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HOUSE BILL NO. 3030

Offered January 11, 2007

A *BILL to amend and reenact §§ 15.2-2404, 56-231.39, 56-577, 56-578, 56-583, 56-585, 56-586, and 56-596 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 15.2-2404.1, and to repeal § 56-579 of the Code of Virginia, relating to the transmission of electricity by electric utilities; ownership and control of transmission facilities; regional transmission organizations.*

Patrons—Marshall, R.G., Cole and McQuigg

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2404, 56-231.39, 56-577, 56-578, 56-583, 56-585, 56-586, and 56-596 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2404.1 as follows:

§ 15.2-2404. Authority to impose taxes or assessments for local improvements; purposes.

A. A locality may impose taxes or assessments upon the owners of abutting property for constructing, improving, replacing or enlarging the sidewalks upon existing streets, for improving and paving existing alleys, and for the construction or the use of sanitary or storm water management facilities, retaining walls, curbs and gutters. Such taxes or assessments may include the legal, financial or other directly attributable costs incurred by the locality in creating a district, if a district is created, and financing the payment of the improvements. The taxes or assessments shall not be in excess of the peculiar benefits resulting from the improvements to such abutting property owners. No tax or assessment for retaining walls shall be imposed upon any property owner who does not agree to such tax or assessment.

B. In addition to the foregoing, a locality may impose taxes or assessments upon the owners of abutting property for the construction, replacement or enlargement of waterlines; for the installation of street lights; for the construction or installation of canopies or other weather protective devices; for the installation of lighting in connection with the foregoing; and for permanent amenities, including, but not limited to, benches or waste receptacles. With regard to installation of street lights, a locality may provide by ordinance that upon a petition of at least 60 percent of the property owners within a subdivision, or such higher percent as provided in the ordinance, the locality may impose taxes or assessments upon all owners within the subdivision who benefit from such improvements. The taxes or assessments shall not be in excess of the peculiar benefits resulting from the improvements to such property owners.

C. In cities with a population (i) in excess of 170,000 according to the 1970 or any subsequent census or (ii) between 22,000 and 23,500, the governing body may impose taxes or assessments upon the abutting property owners for the initial improving and paving of an existing street provided not less than 50 percent of such abutting property owners who own not less than 50 percent of the property abutting such street request the improvement or paving. The taxes or assessments permitted by this paragraph shall not be in excess of the peculiar benefits resulting from the improvements to such abutting property owners and in no event shall such amount exceed the sum of \$10 per front foot of property abutting such street or the sum of \$1,000 for any one subdivided lot or parcel abutting such street, whichever is the lesser.

D. The governing bodies of the Cities of Buena Vista and Waynesboro and the County of Augusta may, by duly adopted ordinance, impose taxes or assessments upon abutting property owners subjected to frequent flooding for special benefits conferred upon that property by the installation or construction of flood control barriers, equipment or other improvements for the prevention of flooding in such area and shall provide for the payment of all or any part of the above projects out of the proceeds of such taxes or assessments, provided that such taxes or assessments shall not be in excess of the peculiar benefits resulting from the improvements to such abutting property owners.

E. In the Cities of Poquoson and Williamsburg, the governing body may impose taxes or assessments upon the owners of abutting property for the underground relocation of distribution lines for electricity, telephone, cable television and similar utilities. Notwithstanding the provisions of § 15.2-2405, such underground relocation of distribution lines may only be ordered by the governing body and the cost thereof apportioned in pursuance of an agreement between the governing body and the abutting landowners. Notice shall be given to the abutting landowners, notifying them when and where they may appear before the governing body, or some committee thereof, or the administrative board or other similar board of the locality to whom the matter may be referred, to be heard in favor of or against such

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59 improvements.

60 F. In Loudoun County and the Towns of Hamilton, Leesburg, and Purcellville, the governing body
61 may request an electric utility that proposes to construct an overhead electric transmission line of 150
62 kilovolts or more, any portion of which would be located in such locality, to enter into an agreement
63 with the locality that provides (i) the locality will impose a tax or assessment on electric utility
64 customers in a special rate district in an amount sufficient to cover the utility's additional costs of
65 constructing, operating, and maintaining that portion of the proposed line to be located in such locality,
66 or any smaller portion thereof as the utility and the locality may agree, as an underground rather than an
67 overhead line; (ii) the tax or assessment will be shown as a separate item on such customers' electric
68 bills and will be collected by the utility on behalf of the locality; (iii) the utility will construct, operate,
69 and maintain the agreed portion of the line underground; (iv) the locality will pay to the utility its full
70 additional costs of constructing, operating, and maintaining that portion of the line underground rather
71 than overhead; 2404.1 and (v) such other terms and conditions as the parties may agree. This provision
72 shall not apply, however, to lines in operation as of March 1, 2005, or to non-operational lines for
73 which the utility has acquired any right-of-way by that date.

