

VIRGINIA ACTS OF ASSEMBLY -- 2006 RECONVENED SESSION

CHAPTER 941

An Act to amend and reenact §§ 15.2-5401, 15.2-5402, 15.2-5403, 15.2-5405, 15.2-5406, 15.2-5409, 15.2-5423, 56-1, and 56-580 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 15.2-5405.1, 15.2-5406.1, 15.2-5406.2, and 15.2-5423.1, relating to electric authorities.

[S 406]

Approved May 18, 2006

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-5401, 15.2-5402, 15.2-5403, 15.2-5405, 15.2-5406, 15.2-5409, 15.2-5423, 56-1, and 56-580 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 15.2-5405.1, 15.2-5406.1, 15.2-5406.2, and 15.2-5423.1 as follows:

§ 15.2-5401. Intent of General Assembly.

It is the intent of the General Assembly by the passage of this chapter to authorize the creation of electric authorities by localities of this Commonwealth, either acting jointly or separately, in order to provide facilities for the generation ~~and~~, transmission, *and distribution* of electric power and energy, and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth.

It is further the intent of the General Assembly that in order to achieve the economies and efficiencies made possible by the proper planning, financing, sizing and location of facilities for the generation ~~and~~, transmission, *and distribution* of electric power and energy which are not practical for any locality or electric authority acting alone, and to insure an adequate, reliable and economical supply of electric power and energy to the inhabitants of the Commonwealth, electric authorities shall be authorized to jointly cooperate and plan, finance, develop, own and operate with other electric authorities and other public corporations and governmental entities and investor-owned electric power companies and electric power cooperative associations or corporations, within or outside the Commonwealth, electric generation ~~and~~, transmission, *and distribution* facilities in order to provide for the present and future requirements of the electric authorities and their participating localities. *It is further the intent of the General Assembly that an authority that is created by the Town of Elkton and that is limited by its articles of incorporation to having the Town of Elkton as its sole member throughout its life is authorized to become an authority to distribute electric energy for retail sale. The distribution of electric energy for retail sale by an authority that is created by the Town of Elkton and that is limited by its articles of incorporation to having the Town of Elkton as its sole member throughout its life shall be limited to the geographic area that was served as of January 1, 2006, by the Town of Elkton.*

Accordingly, it is determined that the exercise of the powers granted herein will benefit the inhabitants of the Commonwealth and serve a valid public purpose in improving and otherwise promoting their health, welfare and prosperity.

This chapter shall be liberally construed in conformity with these intentions.

§ 15.2-5402. Definitions.

Wherever used in this chapter, unless a different meaning clearly appears in the context:

"Authority" means a political subdivision and a body politic and corporate created, organized and existing pursuant to the provisions of this chapter, or if the authority is abolished, the board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers given by this chapter shall be given by law.

"Bonds" or "revenue bonds" means bonds, notes and other evidences of indebtedness of an authority issued by the authority pursuant to the provisions of this chapter.

"Cost" or "cost of a project" means, but shall not be limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement, betterment or extension of any project, including the cost of studies, plans, specifications, surveys, and estimates of costs and revenues relating thereto, the cost of labor and materials; the cost of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing the same; administrative, legal, engineering and inspection expenses; financing fees, expenses and costs; working capital; costs of fuel and of fuel supply resources and related facilities; interest on bonds during the period of construction and for such reasonable period thereafter as may be determined by the issuing authority; establishment of reserves; and all other expenditures of the issuing authority incidental, necessary or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment or extension of any project and the placing of the project in operation.

"Governmental unit" means any incorporated city or town in the Commonwealth owning on January

1, 1979, a system or facilities for the generation, transmission or distribution of electric power and energy for public and private uses and engaged in the generation or retail distribution of electricity; any incorporated city in the Commonwealth which on January 1, 1979, has a population of 200,000 or more; or any county or incorporated city or town in the Commonwealth which after January 1, 1979, is authorized to participate in an authority pursuant to an act of the General Assembly.

