulate, to the extent not prohibited by federal law, the reliability, quality and maintenance by transmitters and distributors of their transmission and retail distribution systems.

C. The Commission shall develop codes of conduct governing the conduct of incumbent electric utilities and affiliates thereof when any such affiliates provide, or control any entity that provides, generation, distribution, transmission or any services made competitive pursuant to § 56-581.1, to the extent necessary to prevent impairment of competition.

D. The Commission shall permit the construction and operation of electrical generating facilities upon a finding that such generating facility and associated facilities (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility and (ii) are not otherwise contrary to the public interest. In review of a petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1. In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters. Nothing in this section shall affect the ability of the Commission to keep the record of a case open. Nothing in this section shall affect any right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a decision approving such proposed facility that is conditioned upon issuance of any environmental permit or approval.

E. Nothing in this section shall impair the distribution service territorial rights of incumbent electric utilities, and incumbent electric utilities shall continue to provide distribution services within their exclusive service territories as established by the Commission. Nothing in this chapter shall impair the Commission's existing authority over the provision of electric distribution services to retail customers in the Commonwealth including, but not limited to, the authority contained in Chapters 10 (§ 56-232 et seq.) and 10.1 (§ 56-265.1 et seq.) of this title.

F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility owned or operated by a municipality as of July 1, 1999, nor shall any provision of this chapter apply to any such electric utility unless (i) that municipality elects to have this chapter apply to that utility or (ii) that utility, directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail customer outside the geographic area that was served by such municipality as of July 1, 1999, except any area within the municipality that was served by an incumbent public utility as of that date but was thereafter served by an electric utility owned or operated by a municipality pursuant to the terms of a franchise agreement between the municipality and the incumbent public utility. If an electric utility owned or operated by a municipality as of July 1, 1999, is made subject to the provisions of this chapter pursuant to clause (i) or (ii) of this subsection, then in such event the provisions of this chapter applicable to incumbent electric utilities shall also apply to any such utility, mutatis mutandis.

G. The applicability of this chapter to any investor-owned incumbent electric utility supplying

electric service to retail customers on January 1, 2003, whose service territory assigned to it by the Commission is located entirely within Dickenson, Lee, Russell, Scott, and Wise Counties shall be suspended effective July 1, 2003, so long as such utility does not provide retail electric services in any other service territory in any jurisdiction to customers who have the right to receive retail electric energy from another supplier. During any such suspension period, the utility's rates shall be (i) its capped rates established pursuant to § 56-582 for the duration of the capped rate period established thereunder, and (ii) determined thereafter by the Commission on the basis of such utility's prudently incurred costs pursuant to Chapter 10 (§ 56-232 et seq.) of this title.

*H. The expiration date of any certificates granted by the Commission pursuant to subsection D of this section, for which applications were filed with the Commission prior to July 1, 2002, shall be extended for an additional two years from the expiration date that otherwise would apply.*