74 If the locality and the utility enter into such an agreement, the locality shall by ordinance (i) set the
75 boundaries of the special rate district within a reasonable distance of the route of that portion of the line
76 to be placed underground pursuant to the agreement, and (ii) fix the amount of such tax or assessment,
77 which shall be based on the assessed value of real property within such district. Thereafter, owners of
78 real property comprising not less than 60 percent of the assessed value of real property within such
79 district may petition the locality to impose such tax or assessment. If such petition is filed, the locality
80 shall submit the agreement to the State Corporation Commission, which, after notice and opportunity for
81 hearing, shall approve the agreement if it finds it to be in the public interest. If the agreement is
82 approved by the State Corporation Commission, the locality shall impose such tax or assessment on
83 electric utility customers within the district, and the locality and the utility shall carry out the agreement
84 according to its terms and conditions.

85 G. *The governing body of any locality within or located adjacent to the Eighth Planning District may*
86 *request that an electric utility proposing to construct an overhead electric transmission line of 450*
87 *kilovolts or more, any portion of which would be located in such locality, construct, operate, and*
88 *maintain the line underground rather than overhead at the expense of the electric utility. If the electric*
89 *utility declines to do so, the electric utility, upon request from the locality, shall enter into an agreement*
90 *with the locality that provides that (i) the locality will impose a tax or assessment on electric utility*
91 *customers in a special rate district in an amount sufficient to cover the utility's additional costs of*
92 *constructing, operating, and maintaining that portion of the proposed line to be located in such locality,*
93 *or any smaller portion thereof as the utility and the locality may agree, as an underground rather than*
94 *an overhead line; (ii) the tax or assessment will be shown as a separate item on such customers' electric*
95 *bills and will be collected by the utility on behalf of the locality; (iii) the utility will construct, operate,*
96 *and maintain the agreed-upon portion of the line underground; (iv) the locality will pay to the utility its*
97 *full additional costs of constructing, operating, and maintaining that portion of the line underground*
98 *rather than overhead; (v) the electric utility will distribute to a corporation created by the locality*
99 *certain of its capital stock, as provided in § 15.2-2404.1, with a fair market value that equals the*
100 *amount required to cover the utility's additional costs of constructing, operating, and maintaining the*
101 *line underground as determined in clause (i); and (vi) such other terms and conditions as the parties*
102 *may agree.*

103 *If the locality and the utility enter into such an agreement, the locality shall by ordinance (i) set the*
104 *boundaries of the special rate district within a reasonable distance of the route of that portion of the*
105 *line to be placed underground pursuant to the agreement, and (ii) fix the amount of such tax or*
106 *assessment, which shall be based on the assessed value of real property within such district. The locality*
107 *shall impose such tax or assessment on electric utility customers within the district, and the locality and*
108 *the utility shall carry out the agreement according to its terms and conditions.*

109 § 15.2-2404.1. *Creation of corporation to own shares of electric utility.*

110 A. *If the governing body of any locality within or located adjacent to the Eighth Planning District*
111 *enters into an agreement pursuant to subsection G of § 15.2-2404, whereby the locality imposes a tax or*
112 *assessment on electric utility customers in a special rate district to cover the utility's additional costs of*
113 *constructing, operating, and maintaining that portion of the proposed line as an underground rather*
114 *than an overhead line, then, notwithstanding any conflicting provision of law to the contrary:*

115 1. *The governing body of any locality is authorized to create a for-profit stock corporation as*
116 *provided in the Virginia Stock Corporation Act (§ 13.1-601 et seq.), which corporation shall have as its*
117 *shareholders the owners of real estate within the special rate district established pursuant to subsection*
118 *G of § 15.2-2404. The shares of the corporation shall be allocated among such owners of property in*
119 *the special rate district as the governing body of the locality shall determine, based on a formula that*
120 *allocates to each property owner a fraction of the total number of shares equal to the ratio that the*

121 amount of the tax or assessment payable by each owner bears to the total of the tax or assessment
122 payable by all owners;

123 2. The corporation shall be created for the sole purpose of owning an interest in the electric utility
124 as provided in this section;

125 3. Upon completion of the construction of the line and the start of the levying of the tax or
126 assessment as provided pursuant to subsection G of § 15.2-2404, the electric utility shall distribute to
127 the corporation shares of capital stock in the electric utility, with the same voting rights, rights to
128 receive dividends, and other rights applicable to its common stock generally, with a fair market value as
129 of the date of the distribution equal to the amount required to cover the utility's additional costs of
130 constructing, operating, and maintaining that portion of the proposed line as an underground rather
131 than an overhead line. Such distribution of stock shall be subject to review by the Commission, which,
132 after notice and opportunity for hearing, shall approve the distribution if it finds such distribution to be
133 consistent with the terms of this section.