"Project" means any system of facilities for the generation, transmission, transformation or, supply, or distribution of electric power and energy by any means whatsoever, including fuel and fuel supply resources and other related facilities, any interest therein and any right to output, capacity or services thereof, but does not include facilities for the distribution of electric energy for retail sale *unless the facilities are owned by an authority created by a governmental unit that is exempt from the referendum requirement of § 15.2-5403, and the distribution is limited to retail sales within the geographic area that was served as of January 1, 2006, by the governmental unit that is the sole member of such authority.*

"Unit" means any governmental unit; any electric authority; any investor-owned electric power company; any electric cooperative association or corporation; the Commonwealth or any other state; or any department, institution, commission, public instrumentality or political subdivision of the Commonwealth, any other state, or the United States.

§ 15.2-5403. Creation of electric authority; referendum.

The governing body of a governmental unit may by ordinance, or the governing bodies of two or more governmental units may by concurrent ordinances or agreement authorized by ordinance of each of the respective governmental units, create an electric authority, under any appropriate name and title containing the words "electric authority." Upon compliance with the provisions of this section and §§ 15.2-5404 and 15.2-5405, the authority shall be a political subdivision of the Commonwealth and a body politic and corporate. Any such ordinance shall be adopted in accordance with applicable general or special laws or charter provisions providing for the adoption of ordinances of the particular governmental unit, and shall be published once a week for two successive weeks prior to adoption in a newspaper of general circulation within the governmental unit. The second publication shall not be sooner than one calendar week after the first publication.

No governmental unit shall participate as a member of such an authority unless and until such participation is authorized by a majority of the voters voting in a referendum held in the governmental unit on the question of whether or not the governmental unit should participate in the authority. The referendum shall be held as provided in §§ 24.2-682 and 24.2-684. *The foregoing referendum requirement shall not apply to the Town of Elkton if the Town creates an authority by an ordinance that includes articles of incorporation which comply with the provisions of § 15.2-5404 and also set forth a statement that such authority shall have only the Town as its sole member throughout its life.*

§ 15.2-5405. Certificate of incorporation or charter; addition and withdrawal of members; board of directors; indemnification of directors, officers or employees.

A. After adoption or approval of the ordinances or agreement providing for the creation of an authority, the articles of incorporation of the authority shall be filed with the State Corporation Commission. If the State Corporation Commission finds that the articles of incorporation conform to law, and the creation of such an authority is in the public interest, a certificate of incorporation or charter shall forthwith be issued, and thereupon the authority shall constitute a political subdivision of the Commonwealth and a body politic and corporate and shall be deemed to have been lawfully and properly created, established and authorized to exercise the powers granted under this chapter.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract or action of the authority, the authority, in the absence of establishing fraud in the premises, shall be conclusively deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of the aforesaid certificate by the State Corporation Commission. A copy of such certificate, duly certified by the State Corporation Commission, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive evidence of the filing and contents thereof.

Notice of the issuance of such certificate by the State Corporation Commission shall be given to each of the member governmental units of the authority by the State Corporation Commission.

B. After the creation of an authority, any other governmental unit may become a member thereof upon application to such authority after the adoption of an ordinance by the governing body of the governmental unit authorizing such governmental unit to become a member of the authority, and with the unanimous consent of the members of the authority evidenced by ordinances of their respective governing bodies. *Any Except for an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403, any governmental unit may withdraw from an authority; however, all contractual rights acquired and obligations incurred while a governmental unit was a member shall remain in full force and effect.*

In the case of the joining of a new member governmental unit to an authority, or in the case of the withdrawal of an existing member governmental unit from an authority, the articles of incorporation of the authority shall be amended to evidence such joinder or withdrawal, as the case may be, and such amendment shall be filed with the State Corporation Commission. Thereupon, the State Corporation Commission shall issue a certificate of joinder or withdrawal, as the case may be, to which shall be

attached a copy of the amendment to the articles of incorporation. The joining or withdrawal shall become effective upon the issuance of such certificate.

