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SENATE BILL NO. 1416

Offered January 19, 2007

A BILL to amend and reenact §§ 56-234.2, 56-235.4, 56-249.6, 56-576 through 56-581, 56-582, 56-583, 56-585, 56-587, 56-589, and 56-590 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 56-585.1, and to repeal § 56-581.1 of the Code of Virginia, relating to the regulation of electric utility service.

Patron—Norment

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-234.2, 56-235.4, 56-249.6, 56-576 through 56-581, 56-582, 56-583, 56-585, 56-587, 56-589, and 56-590 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-585.1 as follows:

§ 56-234.2. Review of rates.

The Commission shall review the rates of any public utility on an annual basis when, in the opinion of the Commission, such annual review is in the public interest, *provided that the rates of a public utility subject to § 56-585.1 shall be reviewed on a biennial basis in accordance with subsection A of that section.*

§ 56-235.4. Prohibition of multiple rate increases within any twelve-month period; exception.

A. The regulated operating revenues of a public utility shall not be increased pursuant to Chapter 9.1 (§ 56-231.15 et seq.), 10 (§ 56-232 et seq.) or 19 (§ 56-531 et seq.) of this title more than once within any twelve-month period. This limitation shall not apply to increases in regulated operating revenues resulting from (i) increases in rates pursuant to § 56-245 or § 56-249.6, (ii) any automatic rate adjustment clause approved by the Commission, (iii) new rate schedules for service not offered under existing rate schedules or for expansion, reduction, or termination of existing services, (iv) initiation, modification or termination of experimental rates under § 56-234, or (v) the making permanent of an experimental program. Notwithstanding any other provisions of this section, a telephone company may apply to the Commission to pass on to its customers as a part of its rates any changes approved by the Commission in the carrier access charges, *and any public utility may apply to the Commission to implement rate design changes which overall, and by customer class, are not designed to increase or decrease the aggregate regulated operating revenues of such utility.*

B. The Commission may adopt such rules and regulations as may be necessary to carry out the provisions of this section. The Commission may specify, by rule, the time during the calendar year when application may be filed by electric utility and cooperatives, gas utilities, telephone utilities and cooperatives, and other utilities.

The Commission may by rule provide standards and procedures for expedited handling of rate increase applications, and such rules may provide that an expedited rate increase may take effect in less than twelve months after the preceding increase so long as regulated operating revenues are not increased pursuant to the provisions of subsection A of this section more than once in any calendar year.

§ 56-249.6. Recovery of fuel and purchased power costs.

A. 1. Each electric utility that purchases fuel for the generation of electricity or purchases power and that was not, as of July 1, 1999, bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, shall submit to the Commission its estimate of fuel costs, including the cost of purchased power, for the 12-month period beginning on the date prescribed by the Commission. Upon investigation of such estimates and hearings in accordance with law, the Commission shall direct each company to place in effect tariff provisions designed to recover the fuel costs determined by the Commission to be appropriate for that period, adjusted for any over-recovery or under-recovery of fuel costs previously incurred. *Notwithstanding any provision of Chapter 23 (§ 56-576 et seq.) or any Commission order issued prior to January 1, 2007, such tariff provisions, which shall include all of the actually incurred costs of purchased power, of an incumbent electric utility that has divested its generation assets with the approval of the Commission pursuant to § 56-590 prior to January 1, 2002, shall have the effect of increasing its regulated electric revenue by an amount not more than 20 percent of such revenue during the previous calendar year. Any costs excluded from such tariff provisions by the foregoing limitation may be deferred by such utility and shall be recovered in such utility's subsequent proceedings hereunder to the extent such recovery, when combined with recovery of subsequent purchased power costs, would not exceed the foregoing limitation. Any such recovery shall be with interest at a compensatory rate as the Commission may approve but no less than*

the rate of interest used by the Commission for refunds in rate proceedings under this chapter.

2. The Commission shall continuously review fuel costs and if it finds that any utility described in subdivision A 1 is in an over-recovery position by more than five percent, or likely to be so, it may reduce the fuel cost tariffs to correct the over-recovery.

B. All fuel costs recovery tariff provisions in effect on January 1, 2004, for any electric utility that purchases fuel for the generation of electricity and that was, as of July 1, 1999, bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, shall remain in effect until the earlier of (i) July 1, 2007; (ii) the termination of capped rates pursuant to the provisions of subsection C of § 56-582; or (iii) the establishment of tariff provisions under subsection C. Any such utility shall continue to report to the Commission annually its actual fuel costs, including the cost of purchased power until July 1, 2007.

C. ~~Until the capped rates for such utility expire or are terminated pursuant to the provisions of § 56-582, each~~ *Each* electric utility described in subsection B shall submit annually to the Commission its estimate of fuel costs, including the cost of purchased power, for ~~the~~ successive 12-month periods beginning on July 1, 2007~~, 2008, and 2009, and the six-month period beginning July 1, 2010~~. Upon investigation of such estimates and hearings in accordance with law, the Commission shall direct each such utility to place in effect tariff provisions designed to recover the fuel costs determined by the Commission to be appropriate for such periods, adjusted for any over-recovery or under-recovery of fuel costs previously incurred; however, (i) no such adjustment for any over-recovery or under-recovery of fuel costs previously incurred shall be made for any period prior to July 1, 2007, and (ii) the Commission may order that up to 40% of any increase in fuel tariffs determined by the Commission to be appropriate for the 12-month period beginning July 1, 2007, above the fuel tariffs previously existing, shall be deferred and recovered during the period from July 1, 2008, through December 31, 2010.

D. ~~1.~~ In proceedings under subsections A and C~~, the Commission may, to the extent deemed appropriate, offset against fuel costs and purchased power costs to be recovered the revenues attributable to sales of power pursuant to interconnection agreements with neighboring electric utilities.~~*:*

1. Energy revenues associated with off-system sales of power shall be credited against fuel factor expenses in an amount equal to the total incremental fuel factor costs incurred in the production and delivery of such sales. In addition, 50 percent of the total accumulated energy margins from off-system sales shall be credited against fuel factor expenses. The remaining 50 percent of such energy margins shall not be considered in the biennial reviews of electric utilities conducted pursuant to § 56-585.1. In the event such accumulated energy margins result in a net loss to the electric utility, no charges shall be applied to fuel factor expenses. For purposes of this subsection, "energy margins" shall mean the total energy revenues received from off-system sales transactions less the total incremental costs incurred in the production and delivery of such sales; and

2. ~~In proceedings under subsections A and C, the~~ *The* Commission shall disallow recovery of any fuel costs that it finds without just cause to be the result of failure of the utility to make every reasonable effort to minimize fuel costs or any decision of the utility resulting in unreasonable fuel costs, giving due regard to reliability of service and the need to maintain reliable sources of supply, economical generation mix, generating experience of comparable facilities, and minimization of the total cost of providing service.