134 B. Payments received by the corporation as a result of its ownership of stock in the electric utility
135 may be used to reimburse the locality for its payments to the utility for the additional costs of
136 constructing, operating, and maintaining the line underground rather than overhead, to compensate
137 owners of property for any uncompensated diminution in the fair market value to the property as a
138 result of the construction, operation, or maintenance of the underground line, or for such other purpose
139 as the board of directors of the corporation shall determine.

140 § 56-231.39. Organization and purpose.

141 A. Subject to § 56-231.50:1, any utility consumer service cooperative or utility aggregation
142 cooperative may form a cooperative in accordance with this article, either stock or nonstock, not for
143 pecuniary profit, with the exception of for-profit affiliates, for the purpose of purchasing, generating or
144 transmitting energy products and services for sale or resale, ~~operating or participating in an independent~~
145 ~~system operator, regional transmission entity, regional power exchange, or both,~~ and any other lawful
146 purpose, consistent with sound business principles and prudent management practices; (i) provided,
147 however, that within the certificated service territory of any member distribution cooperative that existed
148 as of January 1, 1999, no such cooperative shall, prior to July 1, 2000, undertake or initiate any new
149 program (a) to buy or maintain an inventory of HVACR equipment or household appliances, (b) to
150 install or service any such equipment or household appliances for customers, unless such service is not
151 provided by the cooperative but by a third party individual, firm or corporation licensed to perform such
152 service, (c) to sell HVACR equipment or household appliances to customers who are metered and billed
153 on residential rates, (d) to sell HVACR equipment to customers other than those metered and billed on
154 residential rates except where such sale is an incidental part of providing other energy services or
155 providing traditional cooperative activities, (e) to sell or distribute propane or fuel oil; sell, install or
156 service propane or fuel oil equipment; or maintain or buy an inventory of propane or fuel oil equipment
157 for resale, or (f) to serve as a coordinator of nonelectric energy services or provide engineering
158 consulting services except when such energy or engineering services are an incidental part of a
159 marketing effort to provide other energy or engineering services or as a part of providing services that
160 are traditional cooperative activities; (ii) provided further, that notwithstanding clause (i), such
161 cooperative may, within the certificated service territory of a specific distribution cooperative that
162 existed as of January 1, 1999, and then only to the extent that such specific distribution cooperative
163 could lawfully do so, engage in any of the activities enumerated in clause (i) that (a) have received State
164 Corporation Commission approval prior to February 1, 1998, (b) such cooperative is ordered or required
165 to undertake by any jurisdictional court or regulatory authority, (c) were lawfully undertaken prior to
166 February 1, 1998, (d) are specifically permitted by statute, or (e) are undertaken by any other regulated
167 public service company or its unregulated affiliate within such distribution cooperative's certificated
168 service territory; and (iii) also provided that such cooperative or its affiliate may not undertake such
169 activities as are prohibited by clause (i) within the certificated service territory of another public service
170 company unless such activities are undertaken by such public service company or its unregulated
171 affiliate within the certificated service territory of a specific distribution cooperative existing as of
172 January 1, 1999, and the certificated service territories of the public service company and the specific
173 distribution cooperative overlap. In addition, such cooperative may establish one or more subsidiaries to
174 engage in any other business activities not prohibited by law. Notwithstanding the foregoing, no such
175 subsidiary may engage in any business activities that the cooperatives are prohibited from engaging in
176 under this section. For purposes of determining whether a cooperative is formed not for pecuniary profit,
177 the establishment of one or more affiliates thereof on a for-profit basis shall not disqualify such entity
178 from being formed as a cooperative pursuant to this article.

179 B. Nothing in this article shall be construed to authorize a cooperative formed pursuant to this
180 article, or any affiliate thereof, to engage, within any political subdivision of the Commonwealth on a
181 not-for-profit basis, in the sale of products, the provision of services, or other business activity, except

182 for electric power services and traditional cooperative activities. However, if such business activities are
183 not currently provided by any person other than a cooperative formed under or subject to this chapter or
184 its affiliate and the Commission determines that no such other person is likely, within a reasonable time,
185 to effectively provide such products and services in such political subdivision, an affiliate of a
186 cooperative may provide such products or services on a not-for-profit basis. The Commission shall also
187 permit an affiliate of a cooperative formed under or subject to this chapter to provide such products or
188 services on a not-for-profit basis upon a finding that the affiliate will not receive the benefit of any
189 federal income tax exemption that is not available to persons other than cooperatives and will not
190 receive the benefit of any federally guaranteed or subsidized financing that is not available to persons
191 other than cooperatives; and provided further, that nothing in this subsection shall prohibit the continued
192 operation of any business activities of any not-for-profit cooperative or affiliate formed, operating, and
193 actively providing products or services to customers on or before July 1, 1999.

194 § 56-577. Schedule for transition to retail competition; Commission authority; exemptions; pilot
195 programs.