C. The powers of each authority created by the governing body of a single governmental unit shall be exercised by a board of five directors, or, at the option of the governing body of the particular governmental unit, a number of directors equal to the number of persons on the governing body of the governmental unit. The powers of each authority created by the governing bodies of two or more governmental units shall be exercised by a board of such number of directors specified in its articles of incorporation, which shall be not less than one member for each governmental unit and not less than a total of five directors. The directors of an authority shall be selected in the manner and for the terms provided by the ordinance of a single governmental unit, or the concurrent ordinances or agreement of two or more of the governmental units creating the authority. No director shall be appointed for a term of more than four years but a director may be reappointed and succeed himself or herself. Directors shall hold office until their successors have been appointed. When one or more additional governmental units join an existing authority, each of such joining governmental units shall appoint not less than one director of the authority.

The directors of the authority shall elect one of their number chairman of the authority, and shall elect a secretary and treasurer and such other officers as are deemed necessary who need not be directors of the authority. The offices of secretary and treasurer may be combined. A majority of the directors of the authority shall constitute a quorum, and the vote of a majority of the directors shall be necessary for any action taken by the authority. No vacancy in the board of directors of the authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority. If a vacancy occurs by reason of the death, disqualification or resignation of a director, the governing body of the governmental unit which appointed such director shall appoint a successor to fill his unexpired term. In the event of a vacancy in the board of directors for any reason, a successor shall be appointed within six months of the date on which such vacancy occurred.

Whenever a governmental unit withdraws from an authority, the term of any director appointed to the board of directors from such governmental unit shall immediately terminate, and, if such termination results in less than five directors of the authority, additional directors shall be selected in the manner and for the terms provided by the ordinances or agreement creating the authority so as to comply with the requirements of this section. No elected official of a member governmental unit shall be a director of an authority. No person shall serve as a director unless he resides within the governmental unit which has appointed him. Directors shall receive such compensation as shall be fixed from time to time by resolution or resolutions of the governing body or bodies of the member governmental unit or units of the authority, and shall be reimbursed for any actual expenses necessarily incurred in the performance of their duties.

D. An authority may defend, indemnify against loss or liability and save harmless any of its directors, officers or employees whenever a claim or demand is made or threatened, or whenever proceeded against in any investigation or before any court, board, commission or other public body to defend or maintain his official position or a position taken in the course of the execution of his duties or because of any act or omission arising out of the performance of his official duties if the director, officer or employee acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the authority. If it is ultimately determined that a director, officer or employee of an authority is entitled to be indemnified by the authority as authorized in this section, he shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him in connection therewith. Expenses, including attorneys' fees, incurred in defending a civil action, suit or proceeding may be paid by an authority in advance of the final disposition of such action, suit or proceeding as authorized in the manner provided in this section upon receipt of an undertaking by or on behalf of the director, officer or employee, to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the authority as authorized in this section.

The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer or employee, and shall inure to the benefit of the heirs, executors and administrators of such person. An authority shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer or employee of the authority against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the authority would have the power to indemnify him against such liability under the provisions of this section.

§ 15.2-5405.1. Applicability of personnel and procurement procedures to certain authorities.

The provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.) and the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall apply to an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 in the exercise of any power conferred under this article only to the extent that such provisions would have applied to the sole member of such authority in the exercise of such power directly.

§ 15.2-5406. Rights, powers and duties of authority.