~~3.~~ The Commission is authorized to promulgate, in accordance with the provisions of this section, all rules and regulations necessary to allow the recovery by electric utilities of all of their prudently incurred fuel costs under subsections A and C, including the cost of purchased power, as precisely and promptly as possible, with no over-recovery or under-recovery, except as provided in subsection C, in a manner that will tend to assure public confidence and minimize abrupt changes in charges to consumers.

~~The Commission may, however, dispense with the procedures set forth above for any electric utility if it finds, after notice and hearing, that the electric utility's fuel costs can be reasonably recovered through the rates and charges investigated and established in accordance with other sections of this chapter.~~

§ 56-576. Definitions.

As used in this chapter:

"Affiliate" means any person that controls, is controlled by, or is under common control with an electric utility.

"Aggregator" means a person that, as an agent or intermediary, (i) offers to purchase, or purchases, electric energy or (ii) offers to arrange for, or arranges for, the purchase of electric energy, for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. The following activities shall not, in and of themselves, make a person an aggregator under this chapter: (i) furnishing legal services to two or more retail customers, suppliers or aggregators; (ii) furnishing educational, informational, or analytical services to two or more retail customers, unless direct or indirect compensation for such services is paid by an aggregator or supplier of electric energy; (iii) furnishing educational, informational, or analytical services to two or more suppliers or aggregators; (iv)

providing default service under § 56-585; (v) engaging in activities of a retail electric energy supplier, licensed pursuant to § 56-587, which are authorized by such supplier's license; and (vi) engaging in actions of a retail customer, in common with one or more other such retail customers, to issue a request for proposal or to negotiate a purchase of electric energy for consumption by such retail customers.

~~"Billing services" means services related to billing customers for competitive electric services or billing customers on a consolidated basis for both competitive and regulated electric services.~~

"Commission" means the State Corporation Commission.

"Cooperative" means a utility formed under or subject to Chapter 9.1 (§ 56-231.15 et seq.) of this title.

"Covered entity" means a provider in the Commonwealth of an electric service not subject to competition but shall not include default service providers.

"Covered transaction" means an acquisition, merger, or consolidation of, or other transaction involving stock, securities, voting interests or assets by which one or more persons obtains control of a covered entity.

"Customer choice" means the opportunity for a retail customer in the Commonwealth to purchase electric energy from any supplier licensed and seeking to sell electric energy to that customer.

"Distribute," "distributing" or "distribution of" electric energy means the transfer of electric energy through a retail distribution system to a retail customer.

"Distributor" means a person owning, controlling, or operating a retail distribution system to provide electric energy directly to retail customers.

"Electric utility" means any person that generates, transmits, or distributes electric energy for use by retail customers in the Commonwealth, including any investor-owned electric utility, cooperative electric utility, or electric utility owned or operated by a municipality.

"Generate," "generating," or "generation of" electric energy means the production of electric energy.

"Generator" means a person owning, controlling, or operating a facility that produces electric energy for sale.

"Incumbent electric utility" means each electric utility in the Commonwealth that, prior to July 1, 1999, supplied electric energy to retail customers located in an exclusive service territory established by the Commission.

"Independent system operator" means a person that may receive or has received, by transfer pursuant to this chapter, any ownership or control of, or any responsibility to operate, all or part of the transmission systems in the Commonwealth.

~~"Market power" means the ability to impose on customers a significant and nontransitory price increase on a product or service in a market above the price level which would prevail in a competitive market.~~

~~"Metering services" means the ownership, installation, maintenance, or reading of electric meters and includes meter data management services.~~

"Municipality" means a city, county, town, authority or other political subdivision of the Commonwealth.

"Period of transition to customer choice" means the period beginning on January 1, 2002, and ending on January 1, 2004, unless otherwise extended by the Commission pursuant to this chapter, during which the Commission and all electric utilities authorized to do business in the Commonwealth shall implement customer choice for retail customers in the Commonwealth.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any municipality.

"Renewable energy" means energy derived from sunlight, wind, falling water, sustainable biomass, energy from waste, wave motion, tides, and geothermal power, and does not include energy derived from coal, oil, natural gas or nuclear power.

"Retail customer" means any person that purchases retail electric energy for its own consumption at one or more metering points or nonmetered points of delivery located in the Commonwealth.

"Retail electric energy" means electric energy sold for ultimate consumption to a retail customer.

"Supplier" means any generator, distributor, aggregator, broker, marketer, or other person who offers to sell or sells electric energy to retail customers and is licensed by the Commission to do so, but it does not mean a generator that produces electric energy exclusively for its own consumption or the consumption of an affiliate.

"Supply" or "supplying" electric energy means the sale of or the offer to sell electric energy to a retail customer.

"Transmission of," "transmit," or "transmitting" electric energy means the transfer of electric energy through the Commonwealth's interconnected transmission grid from a generator to either a distributor or a retail customer.

"Transmission system" means those facilities and equipment that are required to provide for the

transmission of electric energy.

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

A. ~~The transition to retail~~ *Retail* competition for the purchase and sale of electric energy shall be ~~implemented as follows~~ *subject to the following provisions*:

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

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

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

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

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

~~4. On and after~~ *3. From* January 1, 2004, *until the expiration or termination of capped rates,* all retail customers of electric energy within the Commonwealth, regardless of customer class, shall be permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth. *After the expiration or termination of capped rates, only individual retail customers of electric energy within the Commonwealth, regardless of customer class, whose demand during the most recent calendar year exceeded five megawatts, shall be permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth, subject to the following conditions:*

a. If such customer does not purchase electric energy from licensed suppliers after that date, such customer shall purchase electric energy from its incumbent electric utility.

b. The demands of individual retail customers may not be aggregated or combined for the purpose of meeting the demand limitations of this provision, any other provision of this chapter to the contrary notwithstanding.