196 A. The transition to retail competition for the purchase and sale of electric energy shall be
197 implemented as follows:

198 1. Each incumbent electric utility owning, operating, controlling, or having an entitlement to
199 transmission capacity shall join or establish a regional transmission entity, which entity may be an
200 independent system operator, to which such utility shall transfer the management and control of its
201 transmission system, subject to the provisions of ~~§ 56-579~~.

202 2. On and after January 1, 2002, retail customers of electric energy within the Commonwealth shall
203 be permitted to purchase energy from any supplier of electric energy licensed to sell retail electric
204 energy within the Commonwealth during and after the period of transition to retail competition, subject
205 to the following:

206 a. The Commission shall separately establish for each utility a phase-in schedule for customers by
207 class, and by percentages of class, to ensure that by January 1, 2004, all retail customers of each utility
208 are permitted to purchase electric energy from any supplier of electric energy licensed to sell retail
209 electric energy within the Commonwealth.

210 b. The Commission shall also ensure that residential and small business retail customers are
211 permitted to select suppliers in proportions at least equal to that of other customer classes permitted to
212 select suppliers during the period of transition to retail competition.

213 3. On and after January 1, 2002, the generation of electric energy shall no longer be subject to
214 regulation under this title, except as specified in this chapter.

215 4. On and after January 1, 2004, all retail customers of electric energy within the Commonwealth,
216 regardless of customer class, shall be permitted to purchase electric energy from any supplier of electric
217 energy licensed to sell retail electric energy within the Commonwealth.

218 B. The Commission may delay or accelerate the implementation of any of the provisions of this
219 section, subject to the following:

220 1. Any such delay or acceleration shall be based on considerations of reliability, safety,
221 communications or market power; and

222 2. Any such delay shall be limited to the period of time required to resolve the issues necessitating
223 the delay, but in no event shall any such delay extend the implementation of customer choice for all
224 customers beyond January 1, 2005.

225 The Commission shall, within a reasonable time, report to the General Assembly, or any legislative
226 entity monitoring the restructuring of Virginia's electric industry, any such delays and the reasons
227 therefor.

228 C. The Commission may conduct pilot programs encompassing retail customer choice of electricity
229 energy suppliers for each incumbent electric utility that has not transferred functional control of its
230 transmission facilities to a regional transmission entity prior to January 1, 2003. Upon application of an
231 incumbent electric utility, the Commission may establish opt-in and opt-out municipal aggregation pilots
232 and any other pilot programs the Commission deems to be in the public interest, and the Commission
233 shall report to the Commission on Electric Utility Restructuring on the status of such pilots by
234 November of each year through 2006.

235 D. The Commission shall promulgate such rules and regulations as may be necessary to implement
236 the provisions of this section.

237 E. 1. By January 1, 2002, the Commission shall promulgate regulations establishing whether and, if
238 so, for what minimum periods, customers who request service from an incumbent electric utility
239 pursuant to subsection D of § 56-582 or a default service provider, after a period of receiving service
240 from other suppliers of electric energy, shall be required to use such service from such incumbent
241 electric utility or default service provider, as determined to be in the public interest by the Commission.

242 2. Subject to (i) the availability of capped rate service under § 56-582, and (ii) the transfer of the
243 management and control of an incumbent electric utility's transmission assets to a regional transmission

244 entity after approval of such transfer by the Commission under § 56-579, retail customers of such utility
 245 (a) [JM1] purchasing such energy from licensed suppliers and (b) otherwise subject to minimum stay
 246 periods prescribed by the Commission pursuant to subdivision 1, shall nevertheless be exempt from any
 247 such minimum stay obligations by agreeing to purchase electric energy at the market-based costs of such
 248 utility or default providers after a period of obtaining electric energy from another supplier. Such costs
 249 shall include (i) the actual expenses of procuring such electric energy from the market, (ii) additional
 250 administrative and transaction costs associated with procuring such energy, including, but not limited to,
 251 costs of transmission line losses, and ancillary services, and (iii) a reasonable margin. The methodology
 252 of ascertaining such costs shall be determined and approved by the Commission after notice and
 253 opportunity for hearing and after review of any plan filed by such utility to procure electric energy to
 254 serve such customers. The methodology established by the Commission for determining such costs shall
 255 be consistent with the goals of (a) promoting the development of effective competition and economic
 256 development within the Commonwealth as provided in subsection A of § 56-596, and (b) ensuring that
 257 neither incumbent utilities nor retail customers that do not choose to obtain electric energy from
 258 alternate suppliers are adversely affected.

259 3. Notwithstanding the provisions of subsection D of § 56-582 and subdivision C 1 of § 56-585,
 260 however, any such customers exempted from any applicable minimum stay periods as provided in
 261 subdivision 2 shall not be entitled to purchase retail electric energy thereafter from their incumbent
 262 electric utilities, or from any distributor required to provide default service under subdivision B 3 of
 263 § 56-585, at the capped rates established under § 56-582, unless such customers agree to satisfy any
 264 minimum stay period then applicable while obtaining retail electric energy at capped rates.