An authority shall have all of the rights and powers necessary and convenient to carry out and effectuate the purposes and provisions of this chapter, including, but without limiting the generality of the foregoing, the rights and powers:

1. To adopt bylaws or rules for the regulation of its affairs and the conduct of its business;
2. To adopt an official seal and alter the same at pleasure;
3. To maintain an office at such place or places as it may designate;
4. To sue and be sued;
5. To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;
6. To study, plan, research, develop, finance, construct, reconstruct, acquire, improve, enlarge, extend, better, lease, own, operate and maintain any project or any interest in any project, within or outside the Commonwealth, including the acquisition of an ownership interest in any project as a tenant in common with any other unit or units whether public or private, and to enter into and perform contracts with respect thereto, and if the authority acquires an ownership interest as a tenant in common in any project within the Commonwealth, the surrender or waiver by any such owner of its right to partition such property for a period not exceeding the period for which the property is used or useful for electric utility purposes shall not be invalid and unenforceable by reason of length of such period or as unduly restricting the alienation of such property;
7. To acquire by private negotiated purchase or lease or otherwise an existing project, a project under construction, or other property within or outside the Commonwealth, either individually or jointly with any other unit or units whether public or private; to acquire by private negotiated purchase or lease or otherwise any facilities for the development, production, manufacture, procurement, handling, transportation, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water; and to enter into agreements by private negotiation or otherwise, for such period as the authority shall determine, for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water;
8. To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof;
9. To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;
10. To dispose of by private negotiated sale or lease or otherwise an existing project, a project under construction, or other property owned either individually or jointly, and to dispose of by private negotiated sale or lease or otherwise any facilities for the development, production, manufacture, procurement, handling, transportation, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water;
11. To borrow money and issue revenue bonds of the authority in the manner hereinafter provided;
12. To accept advice and money from any member governmental unit of the authority;
13. To apply and contract for and to expend assistance from the United States or other public or private sources, whether in form of a grant or loan or otherwise;
14. To fix, charge and collect rents, rates, fees and charges for output or capacity of any project and for the use of, or for, the other services, facilities and commodities sold, furnished or supplied through any project;
15. To authorize the acquisition, construction, operation or maintenance of any project by any unit or individual on such terms as the authority shall deem proper, and, in connection with any project which is owned jointly by the authority and one or more units, to act as agent, or designate one or more of the other units to act as agent, for all the owners of the project for the construction, operation or maintenance of such project;
16. To generate, produce, transmit, deliver, exchange, purchase or sell electric power and energy at wholesale *or retail*, and to enter into contracts for any or all such purposes;
17. To negotiate and enter into contracts for the purchase, sale, exchange, interchange, wheeling, pooling, transmission or use of electric power and energy at wholesale *or retail* with any unit within or outside the Commonwealth;
18. To purchase power and energy and related services from any source on behalf of its member governmental units and other customers and to sell the same to its member governmental units and other customers in such amounts, with such characteristics, for such periods of time and under such terms and conditions as the authority shall determine;
19. In the event of any annexation by a governmental unit which is not a member governmental unit of the authority of lands, areas, or territory in which the authority's projects exist, to continue to do business and to exercise jurisdiction over its properties and facilities in and upon or over such lands, areas or territory as long as any bonds remain outstanding or unpaid, or any contracts or other obligations remain in force;

20. To amend the articles of incorporation with respect to the name or powers of such authority or in any other manner not inconsistent with this chapter by following the procedure prescribed by law for the creation of an authority;

21. To enter into contracts with any unit on such terms as the authority shall deem proper for the purposes of acting as a billing and collecting agent for electric service or electric service fees, rents or charges imposed by any such unit;

22. To pledge or assign any moneys, fees, rents, charges or other revenues and any proceeds derived by the authority from the sales of bonds, property, insurance or condemnation awards;

23. To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the authority under this chapter, including contracts with persons, firms, corporations and others;

24. To apply to the appropriate agencies of the Commonwealth, the United States or any state thereof, and to any other proper agency for such permits, licenses, certificates or approvals as may be necessary, to construct, maintain and operate projects in accordance with such licenses, permits, certificates or approvals; and to obtain, hold and use such licenses, permits, certificates and approvals in the same manner as any other person or operating unit;

25. To employ such persons as may be required in the judgment of the authority and to fix and pay their compensation from funds available to the authority therefor; and

26. To do all acts and things necessary and convenient to carry out the purposes and to exercise the powers granted to the authority herein.