c. If such customer does purchase electric energy from licensed suppliers after the expiration or termination of capped rates, it shall not thereafter be entitled to purchase electric energy from the incumbent electric utility without giving five years' advance written notice of such intention to such utility, except where such customer demonstrates to the Commission, after notice and opportunity for hearing, through clear and convincing evidence that its supplier has failed to perform, or is about to fail to perform, through no fault of the customer, and that such customer is unable to obtain service from an alternative supplier. If, as a result of such proceeding, the Commission finds it in the public interest to grant an exemption from the five-year notice requirement, such customer may thereafter purchase electric energy at the costs of such utility, as determined by the Commission pursuant to subdivision 3 d hereof, for the remainder of the five-year notice period, after which point the customer may purchase electric energy from the utility under rates, terms and conditions determined pursuant to § 56-585.1. Any customer that returns to purchase electric energy from its incumbent electric utility, after expiration of the five-year notice period, shall be subject to minimum stay periods equal to those prescribed by the Commission pursuant to subdivision C 1.

d. The costs of serving a customer that has received an exemption from the five-year notice requirement under subdivision 3 c hereof shall be the market-based costs of the utility, including (i) the actual expenses of procuring such electric energy from the market, (ii) additional administrative and transaction costs associated with procuring such energy, including, but not limited to, costs of transmission, transmission line losses, and ancillary services, and (iii) a reasonable margin as determined pursuant to the provisions of subdivision A 3 of § 56-585.1. The methodology established by the Commission for determining such costs shall ensure that neither utilities nor other retail customers are adversely affected.

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

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

~~2. Any such delay shall be limited to the period of time required to resolve the issues necessitating~~

~~the delay, but in no event shall any such delay extend the implementation of customer choice for all customers beyond January 1, 2005.~~

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

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

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

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

2. Subject to (i) the availability of capped rate service under § 56-582, and (ii) the transfer of the management and control of an incumbent electric utility's transmission assets to a regional transmission entity after approval of such transfer by the Commission under § 56-579, retail customers of such utility (a) purchasing such energy from licensed suppliers and (b) otherwise subject to minimum stay periods prescribed by the Commission pursuant to subdivision 1, shall nevertheless be exempt from any such minimum stay obligations by agreeing to purchase electric energy at the market-based costs of such utility or default providers after a period of obtaining electric energy from another supplier. Such costs shall include (i) the actual expenses of procuring such electric energy from the market, (ii) additional administrative and transaction costs associated with procuring such energy, including, but not limited to, costs of *transmission,* transmission line losses, and ancillary services, and (iii) a reasonable margin. The methodology of ascertaining such costs shall be determined and approved by the Commission after notice and opportunity for hearing and after review of any plan filed by such utility to procure electric energy to serve such customers. The methodology established by the Commission for determining such costs shall be consistent with the goals of (a) promoting the development of effective competition and economic development within the Commonwealth as provided in subsection A of § 56-596, and (b) ensuring that neither incumbent utilities nor retail customers that do not choose to obtain electric energy from alternate suppliers are adversely affected.

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

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

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

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

B. Except as otherwise provided in this chapter, every distributor shall provide distribution service within its service territory on a basis which is just, reasonable, and not unduly discriminatory to suppliers of electric energy, including distributed generation, as the Commission may determine. The distribution services provided to each supplier of electric energy shall be comparable in quality to those provided by the distribution utility to itself or to any affiliate. The Commission shall establish rates, terms and conditions for distribution service *to be provided after the expiration or termination of capped rates,* under Chapter 10 (§ 56-232 et seq.) of this title, *except that the rates, terms and conditions of investor-owned incumbent electric utilities shall be regulated pursuant to the provisions of § 56-585.1.*

C. The Commission shall establish interconnection standards to ensure transmission and distribution safety and reliability, which standards shall not be inconsistent with nationally recognized standards acceptable to the Commission. In adopting standards pursuant to this subsection, the Commission shall

seek to prevent barriers to new technology and shall not make compliance unduly burdensome and expensive. The Commission shall determine questions about the ability of specific equipment to meet interconnection standards.

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

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

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

~~1. Expand the capacity of transmission systems;~~

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

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

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

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

§ 56-579. Regional transmission entities.

A. As set forth in § 56-577, each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish a regional transmission entity, which hereafter may be referred to as "RTE," to which such utility shall transfer the management and control of its transmission assets, subject to the following:

1. No such incumbent electric utility shall transfer to any person any ownership or control of, or any responsibility to operate, any portion of any transmission system located in the Commonwealth prior to July 1, 2004, and without obtaining, following notice and hearing, the prior approval of the Commission, as hereinafter provided. However, each incumbent electric utility shall file an application for approval pursuant to this section by July 1, 2003, and shall transfer management and control of its transmission assets to a regional transmission entity by January 1, 2005, subject to Commission approval as provided in this section.

2. The Commission shall develop rules and regulations under which any such incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth, may transfer all or part of such control, ownership or responsibility to an RTE, upon such terms and conditions that the Commission determines will:

a. Promote:

(1) Practices for the reliable planning, operating, maintaining, and upgrading of the transmission systems and any necessary additions thereto; and

(2) Policies for the pricing and access for service over such systems that are safe, reliable, efficient, not unduly discriminatory and consistent with the orderly development of competition in the Commonwealth;

b. Be consistent with lawful requirements of the Federal Energy Regulatory Commission;

c. Be effectuated on terms that fairly compensate the transferor;

d. Generally promote the public interest, and are consistent with (i) ensuring that consumers' needs for economic and reliable transmission are met and (ii) meeting the transmission needs of electric generation suppliers both within and without this Commonwealth, including those that do not own, operate, control or have an entitlement to transmission capacity.

B. The Commission shall also adopt rules and regulations, with appropriate public input, establishing elements of regional transmission entity structures essential to the public interest, which elements shall be applied by the Commission in determining whether to authorize transfer of ownership or control from an incumbent electric utility to a regional transmission entity.

C. The Commission shall, to the fullest extent permitted under federal law, participate in any and all proceedings concerning regional transmission entities furnishing transmission services within the Commonwealth, before the Federal Energy Regulatory Commission. Such participation may include such intervention as is permitted state utility regulators under Federal Energy Regulatory Commission rules and procedures.

D. Nothing in this section shall be deemed to abrogate or modify:

1. The Commission's authority over transmission line or facility construction, enlargement or acquisition within this Commonwealth, as set forth in Chapter 10.1 (§ 56-265.1 et seq.) of this title;

2. The laws of this Commonwealth concerning the exercise of the right of eminent domain by a public service corporation pursuant to the provisions of Article 5 (§ 56-257 et seq.) of Chapter 10 of this title~~; however, on and after January 1, 2002, a petition may not be filed to exercise the right of eminent domain in conjunction with the construction or enlargement of any utility facility whose purpose is the generation of electric energy~~; or

3. The Commission's authority over retail electric energy sold to retail customers within the Commonwealth by licensed suppliers of electric service, including necessary reserve requirements, all as specified in § 56-587.