265 4. The Commission shall promulgate such rules and regulations as may be necessary to implement
 266 the provisions of this subsection, which rules and regulations shall include provisions specifying the
 267 commencement date of such minimum stay exemption program.

268 § 56-578. Nondiscriminatory access to transmission and distribution system.

269 A. All distributors shall have the obligation to connect any retail customer, including those using
 270 distributed generation, located within its service territory to those facilities of the distributor that are
 271 used for delivery of retail electric energy, subject to Commission rules and regulations and approved
 272 tariff provisions relating to connection of service.

273 B. Except as otherwise provided in this chapter, every distributor shall provide distribution service
 274 within its service territory on a basis which is just, reasonable, and not unduly discriminatory to
 275 suppliers of electric energy, including distributed generation, as the Commission may determine. The
 276 distribution services provided to each supplier of electric energy shall be comparable in quality to those
 277 provided by the distribution utility to itself or to any affiliate. The Commission shall establish rates,
 278 terms and conditions for distribution service under Chapter 10 (§ 56-232 et seq.) of this title.

279 C. The Commission shall establish interconnection standards to ensure transmission and distribution
 280 safety and reliability, which standards shall not be inconsistent with nationally recognized standards
 281 acceptable to the Commission. In adopting standards pursuant to this subsection, the Commission shall
 282 seek to prevent barriers to new technology and shall not make compliance unduly burdensome and
 283 expensive. The Commission shall determine questions about the ability of specific equipment to meet
 284 interconnection standards.

285 D. The Commission shall consider developing expedited permitting processes for small generation
 286 facilities of fifty megawatts or less. The Commission shall also consider developing a standardized
 287 permitting process and interconnection arrangements for those power systems less than 500 kilowatts
 288 which have demonstrated approval from a nationally recognized testing laboratory acceptable to the
 289 Commission.

290 E. Upon the separation and deregulation of the generation function and services of incumbent electric
 291 utilities, the Commission shall retain jurisdiction over utilities' electric transmission function and
 292 services; ~~to the extent not preempted by federal law.~~ Nothing in this section shall impair the
 293 Commission's authority under §§ 56-46.1, 56-46.2, and 56-265.2 with respect to the construction of
 294 electric transmission facilities.

295 F. If the Commission determines that increases in the capacity of the transmission systems in the
 296 Commonwealth, or modifications in how such systems are planned, operated, maintained, used, financed
 297 or priced, will promote the efficient development of competition in the sale of electric energy, the
 298 Commission may; ~~to the extent not preempted by federal law,~~ require one or more persons having any
 299 ownership or control of, or responsibility to operate, all or part of such transmission systems to:

300 1. Expand the capacity of transmission systems;

301 2. File applications and tariffs with the Federal Energy Regulatory Commission (FERC) which (i)
 302 make transmission systems capacity available to retail sellers or buyers of electric energy under terms
 303 and conditions described by the Commission and (ii) require owners of generation capacity located in
 304 the Commonwealth to bear an appropriate share of the cost of transmission facilities, to the extent such

305 cost is attributable to such generation capacity; *or*

306 3. ~~Enter into a contract with, or provide information to, a regional transmission entity; or~~

307 4. Take such other actions as the Commission determines to be necessary to carry out the purposes
308 of this chapter.

309 G. If the Commission determines, after notice and opportunity for hearing, that a person has or will
310 have, as a result of such person's control of electric generating capacity or energy within a transmission
311 constrained area, market power over the sale of electric generating capacity or energy to retail customers
312 located within the Commonwealth, the Commission may, ~~to the extent not preempted by federal law and~~
313 ~~to the extent that the Commission determines market power is not adequately mitigated by rules and~~
314 ~~practices of the applicable regional transmission entity having responsibility for management and control~~
315 ~~of transmission assets within the Commonwealth,~~ adjust such person's rates for such electric generating
316 capacity or energy, only within such transmission-constrained area and only to the extent necessary to
317 protect retail customers from such market power. Such rates shall remain regulated until the
318 Commission, after notice and opportunity for hearing, determines that the market power has been
319 mitigated.

320 § 56-583. Wires charges.

321 A. To provide the opportunity for competition and consistent with § 56-584, the Commission shall
322 calculate wires charges for each incumbent electric utility, effective upon the commencement of
323 customer choice, which shall be the excess, if any, of the incumbent electric utility's capped unbundled
324 rates for generation over the projected market prices for generation, as determined by the Commission;
325 however, where there is such excess, the sum of such wires charges, the unbundled charge for
326 transmission and ancillary services, the applicable distribution rates established by the Commission and
327 the above projected market prices for generation shall not exceed the capped rates established under
328 subdivision A 1 of § 56-582 applicable to such incumbent electric utility. The Commission shall adjust
329 such wires charges not more frequently than annually and shall seek to coordinate adjustments of wires
330 charges with any adjustments of capped rates pursuant to § 56-582. No wires charge shall be less than
331 zero. The projected market prices for generation, when determined under this subsection, shall be
332 adjusted for any projected cost of transmission, transmission line losses, and ancillary services subject to
333 the jurisdiction of the Federal Energy Regulatory Commission which the incumbent electric utility (i)
334 must incur to sell its generation and (ii) cannot otherwise recover in rates subject to state or federal
335 jurisdiction.