In undertaking a project, an authority shall apply to the appropriate agencies of the Commonwealth, the United States, or any state therein, for such permits, licenses, certificates, or approvals as may be necessary, including, in any event, those referred to in §§ 56-46.1, 56-234.3, and 56-265.2; former § 62.1-3; and Chapter 7 (§ 62.1-80 et seq.) of Title 62.1 of the Code of Virginia. An authority shall construct, maintain and operate such projects in accordance with such permits, licenses, certificates and approvals. *The foregoing sentence shall apply to an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 only to the extent that it would have applied to the governmental unit that is the sole member of such authority if the governmental unit had directly undertaken the project.*

In determining which project or projects to undertake in furtherance of its purposes and powers under this chapter, an authority shall take into account estimated future power requirements of member governmental units which have entered into, or propose to enter into, contracts with the authority for the purchase of output, capacity, use or services of such project or projects, and in making such determinations the authority shall consider the following:

1. Economies and efficiencies to be achieved in constructing, on a large scale, facilities for the generation *and distribution* of electric power and energy;

2. Needs of the authority for reserve and peaking capacity and to meet obligations under pooling and reserve-sharing agreements reasonably related to its needs for power and energy to which the authority is or may become a party;

3. Estimated useful life of such project;

4. Estimated time necessary for the planning, development, acquisition, or construction of such project and length of time required in advance to obtain, acquire or construct an additional power supply for the member governmental units of the authority; and

5. Reliability and availability of alternative power supply sources and cost of such alternative power supply sources.

Nothing herein contained shall prevent an authority from undertaking studies to determine whether there is a need for a project or whether such project is feasible.

§ 15.2-5406.1. Retail distribution of electric energy limited to certain authorities.

Notwithstanding any other provision in this chapter to the contrary, an authority is not authorized to distribute electric energy for retail sale unless the authority is an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403. Such distribution shall be limited to retail sales within the geographic area that was, as of January 1, 2006, by the governmental unit of such authority. Nothing in this chapter shall be construed to impair or abridge the exclusive territorial electric distribution rights or property rights of any certificated incumbent public service company operating in the Commonwealth. No such authority is authorized or empowered to take by condemnation, eminent domain, or otherwise, the electric distribution system, utility facilities, or other utility property of any public service company without the consent of such public service company.

§ 15.2-5406.2. Tort claims against certain authorities.

An authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 shall be subject to tort liability only to the extent that the governmental unit that is the sole member of such authority is subject to such liability.

§ 15.2-5409. Sale of capacity and output to nonmembers; limitations.

An authority may sell or exchange the capacity or output of a project not then required by any of its member governmental units for such consideration, for such period, and upon such other terms and

conditions as may be determined by the parties, to any person, firm, association or corporation, public or private within or outside the Commonwealth; however, this shall not authorize retail sales by an authority to any nongovernmental end user of electric capacity or energy, *except as set forth in § 15.2-5406.1*, and sales of such capacity or output of a project shall not be made in such amounts, for such periods of time, and under such terms and conditions as will cause the interest on bonds issued to finance the cost of a project to become taxable by the federal government.

§ 15.2-5423. Payments in lieu of property taxes; license tax.

A project owned by an authority shall be exempt from property taxes. However, an authority, *other than an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403*, owning a project shall, in lieu of property taxes, pay to any governmental body authorized to levy property taxes, the amount which would be assessed as taxes on real and personal property of a project if such project were otherwise subject to valuation and assessment by the State Corporation Commission, in the same manner as are public utility companies. Such payments in lieu of taxes shall be due and shall bear interest, if unpaid, as in the cases of taxes on other property. Authorities, *other than an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403*, shall pay the annual state license tax imposed by § 58.1-2626, or an equal amount in lieu of such tax, to the same extent as if § 58.1-2626 were by its terms expressly applicable to authorities. Payments in lieu of taxes made hereunder shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law. *The retail sales of an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 shall be subject to the taxes imposed under § 58.1-2900.* Except as herein expressly provided with respect to projects owned by an authority, no other property of such authority used or useful in the generation, transmission, ~~and~~ transformation, *and distribution* of electric power and energy shall be subject to payment in lieu of taxes.