E. For purposes of this section, transmission capacity shall not include capacity that is primarily operated in a distribution function, as determined by the Commission, taking into consideration any binding federal precedents.

F. Any request to the Commission for approval of such transfer of ownership or control of or responsibility for transmission facilities shall include a study of the comparative costs and benefits thereof, which study shall analyze the economic effects of the transfer on consumers, including the effects of transmission congestion costs. The Commission may approve such a transfer if it finds, after notice and hearing, that the transfer satisfies the conditions contained in this section.

G. The Commission shall report annually to the Commission on Electric Utility Restructuring its assessment of the success in the practices and policies of the RTE facilitating the orderly development of competition in the Commonwealth. Such report shall set forth actions taken by the Commission regarding requests for the approval of any transfer of ownership or control of transmission facilities to an RTE, including a description of the economic effects of such proposed transfers on consumers.

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

A. ~~The~~ *Subject to the provisions of § 56-585.1, 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, *or* transmission ~~or any~~ services ~~made competitive pursuant to § 56-581.1~~, to the extent necessary to prevent impairment of competition. *Nothing in this chapter shall prevent an incumbent electric utility from offering metering options to its customers.*

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~~ *Subject to the provisions of § 56-585.1, the Commission shall continue to exercise its* 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 (a) 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, or (b) where the geographic area served by an electric utility owned or operated by a municipality is changed pursuant to mutual agreement between the municipality and the affected incumbent public utility in accordance with § 56-265.4:1. 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.

§ 56-581. Regulation of rates subject to Commission's jurisdiction.

A. ~~Subject to the provisions of § 56-582~~ *After the expiration or termination of capped rates,* the Commission shall regulate the rates *of investor-owned incumbent electric utilities* for the transmission of electric energy, to the extent not prohibited by federal law, and for the *generation of electric energy and the* distribution of electric energy to ~~such~~ retail customers ~~on an unbundled basis, but, subject to the provisions of this chapter after the date of customer choice, the Commission no longer shall regulate rates and services for the generation component of retail electric energy sold to retail customers~~ *pursuant to § 56-585.1*.

B. Beginning July 1, 1999, and thereafter, no cooperative that was a member of a power supply cooperative on January 1, 1999, shall be obligated to file any rate rider as a consequence of an increase or decrease in the rates, other than fuel costs, of its wholesale supplier, nor must any adjustment be made to such cooperative's rates as a consequence thereof.

C. Except for the provision of default services under § 56-585 or emergency services in § 56-586, nothing in this chapter shall authorize the Commission to regulate the rates or charges for electric service to the Commonwealth and its municipalities.

§ 56-582. Rate caps.

A. The Commission shall establish capped rates, effective January 1, 2001, for each service territory of every incumbent utility as follows:

1. Capped rates shall be established for customers purchasing bundled electric transmission, distribution and generation services from an incumbent electric utility.

2. Capped rates for electric generation services, only, shall also be established for the purpose of effecting customer choice for those retail customers authorized under this chapter to purchase generation services from a supplier other than the incumbent utility during this period.

3. The capped rates established under this section shall be the rates in effect for each incumbent utility as of the effective date of this chapter, or rates subsequently placed into effect pursuant to a rate application filed by an incumbent electric utility with the Commission prior to January 1, 2001, and subsequently approved by the Commission, and made by an incumbent electric utility that is not currently bound by a rate case settlement adopted by the Commission that extends in its application beyond January 1, 2002. If such rate application is filed, the rates proposed therein shall go into effect on January 1, 2001, but such rates shall be interim in nature and subject to refund until such time as the Commission has completed its investigation of such application. Any amount of the rates found excessive by the Commission shall be subject to refund with interest, as may be ordered by the Commission. The Commission shall act upon such applications prior to commencement of the period of transition to customer choice. Such rate application and the Commission's approval shall give due consideration, on a forward-looking basis, to the justness and reasonableness of rates to be effective for a period of time ending as late as July 1, 2007. The capped rates established under this section, which include rates, tariffs, electric service contracts, and rate programs (including experimental rates, regardless of whether they otherwise would expire), shall be such rates, tariffs, contracts, and programs of each incumbent electric utility, provided that experimental rates and rate programs may be closed to new customers upon application to the Commission. Such capped rates shall also include rates for new services where, subsequent to January 1, 2001, rate applications for any such rates are filed by incumbent electric utilities with the Commission and are thereafter approved by the Commission. In establishing such rates for new services, the Commission may use any rate method that promotes the public interest and that is fairly compensatory to any utilities requesting such rates.

B. The Commission may adjust such capped rates in connection with the following: (i) utilities' recovery of fuel and purchased power costs pursuant to § 56-249.6, and, if applicable, in accordance with the terms of any Commission order approving the divestiture of generation assets pursuant to § 56-590, (ii) any changes in the taxation by the Commonwealth of incumbent electric utility revenues, (iii) any financial distress of the utility beyond its control, (iv) with respect to cooperatives that were not members of a power supply cooperative on January 1, 1999, and as long as they do not become members, their cost of purchased wholesale power and discounts from capped rates to match the cost of providing distribution services, (v) with respect to cooperatives that were members of a power supply cooperative on January 1, 1999, their recovery of fuel costs, through the wholesale power cost adjustment clauses of their tariffs pursuant to § 56-231.33, and (vi) with respect to incumbent electric utilities that were not, as of the effective date of this chapter, bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, the Commission shall adjust such utilities' capped rates, not more than once in any 12-month period, for the timely recovery of their incremental costs for transmission or distribution system reliability and compliance with state or federal environmental laws or regulations to the extent such costs are prudently incurred on and after July 1, 2004. Any adjustments pursuant to § 56-249.6 and clause (i) of this subsection by an incumbent electric utility that transferred all of its generation assets to an affiliate with the approval of the Commission pursuant to § 56-590 prior to January 1, 2002, shall be effective only on and after July 1, 2007. Notwithstanding the provisions of § 56-249.6, the Commission may authorize tariffs that include incentives designed to encourage an incumbent electric utility to reduce its fuel costs by permitting retention of a portion of cost savings resulting from fuel cost reductions or by other methods determined by the Commission to be fair and reasonable to the utility and its customers.