336 B. Customers that choose suppliers of electric energy, other than the incumbent electric utility, or are
337 subject to and receiving default service, prior to the earlier of July 1, 2007, or the termination by the
338 Commission of capped rates pursuant to the provisions of subsection C of § 56-582 shall pay a wires
339 charge determined pursuant to subsection A based upon actual usage of electricity distributed by the
340 incumbent electric utility to the customer (i) during the period from the time the customer chooses a
341 supplier of electric energy other than the incumbent electric utility or (ii) during the period from the
342 time the customer is subject to and receives default service until the earlier of July 1, 2007, or the
343 termination by the Commission of capped rates pursuant to the provisions of subsection C of § 56-582.

344 C. The Commission shall permit any customer, at its option, to pay the wires charges owed to an
345 incumbent electric utility on an accelerated or deferred basis upon a finding that such method is not (i)
346 prejudicial to the incumbent electric utility or its ratepayers or (ii) inconsistent with the development of
347 effective competition, provided that all deferred wires charges shall be paid in full by July 1, 2007.

348 D. A supplier of retail electric energy may pay any or all of the wires charge owed by any customer
349 to an incumbent electric utility. The supplier may not only pay such wires charge on behalf of any
350 customer, but also contract with any customer to finance such payments. Further, on request of a
351 supplier, the incumbent electric utility shall enter into a contract allowing such supplier to pay such
352 wires charge on an accelerated or deferred basis. Such contract shall contain terms and conditions,
353 specified in rules and regulations promulgated by the Commission to implement the provisions of this
354 subsection, that fully compensate the incumbent electric utility for such wires charge, including
355 reasonable compensation for the time value of money.

356 E. 1. Subject to ~~(i)~~ the availability of capped rate service under § 56-582, and ~~(ii) the transfer of the~~
357 ~~management and control of an incumbent electric utility's transmission assets to a regional transmission~~
358 ~~entity after approval of such transfer by the Commission under § 56-579,~~ (a) individual customers
359 within the large industrial and large commercial rate classes of such incumbent electric utility, and (b)
360 aggregated customers of such incumbent electric utility in all rate classes, subject to such aggregated
361 demand criteria as may be established by the Commission, may elect, upon giving 60 days' prior notice
362 to such utility, to purchase retail electric energy from licensed suppliers thereof without the obligation to
363 pay wires charges to any such utility that imposes a wires charge as otherwise provided under this
364 section.

365 2. Notwithstanding the provisions of subsection D of § 56-582 and subdivision C 1 of § 56-585, any
366 such customers (i) making such election and (ii) thereafter exercising that election by obtaining retail

367 electric energy from suppliers without paying wires charges to their incumbent electric utilities, as
368 authorized herein, shall not be entitled to purchase retail electric energy thereafter from their incumbent
369 electric utilities, or from any distributor required to provide default service under subdivision B 3 of
370 § 56-585 at the capped rates established under § 56-582.

371 3. Customers making and exercising such election may thereafter, however, purchase retail electric
372 energy from their incumbent electric utilities at the market-based costs of such utility, upon 60 days'
373 prior notice to such utility. Such costs shall include (i) the actual expenses of procuring such electric
374 energy from the market, (ii) additional administrative and transaction costs associated with procuring
375 such energy, including, but not limited to, costs of transmission, transmission line losses, and ancillary
376 services, and (iii) a reasonable margin. The methodology of ascertaining such costs shall be determined
377 and approved by the Commission after notice and opportunity for hearing and after review of any plan
378 filed by such utility to procure electric energy to serve such customers. The methodology established by
379 the Commission for determining such costs shall be consistent with the goals of (a) promoting the
380 development of effective competition and economic development within the Commonwealth as provided
381 in subsection A of § 56-596, and (b) ensuring that neither incumbent utilities nor retail customers that do
382 not choose to obtain electric energy from alternate suppliers are adversely affected.

383 4. The Commission shall promulgate such rules and regulations as may be necessary to implement
384 the provisions of this subsection. Such rules and regulations shall include provisions specifying the
385 commencement date of such wires charge exemption program and enabling customers to make and
386 exercise such election on a first-come, first-served basis in each incumbent electric utility's Virginia
387 jurisdictional service territory until the most recent total peak billing demand of all such customers
388 transferred to licensed suppliers in any such territory reaches, at a maximum, 1,000 MW or eight percent
389 of such utility's prior year Virginia adjusted peak-load within the 18 months after such commencement
390 date, and thereafter according to regulations promulgated by the Commission.