§ 15.2-5423.1. *Exemption from taxation for certain authorities.*

An authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 is hereby declared to be performing a public function on behalf of the governmental unit that is the sole member of such authority with respect to which the authority is created and to be a public instrumentality of such governmental unit. Accordingly, an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 shall be exempt from state and local taxation to the same extent that the governmental unit that is the sole member of such authority is exempt from such taxation.

§ 56-1. Definitions.

Whenever used in any chapter under this title, the following terms, words and phrases shall have the meaning and shall include what is specified in this section, unless the contrary plainly appears, that is to say:

The words "the Commission" shall mean the State Corporation Commission.

The word "corporation" or "company" shall include all corporations created by acts of the General Assembly of Virginia, or under the general incorporation laws of this Commonwealth, or doing business therein, and shall exclude all municipal corporations, other political subdivisions, and public institutions owned or controlled by the Commonwealth.

The words "interexchange telephone service" shall mean telephone service between points in two or more exchanges, which is not classified as local exchange telephone service.

The words "Virginia limited liability company" shall mean (i) any limited liability company organized under Chapter 12 (§ 13.1-1000 et seq.) of Title 13.1, or (ii) any foreign limited liability company that is organized or is domesticated by filing articles of organization that meet the requirements of §§ 13.1-1003 and 13.1-1011 and include (a) the name of the foreign limited liability company immediately prior to the filing of the articles of organization; (b) the date on which and the jurisdiction in which the foreign limited liability company was first formed, organized, created or otherwise came into being; and (c) the jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the foreign limited liability company, or any equivalent thereto under applicable law, immediately prior to the filing of the articles of organization. The terms and conditions of a domestication of a foreign limited liability company as a limited liability company shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the foreign limited liability company in the conduct of its business or by applicable law other than the law of this Commonwealth, as appropriate. The provisions governing the status, powers, obligations, and choice of law applicable under § 13.1-1010.3 shall apply to any limited liability company domesticated or organized in accordance with this process.

The words "local exchange telephone service" shall mean telephone service provided in a geographical area established for the administration of communication services and consists of one or more central offices together with associated facilities which are used in providing local exchange service. Local exchange service, as opposed to interexchange service, consists of telecommunications between points within an exchange or between exchanges which are within an area where customers may call at rates and charges specified in local exchange tariffs filed with the Commission.

The word "municipality" or "municipal corporation" shall include an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403.

The word "person" shall include individuals, partnerships and corporations.

The words "public service corporation" or "public service company" shall include gas, pipeline, electric light, heat, power and water supply companies, sewer companies, telephone companies, telegraph companies, and all persons authorized to transport passengers or property as a common carrier. "Public service corporation" or "public service company" shall not include a municipal corporation, other political subdivision or public institution owned or controlled by the Commonwealth; however, if such an entity has obtained a certificate to provide services pursuant to § 56-265.4:4, then such entity shall be deemed to be a public service corporation or public service company and subject to the authority of the Commission with respect only to its provision of the services it is authorized to provide pursuant to such certificate.

The word "railroad" shall include all railroad or railway lines, whether operated by steam, electricity, or other motive power, except when otherwise specifically designated.

The words "railroad company" shall include any company, trustee or other person owning, leasing or operating a railroad.

The word "rate" shall be considered to mean "rate charged for any service rendered or to be rendered."

The words "rate," "charge" and "regulation" shall include joint rates, joint charges and joint regulations, respectively.

The words "transportation company" shall include any railroad company, any company transporting express by railroad, and any ship or boat company.

§ 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, *or by an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403.* Nor shall any provision of this chapter apply to any

such electric utility unless (i) that municipality *or that authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403* 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 *or by an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403* 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, *or by an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403* 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, 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.