C. A utility may petition the Commission to terminate the capped rates to all customers any time after January 1, 2004, and such capped rates may be terminated upon the Commission finding of an effectively competitive market for generation services within the service territory of that utility. If its capped rates, as established and adjusted from time to time pursuant to subsections A and B, are continued after January 1, 2004, an incumbent electric utility that is not, as of the effective date of this chapter, bound by a rate case settlement adopted by the Commission that extends in its application beyond January 1, 2002, may petition the Commission, during the period January 1, 2004, through June 30, 2007, for approval of a one-time change in its rates, and if the capped rates are continued after July 1, 2007, such incumbent electric utility may at any time after July 1, 2007, petition the Commission for approval of a one-time change in its rates. Any change in rates pursuant to this subsection by an

incumbent electric utility that divested its generation assets with approval of the Commission pursuant to § 56-590 prior to January 1, 2002, shall be in accordance with the terms of any Commission order approving such divestiture. Any petition for changes to capped rates filed pursuant to this subsection shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.) of this title.

D. Until the expiration or termination of capped rates as provided in this section, the incumbent electric utility, consistent with the functional separation plan implemented under § 56-590, shall make electric service available at capped rates established under this section to any customer in the incumbent electric utility's service territory, including any customer that, until the expiration or termination of capped rates, requests such service after a period of utilizing service from another supplier.

E. During the period when capped rates are in effect for an incumbent electric utility, such utility may file with the Commission a plan describing the method used by such utility to assure full funding of its nuclear decommissioning obligation and specifying the amount of the revenues collected under either the capped rates, as provided in this section, or the wires charges, as provided in § 56-583, that are dedicated to funding such nuclear decommissioning obligation under the plan. The Commission shall approve the plan upon a finding that the plan is not contrary to the public interest.

F. The capped rates established pursuant to this section shall expire on December 31, ~~2010~~ *2008*, unless sooner terminated by the Commission pursuant to the provisions of subsection C*; however, rates after the expiration or termination of capped rates shall equal capped rates until such rates are changed pursuant to other provisions of this title.*

§ 56-583. Wires charges.

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

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

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

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

E. 1. Subject to (i) the availability of capped rate service under § 56-582, and (ii) the transfer of the management and control of an incumbent electric utility's transmission assets to a regional transmission entity after approval of such transfer by the Commission under § 56-579, (a) individual customers within the large industrial and large commercial rate classes of such incumbent electric utility, and (b) aggregated customers of such incumbent electric utility in all rate classes, subject to such aggregated demand criteria as may be established by the Commission, may elect, upon giving 60 days' prior notice to such utility, to purchase retail electric energy from licensed suppliers thereof without the obligation to

pay wires charges to any such utility that imposes a wires charge as otherwise provided under this section.

2. Notwithstanding the provisions of subsection D of § 56-582 and ~~subdivision~~ *subsection* C ~~1~~ of § 56-585, any such customers (i) making such election and (ii) thereafter exercising that election by obtaining retail electric energy from suppliers without paying wires charges to their incumbent electric utilities, as authorized herein, shall not be entitled to purchase retail electric energy thereafter from their incumbent electric utilities, or from any distributor required to provide default service under ~~subdivision~~ *subsection* B ~~3~~ of § 56-585 at the capped rates established under § 56-582.

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

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

§ 56-585. Default service.

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

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

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

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

~~3. To the extent that default service is not provided pursuant to a designation under subdivision 2, may require a distributor to provide~~ *A distributor shall have the obligation and right to be the supplier of default services in its certificated service territory, and shall do so,* in a safe and reliable manner, ~~one or more components of such services, or to form an affiliate to do so, in one or more regions of the Commonwealth,~~ at rates determined pursuant to subsection C ~~and for periods specified by the Commission~~; however, the Commission may not require a distributor, or affiliate thereof, to provide any such services outside the territory in which such distributor provides service~~; and~~

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

C. ~~If a distributor is required to provide default services pursuant to subdivision B 3, after notice and~~

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opportunity for hearing, the Commission shall periodically, for each distributor, determine the rates, terms and conditions for default services, taking into account the characteristics and qualifications set forth in subdivision B 1, as follows:

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

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

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

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

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

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

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

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

G. To ensure a reliable and adequate supply of electricity, and to promote economic development, an investor-owned distributor that has been designated a default service provider under this section may petition the Commission for approval to construct, or cause to be constructed, a coal-fired generation facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth, as described in § 15.2-6002, to meet its native load and default service obligations, regardless of whether such facility is located within or without the distributor's service territory. The Commission shall consider any petition filed under this subsection in accordance with its competitive bidding rules promulgated pursuant to § 56-234.3, and in accordance with the provisions of this chapter. Notwithstanding the provisions of subdivision C 3 related to the price of default service, a distributor

~~that constructs, or causes to be constructed, such facility shall have the right to recover the costs of the facility, including allowance for funds used during construction, life-cycle costs, and costs of infrastructure associated therewith, plus a fair rate of return, through its rates for default service. A distributor filing a petition for the construction of a facility under the provisions of this subsection shall file with its application a plan, or a revision to a plan previously filed, as described in subdivision C 3, that proposes default service rates to ensure such cost recovery and fair rate of return. The construction of such facility that utilizes energy resources located within the Commonwealth is in the public interest, and in determining whether to approve such facility, the Commission shall liberally construe the provisions of this title.~~

§ 56-585.1. Generation, distribution, and transmission rates after capped rates.

A. After the expiration or termination of capped rates, the Commission shall, after notice and opportunity for hearing, conduct biennial reviews of the rates, terms and conditions for the provision of generation, distribution and transmission services by each investor-owned incumbent electric utility, subject to the following provisions:

1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis. Such reviews shall be conducted in a single, combined proceeding, and shall utilize a 12-month test period. The first such proceeding after the expiration or termination of capped rates shall utilize a 12-month test period ending December 31, 2008.

2. The sole purposes for such biennial review shall be (i) to determine whether the utility's earnings during the respective test periods defined in this subsection have produced a fair combined rate of return on the utility's common equity for its generation and distribution services; (ii) to make any revisions necessary to the utility's rates in the event it is earning less than a fair combined rate of return so as to provide the opportunity to recover fully the costs of providing such services and to earn such return; and (iii) to distribute to customers certain earnings in excess of a fair combined rate of return, as provided in subdivision A 9 or A 10. For these purposes, a "fair combined rate of return" shall be determined pursuant to subdivision A 3.