391 § 56-585. Default service.

392 A. The Commission shall, after notice and opportunity for hearing, (i) determine the components of
393 default service and (ii) establish one or more programs making such services available to retail
394 customers requiring them commencing with the availability throughout the Commonwealth of customer
395 choice for all retail customers as established pursuant to § 56-577. For purposes of this chapter, "default
396 service" means service made available under this section to retail customers who (i) do not affirmatively
397 select a supplier, (ii) are unable to obtain service from an alternative supplier, or (iii) have contracted
398 with an alternative supplier who fails to perform.

399 B. From time to time, the Commission shall designate one or more providers of default service. In
400 doing so, the Commission:

401 1. Shall take into account the characteristics and qualifications of prospective providers, including
402 proposed rates, experience, safety, reliability, corporate structure, access to electric energy resources
403 necessary to serve customers requiring such services, and other factors deemed necessary to ensure the
404 reliable provision of such services, to prevent the inefficient use of such services, and to protect the
405 public interest;

406 2. May periodically, as necessary, conduct competitive bidding processes under procedures
407 established by the Commission and, upon a finding that the public interest will be served, designate one
408 or more willing and suitable providers to provide one or more components of such services, in one or
409 more regions of the Commonwealth, to one or more classes of customers;

410 3. To the extent that default service is not provided pursuant to a designation under subdivision 2,
411 may require a distributor to provide, in a safe and reliable manner, one or more components of such
412 services, or to form an affiliate to do so, in one or more regions of the Commonwealth, at rates
413 determined pursuant to subsection C and for periods specified by the Commission; however, the
414 Commission may not require a distributor, or affiliate thereof, to provide any such services outside the
415 territory in which such distributor provides service; and

416 4. Notwithstanding imposition on a distributor by the Commission of the requirement provided in
417 subdivision 3, the Commission may thereafter, upon a finding that the public interest will be served,
418 designate through the competitive bidding process established in subdivision 2 one or more willing and
419 suitable providers to provide one or more components of such services, in one or more regions of the
420 Commonwealth, to one or more classes of customers.

421 C. If a distributor is required to provide default services pursuant to subdivision B 3, after notice and
422 opportunity for hearing, the Commission shall periodically, for each distributor, determine the rates,
423 terms and conditions for default services, taking into account the characteristics and qualifications set
424 forth in subdivision B 1, as follows:

425 1. Until the expiration or termination of capped rates, the rates for default service provided by a
426 distributor shall equal the capped rates established pursuant to subdivision A 2 of § 56-582. After the
427 expiration or termination of such capped rates, the rates for default services shall be based upon

428 competitive market prices for electric generation services.

429 2. The Commission shall, after notice and opportunity for hearing, determine the rates, terms and
430 conditions for default service by such distributor on the basis of the provisions of Chapter 10 (§ 56-232
431 et seq.) of this title, except that the generation-related components of such rates shall be (i) based upon
432 a plan approved by the Commission as set forth in subdivision 3 or (ii) in the absence of an approved
433 plan, based upon prices for generation capacity and energy in competitive regional electricity markets,
434 except as provided in subsection G.

435 3. Prior to a distributor's provision of default service, and upon request of such distributor, the
436 Commission shall review any plan filed by the distributor to procure electric generation services for
437 default service. The Commission shall approve such plan if the Commission determines that the
438 procurement of electric generation capacity and energy under such plan is adequately based upon prices
439 of capacity and energy in competitive regional electricity markets. If the Commission determines that the
440 plan does not adequately meet such criteria, then the Commission shall modify the plan, with the
441 concurrence of the distributor, or reject the plan.

442 4. a. For purposes of this subsection, in determining whether regional electricity markets are
443 competitive and rates for default service, the Commission shall consider (i) the liquidity and price
444 transparency of such markets, (ii) whether competition is an effective regulator of prices in such
445 markets, (iii) the wholesale or retail nature of such markets, as appropriate, ~~(iv) the reasonable~~
446 ~~accessibility of such markets to the regional transmission entity to which the distributor belongs,~~ and
447 ~~(v) such other factors it finds relevant.~~ As used in this subsection, the term "competitive regional
448 electricity market" means a market in which competition, and not statutory or regulatory price
449 constraints, effectively regulates the price of electricity.

450 b. If, in establishing a distributor's default service generation rates, the Commission is unable to
451 identify regional electricity markets where competition is an effective regulator of rates, then the
452 Commission shall establish such distributor's default service generation rates by setting rates that would
453 approximate those likely to be produced in a competitive regional electricity market. Such proxy
454 generation rates shall take into account: (i) the factors set forth in subdivision C 4 a, and (ii) such
455 additional factors as the Commission deems necessary to produce such proxy generation rates.

456 D. In implementing this section, the Commission shall take into consideration the need of default
457 service customers for rate stability and for protection from unreasonable rate fluctuations.