3. Fair rates of return on common equity applicable separately to the generation and distribution services of such utility, and for the two such services combined, shall be determined by adding 600 basis points to the latest available three-month average bond yield of investment-grade bonds using Moody's Long Term Baa Utility Bonds; provided, however, that if such three-month average bond yield exceeds 12 percent on any occasion when such determination is required or authorized under this chapter, the Commission may adopt an alternate method or benchmark, for use on that occasion, that produces a figure of not less than 12 percent to be used as a proxy for the three-month average bond yield in such determination, and provided further that the Commission may increase or decrease such combined rate of return by up to 50 basis points based on the generating plant performance, operations and efficiency of a utility, as compared to nationally recognized standards, such action being referred to in this section as a Performance Incentive. If the Commission adopts such Performance Incentive, it shall remain in effect without change until the next biennial review for such utility is concluded and shall not be modified pursuant to any provision of the remainder of this subsection. If the combined rate of return on common equity earned by both the generation and distribution services is no more than 100 basis points above the return as so determined, such combined return shall not be considered excessive.

4. Each such utility shall make a biennial filing by March 31 of every other year, beginning in 2009, consisting of Schedules 1 through 7, 9 through 14, 18, 21, 25 and 30 contained in the Commission's rules governing utility rate increase applications (20 VAC 5-200-30) as such rules existed on January 1, 2007. The test period shall be the 12 months ending December 31 immediately preceding the filing date. Such filing shall utilize the financial statements of the utility as filed with the Securities and Exchange Commission, and no adjustments, other than those necessary to allocate the utility's books and records from a total company basis to a Virginia jurisdictional basis, shall be proposed or made to such books and records by the Commission, the Commission's staff or any party in such biennial review, except as provided in this subsection, and provided, however, that any rate adjustment clauses previously implemented pursuant to subdivision 5, 6 or 7 shall be consolidated with the utility's costs, revenues and investments if rates are revised or credits applied to customers' bills pursuant to subdivision 9 or 10. By the same date, each such utility shall also file its plan for its projected generation and transmission requirements to serve its native load for the next 10 years, including how the utility will obtain such resources, the capital requirements for providing such resources, and the anticipated sources of funding for such resources.

5. The following costs incurred by the utility shall be deemed reasonable and prudent: (i) costs for transmission services provided to the utility by the regional transmission entity of which the utility is a member, as determined under applicable rates, terms and conditions approved by the Federal Energy Regulatory Commission, and (ii) costs charged to the utility that are associated with demand response

programs approved by the Federal Energy Regulatory Commission and administered by the regional transmission entity of which the utility is a member. Upon petition of a utility at any time, before or after the expiration or termination of capped rates, the Commission shall approve a rate adjustment clause under which such costs, including, without limitation, costs for transmission service, charges for new and existing transmission facilities, administrative charges, and ancillary service charges designed to recover transmission costs, shall be recovered on a timely and current basis from customers. Retail rates to recover these costs shall be designed using the appropriate billing determinants in the retail rate schedules.

6. A utility may at any time, before or after the expiration or termination of capped rates, petition the Commission for approval of one or more rate adjustment clauses for the timely and current recovery from customers of (i) its incremental costs described in clause (vi) of subsection B of § 56-582 incurred between July 1, 2004, and the expiration or termination of capped rates, if such utility is, as of July 1, 2007, deferring such costs pursuant to an order of the Commission entered under clause (vi) of subsection B of § 56-582, and (ii) projected incremental amounts necessary to provide incentives for the design and operation of fair and effective demand-side management, conservation, renewable energy, energy efficiency, and load management programs found by the Commission to be in the public interest. The Commission shall approve such petition if such costs or the need for such incentives are demonstrated with reasonable certainty.

7. To ensure a reliable and adequate supply of electricity, and to promote economic development, a utility may at any time, before or after the expiration or termination of capped rates, petition the Commission for approval to construct (i) a coal-fired generation facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth, as described in § 15.2-6002, regardless of whether such facility is located within or without the utility's service territory, (ii) one or more other generation facilities, (iii) one or more major unit modifications of generation facilities, or (iv) one or more projects necessary to comply with state or federal environmental laws or regulations, to meet its projected native load obligations. A utility that constructs any such facility shall have the right to recover the costs of the facility, as accrued against income, through its rates, including allowance for funds used during construction until such time as a fair rate of return, as determined pursuant to this subdivision, on construction work in progress is included in rates, projected construction work in progress, planning, development and construction costs, life-cycle costs, and costs of infrastructure associated therewith, plus a fair rate of return, as determined pursuant to subdivision 3; however, no change shall be made to any Performance Incentive previously adopted by the Commission in making such determination. Allowance for funds used during construction shall be calculated for any such facility utilizing the utility's actual capital structure and overall cost of capital. Section 56-265.2 and the Commission's competitive bidding rules promulgated pursuant to § 56-234.3 shall not apply to any such facility. If the construction of such facility is approved, the Commission shall also approve a rate adjustment clause under which such costs shall be recovered on a timely and current basis from customers. The construction of any facility described in clause (i) is in the public interest, and in determining whether to approve such facility, the Commission shall liberally construe the provisions of this title.

8. Any petition filed pursuant to subdivision 5, 6 or 7 shall be considered by the Commission on a stand-alone basis without regard to the other costs, revenues, investments or earnings of the utility. Any costs incurred by a utility prior to the filing of such petition, or during the consideration thereof by the Commission, that are proposed for recovery in such petition shall be deferred on the books and records of the utility until the Commission's final order in the matter, or until the implementation of any applicable approved rate adjustment clauses, whichever is later. The Commission's final order regarding any petition filed pursuant to subdivision 5, 6 or 7 shall be entered not more than three months, eight months and nine months, respectively, after the date of filing of such petition. If such petition is approved, the order shall direct that the applicable rate adjustment clause be applied to customers' bills not more than 60 days after the date of the order, or upon the expiration or termination of capped rates, whichever is later.

9. If the Commission determines as a result of such biennial review that (i) the utility is earning less than a fair combined rate of return on both its generation and distribution services, as determined in subdivision 3, the Commission shall order revisions to the utility's rates necessary to provide the opportunity to fully recover the costs of providing the utility's services and to earn such fair combined rate of return, or (ii) the utility is earning more than 100 basis points above a fair combined rate of return on both its generation and distribution services, as determined in subdivision 3, the Commission shall, subject to the provisions of subdivision 10, direct that:

a. One-half of the amount of such earnings for the test period that are between 100 basis points and 200 basis points above said combined rate of return shall be credited to customers' bills;

b. Two-thirds of the amount of such earnings for the test period that are between 200 basis points and 300 basis points above said combined rate of return shall be credited to customers' bills;

c. Three-quarters of the amount of such earnings for the test period that are between 300 basis points and 400 basis points above said combined rate of return shall be credited to customers' bills; and

d. All of the amount of such earnings for the test period that are more than 400 basis points above said combined rate of return shall be credited to customers' bills.

Any such credits shall be amortized over the 12 months of the rate year and shall be allocated among customer classes such that the relationship between the specific customer class rates of return to the overall target rate of return will have the same relationship as the last approved allocation of revenues used to design base rates. The Commission's final order regarding such biennial review shall be entered not more than eight months after the end of the test period, and any revisions in rates or credits so ordered shall take effect not more than 60 days after the date of the order.

10. If, as a result of a biennial review required under this subsection and conducted with respect to any test period ending later than December 31, 2008, the Commission finds, with respect to such test period, that (i) any utility earned more than 100 basis points above a fair combined rate of return on both its generation and distribution services, as determined in subdivision 3, and (ii) the total aggregate regulated rates of such utility were more than five percent, compounded annually, above the total aggregate regulated rates of such utility as determined pursuant to the biennial review conducted for the base period, the Commission may, upon a finding that such action is required by the public interest, direct that any or all earnings for such test period that were more than 100 basis points above such fair combined rate of return shall be credited to customers' bills, in lieu of the graduated crediting provisions of clause (ii) of subdivision 9. Any such credits shall be amortized and allocated among customer classes in the manner provided by clause (ii) of subdivision 9. For purposes of this subdivision:

"Base period" means (i) the test period ending December 31, 2008, or (ii) the most recent test period with respect to which credits have been applied to customers' bills under the provisions of this subdivision, whichever is later.

"Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6, except for any increases in fuel tariffs deferred by the Commission for recovery in periods after December 31, 2008, pursuant to the provisions of clause (ii) of subsection C of § 56-249.6; (ii) rate adjustment clauses implemented pursuant to subdivision 5, 6 or 7; (iii) revisions to the utility's rates pursuant to clause (i) of subdivision 9; (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility rate increase applications (20 VAC 5-200-30), as permitted by subsection B, occurring after July 1, 2007; and (v) base rates in effect as of July 1, 2007.

11. Nothing in this subsection shall preclude the Commission from examining, during any proceeding authorized or required by this subsection, the prudency of any cost incurred by a utility, except for those costs declared to be reasonable and prudent by subdivision 5.

B. Nothing in this section shall preclude an investor-owned incumbent electric utility from applying for an increase in rates pursuant to § 56-245 or the Commission's rules governing utility rate increase applications (20 VAC 5-200-30), provided, however, that in any such filing, a fair rate of return on common equity shall be determined pursuant to subdivision 3. Nothing in this section shall preclude such utility's recovery of fuel and purchased power costs as provided in § 56-249.6.

§ 56-587. Licensure of retail electric energy suppliers and persons providing other competitive services.

A. As a condition of doing business in the Commonwealth, each person except a default service provider seeking to sell, offering to sell, or selling ~~(i)~~ electric energy to any retail customer in the Commonwealth, on and after January 1, 2002 ~~or (ii) any service that, pursuant to § 56-581.1, may be provided by persons licensed to provide such service~~, shall obtain a license from the Commission to do so. A license shall not be required solely for the leasing or financing of property used in the sale of electricity to any retail customer in the Commonwealth.

The license shall authorize that person to engage in the activities authorized by such license until the license expires or is otherwise terminated, suspended or revoked.

B. 1. As a condition of obtaining, retaining and renewing any license issued pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, which may include requirements that such person (i) demonstrate, in a manner satisfactory to the Commission, financial responsibility; (ii) post a bond as deemed adequate by the Commission to ensure that financial responsibility; (iii) pay an annual license fee to be determined by the Commission; and (iv) pay all taxes and fees lawfully imposed by the Commonwealth or by any municipality or other political subdivision of the Commonwealth. In addition, as a condition of obtaining, retaining and renewing any license pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, including but not limited to requirements that such person demonstrate (i) technical capabilities as the Commission may deem

appropriate; (ii) in the case of a person seeking to sell, offering to sell, or selling electric energy to any retail customer in the Commonwealth, access to generation and generation reserves; and (iii) adherence to minimum market conduct standards.

2. Any license issued by the Commission pursuant to this section to a person seeking to sell, offering to sell, or selling electric energy to any retail customer in the Commonwealth may be conditioned upon the licensee furnishing to the Commission prior to the provision of electric energy to consumers proof of adequate access to generation and generation reserves.

C. 1. The Commission shall establish a reasonable period within which any retail customer may cancel, without penalty or cost, any contract entered into with any person licensed pursuant to this section.

2. The Commission may adopt other rules and regulations governing the requirements for obtaining, retaining, and renewing a license issued pursuant to this section, and may, as appropriate, refuse to issue a license to, or suspend, revoke, or refuse to renew the license of, any person that does not meet those requirements.

D. Notwithstanding the provisions of § 13.1-620, a public service company may, through an affiliate or subsidiary, conduct one or more of the following businesses, even if such business is not related to or incidental to its stated business as a public service company: (i) become licensed as a retail electric energy supplier pursuant to this section, or for purposes of participation in an approved pilot program encompassing retail customer choice of electric energy suppliers; (ii) become licensed as an aggregator pursuant to § 56-588, or for purposes of participation in an approved pilot program encompassing retail customer choice of electric energy suppliers; *or* (iii) ~~become licensed to furnish any service that, pursuant to § 56-581.1, may be provided by persons licensed to provide such service; or (iv)~~ own, manage or control any plant or equipment or any part of a plant or equipment used for the generation of electric energy.

§ 56-589. Municipal and state aggregation.

A. ~~Counties~~ *Subject to the provisions of subdivision A 3 of § 56-577, counties*, cities, and towns (hereafter municipalities) and other political subdivisions of the Commonwealth may, at their election and upon authorization by majority votes of their governing bodies, aggregate electrical energy and demand requirements for the purpose of negotiating the purchase of electrical energy requirements from any licensed supplier within this Commonwealth, as follows:

1. Any municipality or other political subdivision of the Commonwealth may aggregate the electric energy load of residential, commercial, and industrial retail customers within its boundaries on an opt-in or opt-out basis.