458 E. On or before July 1, 2004, and annually thereafter, the Commission shall determine, after notice
459 and opportunity for hearing, whether there is a sufficient degree of competition such that the elimination
460 of default service for particular customers, particular classes of customers or particular geographic areas
461 of the Commonwealth will not be contrary to the public interest. The Commission shall report its
462 findings and recommendations concerning modification or termination of default service to the General
463 Assembly and to the Commission on Electric Utility Restructuring, not later than December 1, 2004, and
464 annually thereafter.

465 F. A distribution electric cooperative, or one or more affiliates thereof, shall have the obligation and
466 right to be the supplier of default services in its certificated service territory. A distribution electric
467 cooperative's rates for such default services shall be the capped rate for the duration of the capped rate
468 period and shall be based upon the distribution electric cooperative's prudently incurred cost thereafter.
469 Subsections B and C shall not apply to a distribution electric cooperative or its rates. Such default
470 services, for the purposes of this subsection, shall include the supply of electric energy and all services
471 made competitive pursuant to § 56-581.1. If a distribution electric cooperative, or one or more affiliates
472 thereof, elects or seeks to be a default supplier of another electric utility, then the Commission shall
473 designate the default supplier for that distribution electric cooperative, or any affiliate thereof, pursuant
474 to subsection B.

475 G. To ensure a reliable and adequate supply of electricity, and to promote economic development, an
476 investor-owned distributor that has been designated a default service provider under this section may
477 petition the Commission for approval to construct, or cause to be constructed, a coal-fired generation
478 facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth, as
479 described in § 15.2-6002, to meet its native load and default service obligations, regardless of whether
480 such facility is located within or without the distributor's service territory. The Commission shall
481 consider any petition filed under this subsection in accordance with its competitive bidding rules
482 promulgated pursuant to § 56-234.3, and in accordance with the provisions of this chapter.
483 Notwithstanding the provisions of subdivision C 3 related to the price of default service, a distributor
484 that constructs, or causes to be constructed, such facility shall have the right to recover the costs of the
485 facility, including allowance for funds used during construction, life-cycle costs, and costs of
486 infrastructure associated therewith, plus a fair rate of return, through its rates for default service. A
487 distributor filing a petition for the construction of a facility under the provisions of this subsection shall
488 file with its application a plan, or a revision to a plan previously filed, as described in subdivision C 3,
489 that proposes default service rates to ensure such cost recovery and fair rate of return. The construction

490 of such facility that utilizes energy resources located within the Commonwealth is in the public interest,
 491 and in determining whether to approve such facility, the Commission shall liberally construe the
 492 provisions of this title.

493 § 56-586. Emergency service provider.

494 On and after January 1, 2001, if any supplier fails to fulfill an obligation, resulting in the failure of
 495 retail electric energy to be delivered into the control area serving the supplier's retail customer, the entity
 496 fulfilling the control area function, or, if applicable, the regional transmission entity or other entity as
 497 designated by the Commission, shall be responsible for charging the defaulting supplier for the full cost
 498 of replacement energy, including the cost of energy, the cost incurred by others as a result of the
 499 default, and the assessment of penalties as may be approved either by the Commission, to the extent not
 500 precluded by federal law, or by the Federal Energy Regulatory Commission. The Commission, as part of
 501 the rules established under § 56-587, shall determine the circumstances under which failures to deliver
 502 electricity will result in the revocation of the supplier's license.

503 § 56-596. Advancing competition.

504 A. In all relevant proceedings pursuant to this Act, the Commission shall take into consideration,
 505 among other things, the goals of advancement of competition and economic development in the
 506 Commonwealth.

507 B. By September 1 of each year, the Commission shall report to the Commission on Electric Utility
 508 Restructuring and the Governor information on the status of competition in the Commonwealth, the
 509 status of the development of regional competitive markets, and its recommendations to facilitate
 510 effective competition in the Commonwealth as soon as practical. This report shall include any
 511 recommendations of actions to be taken by the General Assembly, the Commission, electric utilities,
 512 suppliers, generators, and distributors and regional transmission entities it considers to be in the public
 513 interest. Such recommendations shall include actions regarding the supply and demand balance for
 514 generation services, new and existing generation capacity, transmission constraints, market power,
 515 suppliers licensed and operating in the Commonwealth, and the shared or joint use of generation sites.

516 **2. That the State Corporation Commission and Office of the Attorney General shall institute**
 517 **proceedings at the Federal Energy Regulatory Commission or other body of appropriate**
 518 **jurisdiction to obtain all necessary federal approvals to accomplish the withdrawal of Virginia's**
 519 **electric utilities from membership in PJM Interconnection LLC or any other regional transmission**
 520 **organization to which they are a member, and any other actions that the State Corporation**
 521 **Commission deems necessary to restore the jurisdiction of the Commonwealth over the**
 522 **transmission of electric power and the dispatch of generation units.**

523 **3. That § 56-579 of the Code of Virginia is repealed.**