2. Any municipality or other political subdivision of the Commonwealth may aggregate the electric energy load of its governmental buildings, facilities, and any other governmental operations requiring the consumption of electric energy. Aggregation pursuant to this subdivision shall not require licensure pursuant to § 56-588.

3. Two or more municipalities or other political subdivisions within the Commonwealth may aggregate the electric energy load of their governmental buildings, facilities, and any other governmental operations requiring the consumption of electric energy. Aggregation pursuant to this subdivision shall not require licensure pursuant to § 56-588 when such municipalities or other political subdivisions are acting jointly to negotiate or arrange for themselves agreements for their energy needs directly with licensed suppliers or aggregators.

Nothing in this subsection shall prohibit the Commission's development and implementation of pilot programs for opt-in, opt-out, or any other type of municipal aggregation, as provided in § 56-577.

B. The Commonwealth, at its election, may aggregate the electric energy load of its governmental buildings, facilities, and any other government operations requiring the consumption of electric energy for the purpose of negotiating the purchase of electricity from any licensed supplier within the Commonwealth. Aggregation pursuant to this subsection shall not require licensure pursuant to § 56-588.

§ 56-590. Divestiture, functional separation and other corporate relationships.

A. The Commission shall not require any incumbent electric utility to divest itself of any generation, transmission or distribution assets pursuant to any provision of this chapter.

B. 1. The Commission shall, however, direct the functional separation of generation, retail transmission and distribution of all incumbent electric utilities in connection with the provisions of this chapter to be completed by January 1, 2002.

2. By January 1, 2001, each incumbent electric utility shall submit to the Commission a plan for such functional separation which may be accomplished through the creation of affiliates, or through such other means as may be acceptable to the Commission.

3. Consistent with this chapter, the Commission may impose conditions, as the public interest requires, upon its approval of any incumbent electric utility's plan for functional separation, including requirements that (i) the incumbent electric utility's generation assets or, at the election of the incumbent electric utility and if approved by the Commission pursuant to subdivision 4 of this subsection, their

equivalent are made available for electric service during the capped rate period as provided in § 56-582 and, if applicable, during any period the distributor serves as a default provider as provided for in § 56-585; (ii) the incumbent electric utility receive Commission approval for the sale, transfer or other disposition of generation assets during the capped rate period and, if applicable, during any period the distributor serves as a default provider; and (iii) any such generation asset sold, transferred, or otherwise disposed of by the incumbent electric utility with Commission approval shall not be further sold, transferred, or otherwise disposed of during the capped rate period and, if applicable, during any period the distributor serves as default provider, without additional Commission approval.

4. If an incumbent electric utility proposes that the equivalent to its generation assets be made available pursuant to subdivision 3 of this subsection, the Commission shall determine the adequacy of such proposal and shall approve or reject such proposal based on the public interest.

5. In exercising its authority under the provisions of this section and under § 56-90, the Commission shall have no authority to regulate, on a cost-of-service basis or other basis, the price at which generation assets or their equivalent are made available for default service purposes. Such restriction on the Commission's authority to regulate, on a cost-of-service basis or other basis, prices for default service shall not affect the ability of a distributor to offer to provide, and of the Commission to approve if appropriate the provision of, such services ~~in any competitive bidding process pursuant to subdivision B 2 of § 56-585,~~ on a cost plus basis or any other basis. The Commission's authority to regulate the price of default service shall be consistent with the pricing provisions applicable to a distributor pursuant to § 56-585. In addition, the Commission shall, in exercising its responsibilities under this section and under § 56-90, consider, among other factors, the potential effects of any such transfer on: (i) rates and reliability of capped rate service under § 56-582, and of default service under § 56-585, and (ii) the development of a competitive market in the Commonwealth for retail generation services. However, the Commission may not deny approval of a transfer proposed by an incumbent electric utility, pursuant to subdivisions 2 and 4 of subsection B, due to an inability to determine, at the time of consideration of the transfer, default service prices under § 56-585.

C. ~~Whenever pursuant to § 56-581.1 services are made subject to competition, the Commission shall direct the functional separation of such services to the extent necessary to achieve the purposes of this section. Each affected incumbent electric utility shall, by dates prescribed by the Commission, submit for the Commission's approval a plan for such functional separation.~~

~~D.~~ The Commission shall, to the extent necessary to promote effective competition in the Commonwealth, promulgate rules and regulations to carry out the provisions of this section, which rules and regulations shall include provisions:

1. Prohibiting cost-shifting or cross-subsidies between functionally separate units;

2. Prohibiting functionally separate units from engaging in anticompetitive behavior or self-dealing;

3. Prohibiting affiliated entities from engaging in discriminatory behavior towards nonaffiliated units; and

4. Establishing codes of conduct detailing permissible relations between functionally separate units.

~~E~~*D*. Neither a covered entity nor an affiliate thereof may be a party to a covered transaction without the prior approval of the Commission. Any such person proposing to be a party to such transaction shall file an application with the Commission. The Commission shall approve or disapprove such transaction within sixty days after the filing of a completed application; however, the sixty-day period may be extended by Commission order for a period not to exceed an additional 120 days. The application shall be deemed approved if the Commission fails to act within such initial or extended period. The Commission shall approve such application if it finds, after notice and opportunity for hearing, that the transaction will comply with the requirements of subsection ~~F~~ *E*, and may, as a part of its approval, establish such conditions or limitations on such transaction as it finds necessary to ensure compliance with subsection ~~F~~ *E*.

~~F~~*E*. A transaction described in subsection ~~E~~ *D* shall not:

1. Substantially lessen competition among the actual or prospective providers of noncompetitive electric service or of a service which is, or is likely to become, a competitive electric service; or

2. Jeopardize or impair the safety or reliability of electric service in the Commonwealth, or the provision of any noncompetitive electric service at just and reasonable rates.

~~G~~*F*. Except as provided in subdivision B 5 ~~of § 56-590~~, nothing in this chapter shall be deemed to abrogate or modify the Commission's authority under Chapter 3 (§ 56-55 et seq.), 4 (§ 56-76 et seq.) or 5 (§ 56-88 et seq.) of this title. However, any person subject to the requirements of subsection ~~E~~ *D* that is also subject to the requirements of Chapter 5 of this title may be exempted from compliance with the requirements of Chapter 5 of this title.

2. That § 56-581.1 of the Code of Virginia is repealed.